

REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Tracking Number: 18e.

Date of Request: October 23, 2007

Date Request Received: October 24, 2007

Board Meeting Date Requested: November 5, 2007

Board Meeting Date Assigned: November 5, 2007

Short Title: Presentation On Development Agreements

Background: During the review of a recent development by the Planning Board, the subject of development agreements was discussed as a possible method for Pender County to use as an added development tool.

Development agreements are a relatively new concept for many North Carolina jurisdictions, as the State only recently (January 2006) adopted the legislation to allow for such agreements to be widely executed by units of governments.

Planning staff will present a brief overview of development agreements to provide the Board of Commissioners with background information on this unique development tool.

Specific Action Requested: No action necessary.

Requested by: Joey Raczkowski
Department: Planning Department
Title: Planning Director
Contact Phone: 910-259-1529
Contact Fax: 910-259-3735

Request Status:

- Request is proceeding to Board of Commissioners
- More information is needed – see attached
- Request on hold – no further information needed
- Other:

(Administrative Use Only)

CONTRACT TYPE

- Renewal
- For Service(s)
- Intergovernmental – County as Grantee
 - Federal Grantor
 - State Grantor
 - Grant or
- County as Grantor
 - County Funds
 - Other Funds:
- Revision
- For Equipment

PURCHASING

- Budgeted Item: Yes No
- Date Rec'd: Reviewed and Approved
 Comments on Reverse

Date Sent:

Signed:

ATTORNEY

- Date Rec'd: Reviewed and Approved
 Legal Problem(s)
 Comments on Reverse

Date Sent:

Signed:

FINANCE

- Sufficient Funds Available Not Available
- Date Rec'd: Budget Amendment Necessary
 Budgeted Amendment is Attached
 Comments on Reverse

Date Sent:

Signed:

CLERK

- Signature(s) Required:
 Board Chairman/County Manager
 Other:

Date Rec'd Approved by Board: Yes No
At meeting on



Development Agreements

*adapted from a presentation by Eric Braun with
Kennedy Covington
Attorneys at Law*



Evolution of Development Agreements

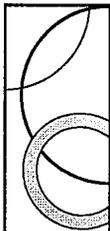
- Many states have used Development Agreements (“DAs”) for years

• Arizona	• Florida	• Maryland	• Oregon
• California	• Hawaii	• Nevada	• South Carolina
• Colorado	• Idaho	• New Jersey	• Virginia
			• Washington



Evolution of Development Agreements

- **Emerging Trends in Real Estate Development**
 - More complex projects (i.e., vertical and horizontal mixed-use)
 - Larger tract development – especially in coastal and mountain regions ($\pm 1,000$ acre developments more common)
 - Increasingly complex regulatory framework
 - Risk of litigation/third-party challengers – increasing sophistication of neighborhood opposition groups; pitfalls in approvals process



Evolution of Development Agreements

- Need for more certainty
- Demands on public infrastructure
- Citizen demand for services and amenities
- Limitations on vested rights



What are Development Agreements?

- Pre-2005 Examples: Generally occurred in the annexation and economic development context; water and sewer agreements fairly common
 - Legal authority not clear
- Post-2005: Development Agreements permitted by recent planning legislation (N.C. Gen. Stat. § 160A-400.20 and § 153A-349.1, et seq.)



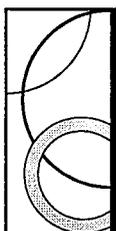
To Take Advantage of the Statute Authorizing DAs:

- The property must contain 25 acres (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other undevelopable portions of the property)
 - So, may need substantially more than 25 acres to utilize statute



The DA must contain the following:

- Legal description of property and the names of its owners;
- Duration of the agreement (up to a maximum of 20 years);
- Uses permitted on the property, including population densities and building types, intensities, site layout, and design;
- Description of the public facilities that will serve the property along with construction schedule;



The DA must contain the following:

- If the agreement calls for the local government to provide public facilities, then agreement must specify that providing the facilities will be tied to successful implementation by the developer of the proposed development;
- Description of land to be dedicated and provisions to protect environmentally sensitive areas of property;
- Description of all local permits approved or needed to be approved for the development;



The DA must contain the following:

- Description of conditions of approval to protect public health, safety, and welfare; and
- Where applicable, provisions related to historic structures



Why Use a Development Agreement?

- Nature and complexity of development necessitates more certainty over time
- Lack of predictability costs developers and local governments alike
- Helps coordinate private and public development activities
- Encourages creativity



Benefits of Development Agreement

- Provides certainty to government and development
- May encourage better planning
- May encourage more effective large scale planned communities
 - May foster more creative projects and development styles
- Vesting protects from moratoria, but only local regulations



Benefits of Development Agreement

- Supplements Protection Afforded to Property Owners by Common Law and Statutory Vested Rights
 - With Development Agreements , there is no question that the right to develop has vested
 - This is in contrast to common law vested rights, as well as statutory vested rights to a certain extent
 - Phasing issues and vesting under common law theory
 - "Front-loading" of infrastructure
 - 5 years is maximum vesting period under existing statutory scheme
 - No local enabling legislation required, unlike statutory vested rights for a site specific or phased development plan



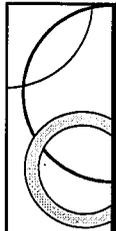
Specific items that may be addressed in DAs:

- Affordable housing
- Water and sewer capacity reservations
- School site reservation and construction
- Off-site improvements (otherwise, generally prohibited by Statute)
- Public safety (i.e., police, fire & rescue)
- Parks, open space & greenways
- Public water and sewer infrastructure
- Streets
- Lock-in impact fees
- Public parking
- Land banking
- Protection of sensitive environmental areas



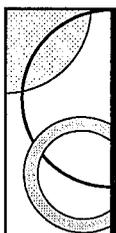
Limitations of Development Agreements

- 25 developable acres are required by statute
- Statute fails to take into account trend toward vertical mixed use projects and urban infill projects (size limitation)
- Significantly different from conditional use zoning
- Annexation issues
 - County → City
 - 8 year vesting
 - Consider including more than one governmental entity



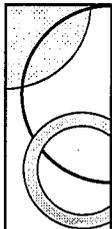
Implementation

- When to negotiate?
- Coordination relative to other approvals
 - Zoning
 - Special Use Permits
 - Variances
 - Site Plans
- Multiple jurisdictions
- Contract zoning concerns



Enforceability

- Mechanisms for enforcements
 - Need to address in detail and with specificity
- Remedies
 - Damages, injunctive relief, etc.



Drafting Issues

- Effective tool for dealing with unique nature of real estate development
- Helps local government address unique needs
- One size does not fit all
 - not conducive to “form drafting”



Questions??