

## Land-Use Regulation Feels the Pressure

Municipalities that need tax revenue are becoming more open to real estate development.

By Mariwyn Evans | September 2009

Many of the legal disputes currently occurring around commercial real estate contracts and loan documents revolve around money—or the lack thereof. But the industry's financial challenges also have implications for current and future land use and environmental decisions.

Economic pressures combined with the need to spur job growth and increase tax revenues are even prompting some municipalities "to look more welcomingly on real estate development," says Janis Schiff, chair of Holland & Knight's real estate department in Washington, D.C.

While few developers have the funds to take advantages of this more favorable climate, they are benefiting from one common manifestation of this increased government cooperation: the willingness of many municipalities to extend development permits and other entitlements already granted for projects now stalled by current market conditions, says Brian Blaesser, a partner at Robinson & Cole LLP in Boston, where he heads the Land Use & Real Estate Development Group.

Several states are considering laws that would automatically extend entitlements for a year or more, he notes. Florida is already granting automatic extensions to developers, adds Schiff.

Declining municipal revenues and tighter credit may also shift more development emphasis to inner-ring brownfield areas near major cities, suggests Brad Kaplan of Ulmer & Berne LLP in Cincinnati. "Because of the laws passed after the Kelo decision, <http://www.realtor.org/LetterLw.nsf/pages/0605kelo?OpenDocument&Login> local governments can use laws to condemn 'blighted' areas, so what's left for redevelopment is brownfields," he says.

### Shift Continues Toward Green

Despite economic uncertainty, many local governments are taking a more aggressive stance toward greening their cities, says Jeff Bennett of Portland's Jordan Schrader Ramis PC. "You're seeing a shift from voluntary green to mandatory."

In his own hometown, says Bennett, the city has created a green tenant improvement guide that may soon move from suggestion to law. On the East Coast, New York Mayor Michael Bloomberg has announced a plan that would require older buildings to reduce their carbon emissions and improve their energy efficiency, according to a report on [GlobeSt.com](http://GlobeSt.com).

On the federal level, regulations are already in place to require all government buildings to cut energy consumption by 2010. While energy upgrades are still in the suggestion column for privately held buildings, several energy bills being considered by Congress would require privately held buildings to meet mandatory energy-efficiency standards. Green leases are also coming to the forefront for many owners and tenants. [Link here to story on green leases.](#)

"We also seeing a lot more effort by states and municipalities to address the issue of storm water runoff and its effect on water quality," Blaesser says. He notes that states including North Carolina, Missouri, and Massachusetts are requiring property owners who redevelop their properties to implement best management structural practices and replace traditional storm water collection and conveyance systems with low-impact development strategies.

These strategies include engineering the terrain, vegetation, and soils to create a natural infiltration system for storm water runoff. The impact of such requirements could be most significant on retail properties, both because of their vast, water-unfriendly parking lots and the fact that retail is altered more often than other commercial property types to remain attractive to customers.

### A Cap on Rentals



Another area in which current land-use regulation seems to be running at odds with the way the country and the economy is heading right now is an increase in ordinances that limit how many rental properties can be located in a given area, says Blaesser.

As homeownership rates decline and renting become more widespread, these ordinances are limiting owners' legal rights to convert unsold condominiums to rentals and, in some cases, to construct new multifamily properties.

Blaesser, whose firm does research on land use and development issues nationwide in response to requests from the NATIONAL ASSOCIATION OF REALTORS®, is seeing a growing number of restrictive rental housing ordinances in states from Maryland to Minnesota.

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