

THE DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT STATUTE SURVIVES THE 2018 LEGISLATIVE SESSION

by CASEY CIRNER, MILES & STOCKBRIDGE

To circumvent the Court of Appeals recent decision in *Lilian C. Blentlinger, LCC, et al. v. Cleanwater Liganore, Inc. et. al.*, 456 Md. 272, 173 A.3d 549 (2017), the Maryland General Assembly considered House Bill 1390 during its 2018 legislation session. HB1390 proposed to materially alter the Development Rights and Responsibility Agreement (DRRA) statute codified in §§7-301 and 7-303 through 7-305 of the Land Use Article of the Maryland Annotated Code.

Maryland is a late vesting state and therefore, the rules applicable to a development project can change late in the game—even after a building permit is issued. The changes could include the zoning classification, development standards, stormwater management requirements, adequate public facilities tests, forest conservation requirements and development impact taxes and are inevitable despite the extent of the financial investment in the development project. The original intent of the DRRA legislation was to establish a tool to ensure certainty and predictability in the development process in light of the inequity imposed by late vesting.

for both sides because it ensures a level of predictability in the process for the developer and local jurisdiction. The DRRA also protects the local jurisdiction from potential litigation for making demands that could otherwise be considered excessive exactions under the “rough proportionality” test.

The *Blentlinger* case involved a challenge to a DRRA for the development of property in Frederick County. Ultimately, the Maryland Court of Appeals held that Maryland law does not require a DRRA to provide enhanced public benefits and therefore, the DRRA at issue was valid and supported by sufficient consideration. *Id.*

standards instead of all laws, rules, regulations and policies governing the use, density, or intensity of the real property; (iii) allow local jurisdictions to require compliance with any other new laws, rules, regulations or policies without a finding that such compliance ensures the public health, safety or welfare; (iv) allow the local planning body to revisit the terms of the DRRA if an amendment is sought by the developer; and (v) require enhanced public benefits in the following form, which also were to be bonded by the developer:

- parklands, open space and afforestation;
- multimodal transportation facilities;
- traffic safety improvements;
- infrastructure; or
- stormwater management and stream restoration.

At the March 6, 2018 public hearing before the Maryland House of Delegates Environment and Transportation Committee, the sponsor, Delegate Lafferty, proposed amendments to HB1390. The amendments relaxed the proposed cap on the duration of the DRRA and eliminated the requirement that developers bond the enhanced public benefits.

The opposition to HB1390, which included the Maryland Building Industry Association, led by Lori Graf, kept pushing back on the bill. The opposition highlighted the continuing utility of the DRRA as a tool that protects against

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The DRRA was designed to fix this problem by freezing the applicable laws, requirements and zoning classification for the duration of the development project in exchange for the developer articulating its responsibilities under the DRRA. The DRRA has benefits

In light of this decision, HB1390 was introduced on February 9, 2018 in the Maryland House of Delegates to substantially alter the DRRA law. As introduced, HB1390 proposed to: (i) cap the duration of a DRRA at ten years (maximum); (ii) freeze only the zoning

late vesting and emphasized the flexibility that local jurisdictions should have to negotiate the terms of the DRRA.

Prior to the Committee's vote, HB1390 was further amended to require only the enhanced public benefits and the above list was identified as illustrative examples of enhanced public benefits. This amended version of HB1390 received a favorable report from the Committee, passed the House of Delegates and went for a hearing before the Senate's Education, Health, and Environmental Affairs Committee on March 27, 2018, where it remained at the close of the 2018 legislative session. At least until January 9, 2019, land owners, developers and local jurisdictions can take comfort in knowing that enhanced public benefits are not a DRRA requirement under Maryland law. ■

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