

Property owner lacked vested right to develop

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The Virginia Supreme Court revisited the law of vested rights in two decisions handed down this year. In both cases, a property owner learned that it could not proceed with its project after a change in the local zoning ordinance. In *Board of Supervisors v. Crucible Inc.*, the court considered whether a property owner had obtained vested rights in connection with a plan to expand a security training facility. Before acquiring additional land for its facility, the property owner met with the Stafford County zoning administrator and planning staff to review the project and consider whether it could be constructed on property located in the county in a particular zoning category.

After the meeting, the zoning administrator issued a zoning verification letter for the property. In the letter, the zoning administrator stated the proposed facility was a permitted use within the applicable zoning category under the Stafford County Zoning Ordinance, but added that the verification was valid as of the date of the letter and was subject to change. Relying on the letter, the property owner spent \$2.25 million to purchase property for its new facility.

Several months after issuing the letter, the Stafford County Board of Supervisors changed its zoning ordinance to make the proposed use of the property “conditional” rather than “by right.” This change required the property owner to obtain a conditional use permit before constructing its new facility. The property owner filed an action in circuit court for declaratory relief, requesting a finding that it had obtained vested rights and could proceed without a conditional-use permit. The circuit court ruled in favor of the property owner, holding that the zoning verification letter constituted a “significant affirmative government act” under Virginia Code Section 15.2-2307, and the county appealed.

In reversing the circuit court, the Virginia Supreme Court reviewed the provisions of Virginia Code Section 15.2-2307 and found that the property owner had failed to provide clear, express and unambiguous evidence that it had complied with the applicable code provisions and obtained a vested right to develop its project. Virginia Code Section 15.2-2307 provides that a property owner obtains a vested right to develop its property when it: obtains “a significant affirmative government act” for a specific project, relies in good faith on the significant affirmative government act, and thereafter incurs “extensive obligations” or “substantial expenses” in connection with the development of that specific project based upon such reliance. The code section gives six examples of acts deemed to constitute a significant affirmative government act. They can be summarized as: accepted proffers, approval of a rezoning application for a specific use, granting of a special exception or use permit with conditions, approval of a variance, preliminary subdivision plat or site plan approval, or final subdivision plat or site plan approval for the project.

The court concluded that the current zoning of the property constituted only a future expectation relating to the potential use and not a vested right. The court also pointed out that while the county zoning administrator and the county staff had met with the property owner, “general support” for the project and “informal assurances of future approval” did not amount to a significant affirmative government act. The court noted that the letter stated that the determination was only valid as of a specific date and was subject to change.

In its decision, the Virginia Supreme Court once again made clear that to obtain vested rights for the development of a project, a property owner must obtain and rely upon a significant affirmative government act. The expenditure of time and money to obtain the general support and informal approval of the project by local officials is not sufficient to protect the project from subsequent changes in the local

zoning ordinance.

While working with local officials and obtaining their general support for your project are important, those actions alone, even when coupled with the good faith reliance of the property owner, do not constitute a significant affirmative government act and will not protect your project from subsequent changes in the local zoning ordinance.

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