

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 859

(Senators Young and Hough)

Education, Health, and Environmental Affairs

Environment and Transportation

**Frederick County - Development Rights and Responsibilities Agreements -
Administrative Appeals**

This bill, applicable only in Frederick County, authorizes (1) a person aggrieved by a development rights and responsibilities agreement to file an administrative appeal to the county board of zoning appeals; (2) judicial review of the board of zoning appeals decision in circuit court; and (3) an appeal from the circuit court to the Court of Special Appeals. If a development rights and responsibilities agreement was entered into before July 1, 2016, however, a person aggrieved by an amendment to the agreement may not file an administrative appeal but may seek direct judicial review in circuit court; the decision of the circuit court is subject to specified appeal.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: The bill does not directly affect State 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/Background:

Development Rights and Responsibilities Agreements

A “development rights and responsibilities agreement” is defined under Division I of the Land Use Article as an agreement between a local governing body and a person having a legal or equitable interest in real property to establish conditions under which development may proceed for a specified time.

Chapter 562 of 1995 first authorized local jurisdictions to use development rights and responsibilities agreements under Article 66B (provisions that are now under Title 7, Subtitle 3 of the Land Use Article). 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.

Chapter 610 of 2013

Chapter 610 of 2013 established procedures unique to Frederick County for a person aggrieved by a development rights and responsibilities agreement to seek review of the agreement. Under Chapter 610, a person aggrieved by an agreement may not file an administrative appeal but may seek direct judicial review of the agreement in circuit court by filing a request with the circuit court of the county.

In a 2015 unreported opinion of the Court of Special Appeals addressing Chapter 610, the court discussed the process available in other counties for an aggrieved person to seek review of a development rights and responsibilities agreement, which includes review by the local board of appeals, the circuit court, and eventually the appellate courts. Chapter 610 removed the review by the local board of appeals from the process in Frederick County and the court’s opinion revealed that Chapter 610 also eliminated the ability to appeal a circuit court decision. The court indicated that appellate review of a circuit court decision is only available where it is authorized in law and, under Chapter 610, there is no longer statutory authorization for appellate review of a circuit court decision regarding a development rights and responsibilities agreement in Frederick County.

Small Business Effect: Small businesses that benefit from a development rights and responsibilities agreement (such as developers), or any small business adversely affected by a proposed development, may be meaningfully impacted by the bill's additions to the process for an aggrieved party to seek review of an agreement. The expanded process may add time and costs to the review process for a given agreement, yet any small businesses adversely affected by an agreement may benefit from greater access to review of an agreement.

Additional Information

Prior Introductions: None.

Cross File: HB 605 (Frederick County Delegation) - Environment and Transportation.

Information Source(s): Maryland Department of Planning; Judiciary (Administrative Office of the Courts); Frederick County; Maryland Building Industry Association; National Association of Homebuilders; *Queen Anne's Conservation, Inc. v. County Commissioners*, 382 Md. 306, 855 A.2d 325 (2004); *Friends of Frederick County, Inc. v. Frederick County Board of Appeals*, October 23, 2015 (Court of Special Appeals – unreported opinion); Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2016
md/lgc

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