BERGER SINGERMAN

FLORIDA'S BUSINESS LAW FIRM

40 YEARS

# ARE YOU PAYING TWICE FOR YOUR BUILDING PERMITS AND INSPECTION FEES?

August 11, 2019

By: Jeffrey R. Margolis

*There is a state law prohibiting that now, as well as requirements relating to impact fees and applications for development permits*

During the 2019 Legislative Session, HB 7103 passed and was signed into law by Governor Ron DeSantis. HB 7103 amends Section 553.791 of the Florida Statutes by simplifying the building permit process for construction contractors and property owners. Prior to HB 7103, Florida law authorized construction contractors and property owners to hire licensed building code administrators, engineers and architects, referred to as "private providers", to review building plans, perform building inspections, and prepare certificates of completion. HB 7103 expands the scope of services of private providers by allowing them to approve plans and perform inspections for portions of projects that are not part of the building structure, such as grading, excavation, irrigation, driveways, and services involving the review of site plans and site work engineering plans. In addition, HB 7103 (a) prohibits a local building official from replicating plan reviews or inspections done by a private provider unless expressly authorized by the statute; (b) prohibits a local jurisdiction from charging a fee, other than a reasonable administrative fee, for building inspections when a property owner or contractor hires a private provider; (c) reduces the required minimum notification time to a local building official regarding the use of a private provider from 7 days to 2:00 P.M. on the date that falls 2 business days prior to a scheduled inspection; (d) reduces the time period for a local building official to review a permit application from a private provider from 30 business days to 20 business days; and (e) provides that a local building official may not audit a private provider more than 4 times in a calendar year unless the building official finds the condition of the building constitutes an immediate threat to public safety.

In addition, HB 7103 amends section 125.022 of the Florida Statutes by imposing requirements and time limits for local governments to review an application for a development permit or a development order and provides procedures for addressing deficiencies. Local governments are required to review an application for completeness and notify the applicant within 30 days that the application is complete or contains deficiencies. If deficiencies are identified, the applicant has 30 days to correct the deficiencies. Within 120 days after an application is deemed complete, or 180 days for applications that require a quasi-judicial or public hearing, the local government must approve, approve with conditions, or deny the application, which approval or denial must also include written findings supporting the decision. These new timeframes do not apply in areas of critical state concern.

HB 7103 also amends Sections 125.01055 and 166.04151 of the Florida Statutes relating to affordable housing. As amended, the law requires that a local inclusionary housing ordinance requiring a developer to provide a specified number of affordable housing units or requiring a developer to contribute to a housing fund or other alternatives in lieu of providing affordable housing units must provide incentives to fully offset the costs to the developer of its affordable housing contribution except in areas of critical state concern.

Further, the law imposes requirements relating to impact fees in new provisions added to Section 163.31801 of the Florida Statutes. Local governments are prohibited from requiring the payment of impact fees prior to issuing a building permit. In addition, impact fees are required to be proportional and have a reasonable connection, or rational nexus between (a) the proposed development and the need for and impact of additional capital facilities, and (b) the expenditure of funds and the benefits accruing to the proposed new development. Funds collected from impact fees must specifically be earmarked for use in acquiring, constructing, or improving capital facilities to benefit new users, and impact fee revenues may not be used to pay existing debt or for previously approved projects unless such expenditure is reasonably connected to or has a rational nexus with the increased impact generated by the new development. If impact fees are increased, the holders of impact fee credits in existence before the increase are entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. Local governments may waive impact fees for the development or construction of affordable housing.

The full text of HB 7103 can be found here.

For more information, please contact the author Jeffrey Margolis on our Business, Finance & Tax Team.

## Related Practices

Real Estate

Government Permitting & Licensing

## Related Practice Teams

Business, Finance & Tax

## Related Team Member(s)

Jeffrey R. Margolis

## Topics

Government Permitting and Licensing