

Development Agreements

Recently North Carolina has seen development projects that are far larger in scope and that are built over longer periods of time than ever before. Local governments have noticed that the off-site impacts and public facility implications of such projects outstrip the ability of their regulatory tools to manage them. Developers have major concerns of their own, particularly in regard to the risk involved in committing substantial funds to projects without adequate assurance that local development standards will not become more demanding as the full extent of the project takes form. Legislation adopted in 2005 allowing cities (G.S. 160A-400.20 to -400.32) and counties (G.S. 153A-379.1 to -379.13) to enter into so-called development agreements provides a new tool.

These development agreements are limited in scope. Under such an agreement, a local government may not impose a tax or a fee or exercise any authority that is not otherwise allowed by law. Unless the agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property are those that are in force at the time of the execution of the agreement. (Thus the time of the execution of the agreement may be viewed as a point in time at which "vesting" may occur.) Cities and counties are not necessarily authorized to commit their legislative authority in advance. For example, cities may not make enforceable promises to refrain from annexing the subject property, to refrain from using their taxing authority in a particular way, or even to refrain from rezoning affected lands at some future time. The agreement may require the developer to furnish certain public facilities, but it must also provide that the delivery date of these facilities is tied to successful performance by the developer in completing the private portion of the development. (This feature is designed to protect developers from having to complete public facilities in circumstances where progress in buildout may not generate the need for the facilities.) The ordinances in effect when the agreement is executed remain in effect for the life of the agreement, but the development is not immune from changes in state and federal law. A development agreement may require the project to be commenced or completed within a certain period of time. It must provide a development schedule and include commencement dates and interim completion dates for intervals no greater than five years.

The property subject to a development agreement must be at least twenty-five acres in size. Agreements may last no more than twenty years. In order to be valid, the agreements must be adopted by ordinance of the governing board. The same public hearing requirements that apply before a zoning text amendment may be adopted also apply before a development agreement may be adopted. Once executed by both parties, the agreement must be recorded, and it binds subsequent owners of affected land as well as the current owner.