

Development Agreements - Long-Term Projects, Extended Vested Rights, and Infrastructure Expense Reimbursements

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Legal Update

As coastal North Carolina continues to see increased interest in living in untapped areas of the "inner banks" and the resulting population boom, a new tool has become available for developers and municipalities interested in promoting long-term multi-use projects offering residential options close to amenities, shopping, and traditional commercial operations. The General Assembly now has authorized municipalities to enter into development agreements to address various land use and infrastructure issues. Development agreements offer the benefits of flexibility for long-term projects, expanded vested rights protection for developers, and the management of infrastructure arrangements.

Long-Term Projects

The General Assembly recognized that large-scale development projects typically occur in multiple phases that extend over a period of years, thus requiring a long-term commitment by both public and private parties to allocate resources and to cooperate in dealing with changes, foreseen or otherwise, that may occur over time. In addition, such large-scale developments often impact communities in ways that are difficult or impossible to accommodate within traditional zoning processes. Previously, contracts between developers and municipalities were not possible due to time limitations on vested rights for developers and restrictions against contract zoning. Now cities, towns, counties, and developers of large-scale developments can enter into binding development agreements to plan for, experiment with, and incorporate long-term planning of mixed-use developments, revitalization of downtowns, and other concepts while managing impacts on the surrounding areas.

Vested Rights

The General Assembly also recognized that developers and lenders are unwilling to risk the private capital and financing required for the scale and duration of such projects without sufficient assurances that development standards will remain stable for an extended period. Development agreements allow local governments to extend their regulatory frameworks and policies in order to encourage developers and lenders to invest their private funds in long-term projects. A development agreement may last for up to 20 years, and the local laws applicable to the project, including zoning designations and restrictions, cannot be changed during the agreed upon period. Thus, the developer's "vested rights" in zoning have been expanded

from two years to a period lasting up to 20 years. This offers assurance to developers and lenders that development standards will not change through the extended build-out period of the project.

Infrastructure

Developers and municipalities also may arrange for a developer to be reimbursed for infrastructure expenses, whether through the use of a development agreement or a stand alone agreement. If a developer provides the financing, construction, and extension of public infrastructure services such as roads and water, sewer, and groundwater drainage facilities, the municipality may offer expense reimbursement to the developer in the form of fee credits and property tax reimbursement. The result is that the municipality will receive benefits it otherwise could not afford, and the developer will be able to ensure that the infrastructure necessary to the success of the project will be built and that the developer will be reimbursed for the resulting costs.

Our Practice

Development agreements provide promising new possibilities for public-private partnerships for large scale development. An understanding of the requirements of the new law as well as management of the interrelationship among infrastructure provisions, local permitting requirements, zoning, infrastructure construction, and reimbursement is vital to ensure that the development agreement is properly prepared and enforceable. A team of Ward and Smith, P.A. professionals, comprised of attorneys from our real estate, environmental, zoning and land use planning, and government relations practices, regularly assists clients in such development matters. Negotiating the ideal development agreement helps clients to get the most out of their large-scale development projects.

For further information regarding the issues described above, please contact Samuel B. Franck, W. Daniel Martin, III, William E. Martin, Clifford P. Parson, C. H. Pope, Jr., Clint D. Routson, Stanley M. Sams, Frank H. Sheffield, Jr., Ryal W. Tayloe, or Amy P. Wang.

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