

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. #663

AN ORDINANCE OF LANCASTER COUNTY, SOUTH CAROLINA, TO ESTABLISH PROCEDURES AND REQUIREMENTS FOR THE CONSIDERATION OF AND THE ENTERING INTO DEVELOPMENT AGREEMENTS.

WHEREAS, the Local Government Development Agreement Act, S.C. Code §§ 6-31-10 to -160 (the "Act"), authorizes county councils to enter into development agreements with developers;

WHEREAS, the Act allows local governments to establish procedures and requirements, as provided in the Act, to consider and enter into development agreements with developers;

WHEREAS, the Lancaster County Council believes it is in the best interests of the citizens of Lancaster County to provide requirements for the consideration of and entering into development agreements particularly when the developer proposes to zone the property as a Planned Development District (PDD) and the property is of a sufficient size;

NOW, THEREFORE, BE IT ORDAINED BY LANCASTER COUNTY, SOUTH CAROLINA:

Section 1. SHORT TITLE. This Ordinance may be cited as the Development Agreement Ordinance for Lancaster County, South Carolina.

Section 2. DEFINITIONS.

(A) As used in this Ordinance:

1. "Act" means the South Carolina Local Government Development Agreement Act, codified as S.C. Code §§ 6-31-10 to -160 (2004), as may be amended from time-to-time.
2. "Agreement" means a development agreement as authorized by the Act.
3. "Clerk" means the Clerk of the Council.
4. "Code" means the South Carolina Code of Laws, 1976, as amended.
5. "Council" means the Lancaster County Council.

(B) Unless the context clearly indicates otherwise, terms not otherwise defined in this Ordinance have the meanings set forth in the Act.

Section 3. INTENT. It is the intent of the Council to require an agreement when Planned Development District zoning, as provided in the County's Unified Development Ordinance, is sought for property containing two hundred or more acres. Nothing in this Ordinance prohibits the County approving or a person seeking an agreement for property zoned other than Planned Development District or for property containing less than two hundred acres.

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Section 4. MINIMUM REQUIREMENT. Property subject to an agreement must contain twenty-five acres or more of highland.

Section 5. INITIATION AND CONSIDERATION OF AGREEMENTS.

(A) At the time a developer makes application for Planned Development District zoning and the property is two hundred acres or more, the developer shall submit to the Clerk:

(1) a letter stating that the developer is seeking Planned Development District zoning for property containing two hundred acres or more;

(2) a proposed agreement containing, at a minimum, the information required by Section 6 of this Ordinance; and

(3) a check as required by Section 10 of this Ordinance.

(B) Upon receipt by the Clerk, the Clerk shall provide copies of the developer's letter and proposed agreement to each member of the Council.

(C) Council may, in its discretion:

(1) provide for the appointment of an ad hoc committee of the Council, to review and make recommendations to the Council on the content and disposition of the proposed agreement;

(2) request the review by and comment of any County agency, department, board or commission and such agency, department, board or commission shall, upon request of the Council, make appropriate resources and personnel available to the Council to facilitate the Council's review and consideration of the proposed agreement;

(3) make arrangements as may be necessary or proper to enter into agreements, including negotiating and drafting of agreements; and

(4) engage such consultants and professional service providers as may be needed including, but not limited to, engineering, financial, legal or other special services.

(D) The Clerk shall forward a copy of the proposed agreement to the Planning Commission. The Planning Commission shall review the proposed agreement and make recommendations to the Council not later than the time the Planning Commission makes its recommendations to the Council on the proposed Planned Development District.

(E) At least two public hearings on the proposed agreement shall be conducted. One of the two required public hearings shall be held by the Planning Commission and the other shall be held by Council. Not less than fifteen days' notice of the time and place of each hearing shall be published in at least one newspaper of general circulation in the county. The notices published for the public hearings must include the information required to be published by Code Section 6-31-50(B).

(F) No agreement may be entered into by the County unless the agreement has been approved by Council through the adoption of an ordinance. Any agreement approved by Council must contain the information required by Section 6.

Section 6. MANDATORY CONTENT OF AGREEMENT. The proposed agreement filed by the developer, as provided in Section 5 of this Ordinance, must include:

(A) a legal description of the property subject to the agreement and the names of the property's legal and equitable owners;

(B) the duration of the agreement which must comply with Code Section 6-31-40;

(C) a representation by the developer of the number of acres of highland contained in the property subject to the agreement;

(D) the then current zoning of the property and a statement, if applicable, of any proposed re-zoning of the property;

(E) the development uses that would be permitted on the property pursuant to the agreement, including population densities, building intensities and height;

(F) a description of the public facilities that will service the development, including who provides the facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development construction timeline for those facilities. If the agreement provides that the County shall provide certain public facilities, the agreement shall provide that the delivery date of the public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer;

(G) a description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the agreement;

(H) a description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions;

(I) a finding that the development permitted or proposed is consistent, or will be consistent by the time of execution of the agreement, with the County's comprehensive plan and land development regulations;

(J) a description, where appropriate, of any provisions for the preservation and restoration of historic structures;

