

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 493

(Delegate G. Clagett, *et al.*)

Environmental Matters

Land Use - Development Rights and Responsibilities Agreements

This bill extends the period for which a development rights and responsibilities agreement between certain local jurisdictions and property owners is effective, from 5 to 10 years, absent the effective period being otherwise specified in the agreement or extended by amendment to the agreement. The bill also prohibits a local jurisdiction from enforcing any laws, rules, regulations, or policies governing the use, density, or intensity of the real property subject to the agreement that are enacted or adopted after the effective date of the agreement, unless the jurisdiction determines that there is an *imminent* threat to the health, safety, or welfare of the residents of all or part of the jurisdiction.

Fiscal Summary

State Effect: None.

Local Effect: Local government finances may be affected as a result of the bill's changes, but any impact cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Local jurisdictions, with the exception of Montgomery and Prince George's counties, are authorized under Article 66B – Land Use to execute development rights and responsibilities agreements for real property within the jurisdiction with a person that has a legal or equitable interest in the real property. 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 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 health, safety, or welfare of residents of all or part of the jurisdiction.

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 Article 66B relating to development rights and responsibilities agreements do not apply to Montgomery and Prince George's counties, which are separately authorized under Article 28 to enter into development rights and responsibilities agreements.

Background: Chapter 562 of 1995 first authorized local jurisdictions to utilize development rights and responsibilities agreements under Article 66B. 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.

Local Fiscal Effect: Local governments may be impacted to the extent the bill restricts a jurisdiction's ability to enforce later enacted or adopted laws, rules, regulations, or policies in situations where the health, safety, or welfare of residents may be affected. However, any associated fiscal impact cannot be reliably estimated at this time.

Small Business Effect: Developers may benefit to the extent the bill provides additional assurance of a developer's ability to proceed under the laws, rules, regulations, and policies governing the use, density, or intensity of the property at the time the agreement was executed. This may lessen monetary risk for those businesses as they proceed toward construction.

Developers may also benefit from the extended effective period of an agreement in the event the development approval process takes longer than five years for a given development and a longer effective period was not otherwise specified.

Additional Information

Prior Introductions: HB 194 of 2009 and HB 1192 of 2008 received unfavorable reports from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of Planning; Baltimore, Garrett, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland Association of Counties; Maryland Municipal League; *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*; National Association of Homebuilders; Department of Legislative Services

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