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LAND USE RELIANCE LETTERS – CAN YOU TRULY RELY ON THEM?

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By: Dawn M. Meyers

It has become a common element of a purchaser's due diligence to obtain a land use reliance letter to confirm certain land use and zoning issues affecting the allowable uses of the property being purchased. Being called a "reliance" letter understandably creates the perception that the recipient of such a letter may rely on the municipality's representations in the letter. However, Florida law makes clear that reliance letters cannot be the end point for your due diligence – merely the starting point.

The mere purchase of land does not create a vested right to the existing zoning. In fact, the majority view in the United States (including Florida) is that new zoning regulations may be applied retroactively. The rule in Florida is a slight variation of the national majority view in that new zoning may only be applied retroactively if the new zoning regulation was pending at the time the development application was made. In order to protect the zoning of the property being purchased, purchaser seek reliance letters as part of their due diligence.

Reliance letters have long been sought to confirm land use and zoning issues, and thereafter presented as a defense should the municipality subsequently take a contrary position. The legal theory underlying the defensive use of a reliance letter is founded in equitable estoppel. Put simply, many purchasers of land who seek to use the land for a purpose deemed allowable according to a reliance letter may be surprised to learn that, contrary to the letter, such a use is in fact not permitted. Consequently, purchaser will then seek to estop the municipality of enforcing the new and contrary position. Equitable estoppel, however, requires that the party who seeks to rely upon the letter have done so in good faith.

So what constitutes the necessary "good faith" for a purchaser to sustain a claim of equitable estoppel? First, the purchaser must establish that it had no actual knowledge of the new zoning regulations. Second, the purchaser much establish that it had no "good reason to believe" there was a new zoning regulation. And this is the crux of the matter. Simply put, in order to clear the "good reason to believe" hurdle, the purchaser must prove that the new zoning regulation was not discoverable by the exercise of due diligence at the time the municipality issued its reliance letter. In other words, even with a reliance letter in hand, it is still incumbent upon the purchaser to conduct its own independent due diligence to confirm the land use and zoning status of the property it seeks to purchase.

By contrast, if the purchaser both obtains a reliance letter and confirms its contents through the exercise of its own due diligence, and the municipality then takes a contrary position based upon a new interpretation of the same regulation, an equitable estoppel claim may still exist, provided the other elements of the cause of action can be met (detrimental reliance, damages, etc.).

While land use reliance letters are still recommended as part of a purchaser's due diligence, obtaining one should not be considered conclusive but simply the foundation for directing further due diligence.

If you have any questions about this topic, please contact the author Dawn Meyers on our Government and Regulatory Team.

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Dawn M. Meyers

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