



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
MARYLAND/DC CHAPTER

Maryland Legislative Update March-April 2009

Despite Budget Cuts, \$1 Billion Deficit Anticipated in 2010 Session ... House and Senate budget committees have made significant cuts to the Governor's budget to accommodate more than \$1 billion in revenue write-downs that occurred in March. However, it is anticipated that the State budget will again face an \$1 billion deficit when the General Assembly returns for the 2010 election year Session. A Joint Legislative Task Force will be named after Session adjourns to recommend substantial changes (reductions) to State aid to local governments which is a substantial expense for the State.

March 30th Marks the Day that House and Senate Act on Bills Intended to be Passed before the General Assembly Adjourns on April 13th ... in recent days, Senate and House Committees have been voting bills they intend to pass this Session. This Legislative Update gives some idea of which bills are expected to pass or fail:

Comprise Reached in Legal Standing Legislation to Benefit of Business

Legislation strongly backed by Attorney General Doug Gansler and environmental organizations was scrapped in favor of a compromise proposal [[HB 1569/SB 1065](#)] that would do away with the lengthy administrative hearing (contested case hearing) in exchange for allowing more individuals and associations to challenge a specific list of environmental permits, including: air quality, landfills, water discharge, sewage sludge, controlled hazardous substances, hazardous material facility, low-level nuclear waste, water appropriation, wetlands, waterway construction, drilling for oil and gas, surface mining, and critical area variances for development in the buffer zone. An appeal of the MD Dept of Environment's (MDE) permit decisions would be directly to the circuit court where a judge could only review the record that was the basis for MDE's decisions. Record review by the courts rarely overturns an agency decision and a permit is typically issued while the challenge is before the circuit court.

The contested case hearing process from the Office of Administrative Hearings is generally a time consuming and expensive process. Business interests were supportive of getting rid of virtually all of the detrimental provisions contained in the original standing proposal, i.e. citizens suits, intervention in enforcement actions, attorneys' fees awarded to prevailing parties, expanded standing for all permits and land use decisions. HB 1569 has passed the House and is expected to win approval in the Senate.

Granting associations legal standing has been an issue before the General Assembly for a number of years and has been opposed by business interests. This compromise will allow a limited number of permits to be resolved more quickly and at lesser expense than is the case today, despite the granting of legal standing to associations.

Governor's Smart Growth Bills Likely to Pass

Governor O'Malley introduced the package of bills as part of his 2009 Legislative Agenda to update the original Smart Growth legislation of the 1990's.

[SB 280/HB 297](#) **Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009.** Overturns the Court of Appeals ruling in *Terrapin Run* that held comprehensive plans are mere guides; and requires local zoning laws and ordinances to be consistent with the comprehensive plan. As originally introduced, the bills were thought by development community to remove any flexibility local governments currently have to prevent out-of-date comprehensive plans from being an obstacle to developing even those projects acknowledged as Smart Growth

projects. The bills have been amended with the support of NAIOP to ensure the statute does not impede approvals for mixed-use development projects. The legislation is expected to pass.

[SB 273/HB 294](#) **Smart, Green, and Growing - Local Government Planning - Planning Visions.** Updates the 1992 Smart Growth elements/visions to be included in comprehensive plans. The legislation is expected to pass.

[SB 274/HB 300](#) **Tax Increment Financing and Special Taxing Districts - Transit-Oriented Development.** Makes TOD implementation more feasible by giving local governments more flexibility with project financing for public infrastructure projects through tax increment financing and special taxing districts. The legislation is expected to pass.

[SB 276/ HB 295](#) **Smart, Green, and Growing - Annual Report - Smart Growth Measures and Indicators and Implementation of Planning Visions.** Directs Dept of Planning to develop quantitative information about land use goals, markers, trends, forecasts and metrics that will assist local governments and regional planning organizations in their planning efforts. House amendments dramatically change the bill to: require 80% of residential growth be located within PFAs and 5% of new developed acres to be located in priority preservation areas and green infrastructure areas; local jurisdictions that do not meet the goal shall develop a percentage goal for incremental progress towards achieving the goal by 2012 and three years thereafter; jurisdictions that meet the goal or make 5% incremental progress every three years are given funding priority; if goals are not met by Oct. 1, 2012, various construction-related permits are denied or conditioned; and reporting requirements include the decrease in vehicle miles traveled (VMTs) per capita. Efforts by rural Delegates to allow for more development outside of PFAs were unsuccessful.

Provisions to report the number of VMTs is the first step in an obvious move to either tax or otherwise reduce VMTs in Maryland. Legislation that would have established specific reductions in VMTs failed. [SB 539/HB 992](#) **Driver Relief Act of 2009.**

Final outcome of the Smart Growth-Indicators legislation is uncertain in the Senate, but passed the House. The Maryland Association of Counties is opposing the legislation.

Environmental Permitting Notification by Internet

[SB 47/HB 1078](#) **Environment - Permit Applications - Notice Requirements** Rather than requiring notification by mail all record owners of residential property within two miles of an environmental permit application, amendments now require MDE to publish environmental permits on its website and provide a mechanism that interested parties can receive additional information in connection with the permit. MDE can require permit applicants to adhere to the same requirements on the company's website. This amended version is expected to pass.

Legislation Requiring an Environmental Justice Review of the population living and working within a two mile radius of a proposed project requiring environmental permitting **will not pass.** [SB 4/HB 1054](#)

Development Approvals May be Extended

[HB 921/SB 958](#) **Construction Permits - Expiration Dates** provides relief to the credit-starved real estate sector by extending development permit approvals obtained on or after Jan. 1, 2008 until June 30, 2010, allowing time for an economic recovery. Additional amendments, however, exempt State sediment control or stormwater permits and local water appropriations, water discharge and water and sewer permits. Permit renewal fees would have to be paid. Allowing this extension in which to implement or complete projects for which permits and development approvals have been sought from State, county or municipal governments has received preliminary approval in the House.

New Mandate for Counties to Impose a Stormwater User Charge Fails on Senate Floor

[SB 672/HB 1457](#) mandates counties and municipalities to establish stormwater user charges on residential and commercial properties to fund all of the stormwater management activities conducted within the jurisdiction. The commercial rate must be higher than the residential rate and be based on the commercial property's impervious surface. NAIOP opposed this legislation which would require both Montgomery and Prince George's Counties to totally revise the structure of their current stormwater management charges, regardless of local considerations.

Commercial properties have stormwater facilities on-site which they are required to maintain, and higher taxes should not be the first option in protecting water quality. Surprisingly, **SB 672** was voted out of the Senate Committee, but failed on a final vote in the Senate (18-29).

No Changes to Controlling Interest Law

Legislation to remove that \$1 million threshold and tax all transactions was withdrawn by the House sponsor **HB 983** and the Senate bill was not well received by the Senate Budget and Taxation Committee **SB 727**. The bill also requires the articles of organization of a limited liability company to include the name and address of specified organizers, members, managers, and authorized persons.

Efforts to Block the ICC Fail (again)

HB 27/ SB 753 Transportation - Intercounty Connector - Elimination of Funding reflected a last-ditch effort by environmentalists and ICC opponents to withdraw funding from the project. All three major contracts for the construction of the ICC are underway, with the first phase (I-270 to Georgia Ave.) expected to open at the end of 2010. The House Committee killed the bill.

For copies of any legislation, go to the Maryland General Assembly website <http://mlis.state.md.us/>

Maryland General Assembly Adjourns April 13th

CONTACT:

Barbara Wilkins

Holland + Knight LLP

410-263-0349 * barbara.wilkins@hklaw.com

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