

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 256

(Frederick County Delegation)

Environmental Matters

Education, Health, and Environmental Affairs

Frederick County - Development Rights and Responsibilities Agreements - Direct
Judicial Review

This bill specifies that, in Frederick County, a person aggrieved by a development rights and responsibilities agreement (1) may not file an administrative appeal and (2) may seek direct judicial review of the agreement in circuit court by filing a request with the circuit court of the county. The judicial review must be in accordance with Title 7, Chapter 200 of the Maryland Rules.

Fiscal Summary

State Effect: The bill does not directly affect State operations or finances.

Local Effect: The bill is not expected to directly affect Frederick County finances.

Small Business Effect: Potential meaningful impact in Frederick County.

Analysis

Current Law:

Development Rights and Responsibilities Agreements

Local jurisdictions other than Montgomery and Prince George's counties are authorized under Title 7, Subtitle 3 of the Land Use Article to, by local law, establish procedures and requirements for the consideration and execution of development rights and responsibilities agreements and to delegate all or part of the authority established under the local law to a public principal (a governmental entity of the local jurisdiction). The public principal may execute agreements for real property within the local jurisdiction

with a person having a legal or equitable interest in the real property and may include a federal, State, or local government or unit as an additional party to the agreement.

Agreements are subject to a public hearing requirement and must be determined by the jurisdiction's planning commission to be consistent with the jurisdiction's overall plan for future development. An agreement must include, among other things:

- the agreement's duration;
- the permissible uses of the property;
- the density or intensity of the use of the property;
- a description of conditions, terms, restrictions, or other requirements determined by the local jurisdiction to be necessary to ensure the public health, safety, or welfare; and
- to the extent applicable, provisions for the dedication of a portion of the property for public use, protection of sensitive areas, preservation and restoration of historic structures, and construction or financing of public facilities.

The parties to an agreement may amend the agreement by mutual consent after a public hearing and a determination by the local planning commission that the amendment is consistent with the jurisdiction's overall plan for future development. The parties may also terminate an agreement by mutual consent and, if it determines that suspension or termination of an agreement is essential to ensure the public health, safety, or welfare, a jurisdiction may suspend or terminate an agreement after a public hearing.

The laws, rules, regulations, and policies governing the use, density, or intensity of real property subject to an agreement are those in force at the time the agreement is executed unless the local jurisdiction determines that compliance with laws, rules, regulations, and policies enacted or adopted after the effective date of the agreement is essential to ensure the public health, safety, or welfare.

An agreement is void five years after the day on which the parties execute the agreement unless otherwise provided in the agreement or an amendment to the agreement.

The parties and their successors in interest are bound to an agreement once it is recorded in the land records office of the local jurisdiction. Unless an agreement is terminated, the parties and their successors in interest may enforce the agreement.

As noted above, the provisions of Title 7, Subtitle 3 of the Land Use Article do not apply to Montgomery and Prince George's counties, which are separately authorized under Titles 24 and 25 to enter into development rights and responsibilities agreements.

Administrative and Judicial Review

Under provisions of the Land Use Article generally applicable to noncharter counties and municipal corporations, a local jurisdiction must appoint a board of appeals that may hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer or unit under provisions of the Land Use Article or of any local law adopted under provisions of the Land Use Article.

An appeal to the board of appeals may be filed by (1) a person aggrieved by a decision of the administrative officer or unit or (2) an officer or unit of the jurisdiction affected by a decision of the administrative officer or unit. A person aggrieved by the decision or action of a board of appeals, a taxpayer, or an officer or unit of the local jurisdiction may file a request for judicial review of a decision of a board of appeals. The judicial review must be in accordance with Title 7, Chapter 200 of the Maryland Rules, which governs judicial review of administrative agency decisions.

Charter counties also have the power to provide for the right of appeal of any matter arising under the planning and zoning laws of the county to circuit court.

Frederick County's development rights and responsibilities agreement ordinance allows for any person aggrieved by an agreement to file an appeal to the board of appeals. An appeal must be taken within 30 days of the day on which the parties execute the agreement.

Background:

Development Rights and Responsibilities Agreements

Chapter 562 of 1995 (HB 700) first authorized local jurisdictions to utilize development rights and responsibilities agreements under Article 66B (provisions that are now under Title 7, Subtitle 3 of the Land Use Article following the enactment of Chapter 426 of 2012 (HB 1290) that revised, restated, and recodified the laws of the State that relate to land use). The Maryland Court of Appeals, in a 2004 opinion, characterized Chapter 562 as seeming to balance developers' and property owners' desires for more certainty and less monetary risk as they proceed with development, against local governments' desire to "receive greater public benefits on a more predictable schedule than might otherwise be attainable[.]" The National Association of Homebuilders similarly indicated in an *amicus* brief in the same case that development agreements can serve to vest development rights in a landowner or developer in exchange for dedication and funding of public facilities, allowing development of a proposed use of land to proceed despite subsequent changes in zoning regulations.

Under Maryland law, in the absence of a development rights and responsibilities agreement, the ability to develop for a specific use generally can be subject to a change in local land use laws up until noticeable commencement of construction.

Frederick County Form of Government

Frederick County, currently under a commission form of government, is transitioning to a charter form of government. The county's adopted charter, which will largely take effect December 1, 2014, states that the public local laws of the county and all rules, regulations, resolutions, and ordinances will continue in force to the extent they are not inconsistent with the charter and until they are repealed or amended. The charter also indicates that the county will continue to be subject to provisions of the Land Use Article of the Annotated Code of Maryland that it was subject to prior to the charter taking effect, and those provisions, and any changes, will be included in the county's code of public local laws.

Small Business Impact: A small business developer that enters into a development rights and responsibilities agreement in Frederick County may benefit from the bill to the extent direct judicial review lessens any delays caused by a challenge to a development rights and responsibilities agreement by an aggrieved party. A small business that challenges a development rights and responsibilities agreement in Frederick County may also benefit from direct access to court if an administrative appeal is viewed by the business as an additional step to go through before reaching court. However, on the other hand, a small business could be disadvantaged to the extent an administrative appeal is a less expensive option to challenge an agreement.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning; Judiciary (Administrative Office of the Courts); Frederick County; *Queen Anne's Conservation, Inc. v. County Commissioners*, 382 Md. 306, 855 A.2d 325 (2004); *Prince George's County v. Sunrise Development Ltd. Partnership*, 330 Md. 297, 623 A.2d 1296 (1993); *88 Op. Att'y Gen. 145* (2003); National Association of Homebuilders; NAIOP Maryland; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2013
ns/lgc Revised - House Third Reader - March 28, 2013
Revised - Enrolled Bill - April 23, 2013

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510