Land Development Permits - State of Emergency

Number: INFORMAL

Date: August 04, 2017

August 1, 2017

Mr. Thomas S. Hogan, Jr.
City Attorney for the City of Brooksville
The Hogan Law Firm
20 South Broad Street
Brooksville, Florida 34601

Dear Mr. Hogan:

This office has received your inquiry on behalf of the City Council of the City of Brooksville, asking whether a development agreement between the City and a developer is subject to the tolling and extension provision for a development order in section 252.363, Florida Statutes. Attorney General Pam Bondi has asked that I respond to your question.

Because you are seeking a factual determination, which under section 16.01(3), Florida Statutes, this office does not have the authority to undertake,[1] we are unable to provide you with a formal opinion. Instead, I offer some informal comments that I hope will assist the City Council in resolving its question.

You represent that the City of Brooksville entered into a Development Agreement with Hampton Ridge Developers, LLC, regarding the Hampton Ridge Project, and subsequently an Amended and Restated Development Agreement with Greenpointe Communities, LLC, successor-in-interest to Hampton Ridge Developers. The amended agreement replaced the original agreement in its entirety. You state that the agreement contains a number of dates for performance of obligations that the parties agreed upon, including provisions related to the construction by the developer of a PVC potable water main loop to supply residents and fire hydrants with adequate water pressure within Phase 3A of the development.

According to your letter, the developer has given the City of Brooksville notice on multiple occasions that obligations within the Development Agreement have been tolled and extended by various executive orders of the Governor under section 252.363(1)(a), Florida Statutes. These periods have combined to delay the construction of infrastructure for occupied portions of the development for approximately six years.

Section 252.363(1)(a), Florida Statutes, entitled “Tolling and extension of permits and other authorizations[,]” provides:

“The declaration of a state of emergency by the Governor tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a

permit or other authorization for 6 months in addition to the tolled period. This paragraph applies to the following:
1. The expiration of a development order issued by a local government.
2. The expiration of a building permit.
3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.
4. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted pursuant to s. 380.06(19)(c).”

Thus, the statute plainly provides for tolling and extension only as applied to certain specified periods of time found within four specified kinds of “permit or other authorization[,]” namely, the expiration date of a local government development order; the expiration date of a building permit; the expiration date of a DEP water-resources permit; and the buildout dates in a development order for a development of regional impact. Your question pertains only to whether the tolling and extension of the expiration date that applies to a “development order issued by a local government” is properly invoked by the parties’ Development Agreement.

The Official Records of the City of Brooksville show that the City and the developer stated that they were entering the Amended and Restated Development Agreement pursuant to sections 163.3220 through 163.3243, Florida Statutes, which is the Florida Local Government Development Agreement Act.[2] Section 252.363, Florida Statutes, does not contain a definition of “development order,” but there is a definition in section 163.3164(15), Florida Statutes, within the Community Planning Act, found in the same chapter as the Florida Local Government Development Agreement Act. When a statutory term is not specifically defined, it is permissible to consider definitions of the same term located in related statutory provisions.[3] Section 163.3164(15), Florida Statutes, defines “development order” as “any order granting, denying, or granting with conditions an application for a development permit.” A “development permit” is defined in section 163.3221(5), Florida Statutes, of the Florida Local Government Development Agreement Act, as including “any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.”

Accordingly, when considered within the context of the Florida Local Government Development Agreement Act, the tolling and extension provision in section 252.363(1)(a)1., Florida Statutes, authorizes, in the event of the declaration of a state of emergency by the Governor, additional time beyond the expiration date of an order that was issued by a local government in which such government granted, or granted with conditions, an application for a building permit, a zoning permit, subdivision approval, rezoning, certification, a special exception, a variance, or any other official action that has the effect of permitting the development of land.[4]

The City of Brooksville must therefore determine whether the Development Agreement is an order by the City of Brooksville that granted a permit application by the developer. An affirmative conclusion would render the order subject to the tolling and extension provision of section 252.363(1)(a)1., Florida Statutes.

You also contend that application of the tolling and extension provision of section 252.363(1)(a), Florida Statutes, to the agreement would be an unconstitutional impairment of the obligation of

contracts under Article I, Section 10 of the United States Constitution. This office, however, addresses the duties of public officials under state law and does not address the constitutionality of statutes.[5]

I trust these informal comments will be helpful to you in addressing your concerns.

Sincerely,

Ellen B. Gwynn
Assistant Attorney General

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[1] *See* Ops. Att'y Gen. Fla. 14-12 (2014) and 11-11 (2011).

[2] City of Brooksville Official Records Book 2768, page 951 (recorded Sept. 10, 2010).

[3] *See Debaun v. State*, 213 So. 3d 747, 753 (Fla. 2017). *Accord Jones v. Williams Pawn & Gun, Inc.*, 800 So. 2d 267, 270 (Fla. 4th DCA 2001).

[4] Similarly, the definition of "development order" in the Brooksville Code of Ordinances is: "Any order granting, denying or granting with conditions, an application for a building permit, zoning permit, subdivision approval, or any other official action of the City having the effect of permitting the development of land." Code of Ordinances, City of Brooksville, § 11-1.2, Art. XI, Subpart B – Land Development Code.

[5] Ops. Att'y Gen. Fla. 05-51 (2005) and 10-02 (2010).