

Cost of Owning and Developing Property In DC Continues to Escalate

Vacant Property Taxation

On June 15, 2010, as part of the FY 2011 Budget Support Act, the DC Council adopted several provisions relating to vacant properties, including a provision to retain the Mayor's proposed vacant property registration requirement and the implementation of a higher fee of \$250 annually — up from \$20. As reported in Spotlight on May 6 and again on June 4, 2010, the Mayor's proposal included a graduated registration fee that would increase up to \$5,000 over a five-year period with no exemptions. DCBIA worked to ensure that the registration fee was kept within reason, and that specific exemptions were included. In addition, the Council reinstated a Class 3 vacant property tax at the rate of \$5.00 per \$100 of value, and a Class 4 tax of \$10.00 per \$100 of value for blighted properties. Vacant building owners are exempt from paying the registration fee or the Class 3 real property tax if the property is for sale or rent, subject to probate proceedings, under active construction or rehabilitation, there is a pending application for an administrative predevelopment proceeding, or for undue economic hardship. The exemptions last for 12 to 24 months, depending on which exemption is used. The cumulative time period of exemptions cannot exceed three years. DCBIA worked to ensure that vacant land was not included in the vacant or blighted tax classes, as well as recommending exemptions to vacant building owners from the registration fee and tax.

PLA and First Source Legislation

A joint public hearing will be held on June 30 by Councilmember Mary Cheh's Committee on Government Operations and the Environment and Councilmember Michael Brown's Committee on Housing and Workforce Development to hear testimony on Bill 18-650, the "Resident Employment and Trade Stimulus Amendment Act of 2010," introduced by Councilmember Harry Thomas, Jr., and Councilmember Michael Brown. The bill would substantially increase the required quota of District residents employed on "government-assisted construction projects of over \$200,000" and mandate a Project Labor Agreement (PLA) for all such projects. Serious concerns have been expressed regarding the bill's problematic levels of required resident employment and the increased costs imposed by PLA participation on virtually all District-supported development. Other issues of equity have also arisen in what is seen as an arbitrary legislative intrusion in free and competitive labor markets. DCBIA, along with much of the business community, has taken a position in strong opposition to Bill 18-650 as counter-productive public policy and a serious impediment to development in the District. At this point, the outlook for committee action on the legislation is unclear.

MS4 Permit Requirements

As part of its renewed priority clean up of the Chesapeake Bay, the Environmental Protection Agency has issued proposed new regulations for the District's MS4 Permit. DCBIA has prepared detailed comments in response, citing the imposition of new on-site stormwater retention standards (90-95%) as unduly stringent and likely to drive development out of the District to nearby suburban jurisdictions with more open space and less aggressive requirements. The comments also note the lack of incentives and flexibility (off-site mitigation) in the application of MS4 proposed regulations, as well as the prospect that overly stringent requirements will undermine the other important environmental goals of smart growth, transit-oriented development.

Federal Payment of Impervious Surface Fees

The U.S. Government Accountability Office has recently informed WASA that federal agencies will not pay the District's impervious surface area fee to fund stormwater infrastructure improvements, declaring the fee is really a tax for which the federal government is exempt. The federal government's refusal to pay a share of the fee (it owns about one-fifth of the land in the District), in effect, makes the proposed MS4 permit requirements an unfunded federal mandate and their costs, already projected to increase substantially over time, an even more crushing financial burden on the private sector.

No Escape from Flood Insurance

It now seems all but certain that the District will not escape the requirements for flood-risk insurance and building code compliance arising from FEMA's revised 100-year floodplain maps, although the District is reportedly still seeking a further postponement from FEMA implementation pending a changed levee up-grade schedule. An earlier agreement with the District by which FEMA would defer the issuance of revised floodplain maps pending the overhaul of the 17th Street levee broke down as agreed-to completion dates were unmet. In March 2010, FEMA issued its final determination of District flood risk to become effective September, 2010 – at which point an estimated 5,500 property owners with buildings in parts of the low lying area of downtown and flanking the National Mall, as well as areas of the city's Southwest quadrant, will be required to secure flood insurance and to comply with flood-risk related building code requirements.

A new levee construction schedule has been arrived at, running from July 2010 to April 2011, which should



*Roderic L. Woodson
Partner
Holland & Knight
LLP*

*Chair, DCBIA
Legislative/
Government Affairs
Committee*



*Paul Tummonds
Director
Goulston & Storrs*

*Vice Chair, DCBIA
Legislative/
Government Affairs
Committee*

continued on page 14

LEGISLATION/REGULATION continued from page 5

substantially reduce the city's at risk area of flooding. Upon certification of the completed levee construction to be constructed by the Army Corps of Engineers, properties that must secure flood insurance as of September 2010 may then elect to forego that coverage. Some of the now at risk flood area will not be affected by levee improvements, however, since the flood threat in those areas springs not from rising river waters but from inadequate drainage of rainfall in parts of downtown north of Interstate 395. The NCPC is leading a study to address drainage issues and potential solutions.

DDOE has advised that it will create a means by which the existing flood risk status for individual properties may be able accessed from its website.

Proposed Contractor Professional Licensing

The "Board of Contractors and Home Inspectors Professional Licensure Act of 2010," prepared by DCRA, is pending introduction in the Council. This legislation would extend professional licensing requirements to general contractors, construction managers, home improvement contractors and home improvement inspectors. At the current time, the licensing proposal is in addition to the current Basic Business License requirement. The bill will establish a new Board of Contractors and Home Inspectors to set practice requirements (insurance, bonding) and professional certification standards. A Home Improvement and General Residential Contractor Guaranty and Education Fund, administered by the Board and supported by licensee fees, would, among other things, guarantee the payment of court-ordered claims in contracting related suits. DCBIA is preparing an analysis of what appears to be an extensive

enlargement of contractor regulation, raising a number of administrative issues.

"Equal Access to Employment for All Act of 2010"

Councilmember Jim Graham, chair of the Council's Committee on Public Services and Consumer Affairs, has introduced Bill 18-720, which would "prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions." Eight Councilmembers have co-sponsored the legislation: Michael Brown, Muriel Bowser, Mary Cheh, Harry Thomas, Jr., Yvette Alexander, Marion Barry, Kwame Brown and Council Chair Gray. DCBIA will work with other business organizations in advocating amendments to this legislation.

Victims of Crime Legislation

Bill 18-796, "Protecting Victims of Crime Amendment Act of 2010," was introduced by Councilmember Yvette Alexander. The bill amends the D.C. Human Rights Act of 1977 to extend non-discrimination by employers to victims and family members of victims of domestic violence, sexual abuse and stalking. It requires employers to "make reasonable accommodation" for the safety and security of such individuals, to establish and post notices of applicable corporate policies and to provide employees with relevant training – all with specified fines for non-compliance. DCBIA will consult with other business community organizations to frame an appropriate response to what appears to be another nanny-like attempt – as in recent "sick and safe leave" legislation – to impose on business the costs of anti-social (and presumably criminal) behavior in the District as a matter of civil rights.

Residential Foreclosure Regulation

Bill 18-691, "Saving D.C. Homes from Foreclosure Act of 2010," was co-introduced by Councilmembers Alexander, Bowser, Gray, Mendelson and Thomas. The bill requires mortgage lenders to engage in mediation with homeowners who may waive mediation, prior to foreclosure. The Department of Insurance, Securities and Banking is directed to establish supporting regulations, including the designation of a "Mediation Administrator." If parties to the mediation, acting in good faith, fail to agree to a mortgage loan modification, the Mediation Administrator is authorized to terminate proceedings. The bill also requires lenders that proceed with foreclosure to offer the residence as a rental to the former homeowner at a market rental rate. DCBIA is preparing a position on Bill 18-691.

Rent Adjustment Petitions

Bill 18-548, "Rent Increase Amendment Act of 2009," introduced by CM Barry, would require housing providers who file a hardship petition for a rent adjustment to await a final approval by the Rent Administrator before implementing any adjustment. In effect, the bill denies any ability to conditionally implement rent adjustments, as is now the case, after 90 days from petition filing. DCBIA has testified in opposition to Bill 18-548, as an abridgement of the right of housing providers to a prompt and reasonable review of hardship provisions. ▲



chiaramonte
CONSTRUCTION COMPANY

A Local Small Disadvantaged Business Enterprise / Certified Business Enterprise in DC

**We are a quality driven general contractor specializing in
metal framing, drywall, ceilings, rough carpentry, masonry, and
concrete.**

We have the capacity to meet your commercial needs!

605 Raleigh Place, SE, Washington, DC 20032
(o) 202-562-0027 www.cc-builder.com (f) 202-370-6480