(K) a development schedule including commencement dates and interim completion dates at no greater than five year intervals;

(L) if more than one local government is made party to the agreement, a provision stating which local government is responsible for the overall administration of the agreement;

(M) a listing of the laws and land development regulations that will apply to the development of the property subject to the agreement, including citation to specific ordinance numbers or portions of the County Code of Ordinances or both;

(N) a provision, consistent with Code Section 6-31-80, addressing the circumstances under which laws and land development regulations adopted subsequent to the execution of the agreement apply to the property subject to the agreement;

(O) a provision stating whether the agreement continues to apply to the property or portions of it that are annexed into a municipality or included in a newly-incorporated area and, if so, that the provisions of Code Section 6-31-110 apply;

(P) a provision that:

(1) the agreement may be amended or cancelled by mutual consent of the parties to the agreement or their successors in interest;

(2) if the amendment constitutes a major modification of the agreement, the major modification may occur only after public notice and a public hearing by the Council, provided, that, for purposes of this subitem, a "major modification" means: (i) significant changes to the development scheduled time-frames set forth in the agreement; (ii) density modifications; (iii) land use changes; (iv) any major miscalculations of infrastructure or facility needs which create demand deficiencies; or (v) any other significant deviation from the development as contained in the agreement;

(3) if the developer requests an amendment to the development schedule, including commencement dates and interim completion dates, then the dates must be modified by the Council if the developer is able to demonstrate and establish that there is good cause to modify those dates; and

(4) the agreement must be modified or suspended as may be necessary to comply with any state or federal laws or regulations enacted after the agreement is entered into which prevents or precludes compliance with one or more of the provisions of the agreement;

(Q) a provision for periodic review, consistent with the provisions of Section 8 of this Ordinance;

(R) a provision addressing the effects of a material breach of the agreement, consistent with the provisions of Section 9 of this Ordinance;

(S) a provision that the developer, within fourteen days after the County enters into the agreement, will record the agreement with the County Clerk of Court;

(T) a provision that the burdens of the agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement; and

(U) a provision addressing the conditions and procedures by which the agreement may be assigned.

Section 7. OPTIONAL CONTENT OF AGREEMENT. The agreement approved by the Council must include the information listed in Section 6 of this Ordinance and, in addition, may include:

(A) a description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Council for the public health, safety, or welfare of the County's citizens;

(B) requirements that the entire development or any phase of it be commenced or completed within a specified period of time;

(C) defined performance standards to be met by the developer;

(D) identification of any laws or land development regulations anticipated to be adopted by the Council subsequent to the execution of the agreement and made applicable to the property subject to the agreement;

(E) any other matter not inconsistent with the Act not prohibited by law.

Section 8. PERIODIC REVIEW. At least every twelve months, the zoning administrator must review compliance with the agreement by the developer. At the time of review the developer must demonstrate good faith compliance with the terms of the agreement.

Section 9. BREACH OF AGREEMENT.

(A) If, as a result of the periodic review provided for in Section 8 of this Ordinance, the zoning administrator finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the zoning administrator shall serve notice in writing, within thirty (30) days after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer thirty (30) days to respond with a corrective action plan to cure the material breach. The zoning administrator may approve a corrective action plan which provides for a cure of the material breach in one (1) year or less. Corrective action plans providing for a cure of the material breach in excess of one (1) year must be reviewed and approved by the Council. The zoning administrator and Council may establish a time for the cure of the material breach different from that proposed by the developer.

(B) If the developer fails to respond to the zoning administrator's notice within thirty (30) days or cure the material breach within the time approved by the zoning administrator or Council, the Council unilaterally may terminate or modify the agreement, provided, that the Council has first given the developer the opportunity: (1) to rebut the finding and determination; or (2) to consent to amend the agreement to meet the concerns of the Council with respect to the findings and determinations.

(C) The failure of a developer to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the agreement, but must be judged based on the totality of the circumstances.


Section 10. COST OF CONSIDERATION. The developer must pay a fee, to defray the cost of consideration of the proposed agreement by the Council, and the amount of the fee shall be determined in the following manner: Twenty-five dollars per acre for each acre of highland proposed to be included in the agreement with the total fee not to exceed twenty thousand dollars. The developer shall pay the fee by check made payable to Lancaster County and the check shall be included with the material submitted to the Clerk as provided in Section 5 of this Ordinance. The fee shall be deposited in a special account and used at the direction of the Council only for the purpose of defraying expenses incurred by the County in the review and consideration of the proposed agreement. Any unused fee shall be returned to the developer within six months of the County's disposition of the proposed agreement.

Section 11. SEVERABILITY. If any section, subsection or clause of this Ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 12. CONFLICTING ORDINANCES REPEALED. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

THIS ORDINANCE IS EFFECTIVE IMMEDIATELY UPON FINAL READING. SIGNED, SEALED, AND DELIVERED AS OF THIS 25th DAY OF APRIL, 2005.


LANCASTER COUNTY, SOUTH CAROLINA

By: 
T. Alston DeVenny, Jr.
Chairman, Lancaster County Council

(Seal)
ATTEST:


Irene Plyler
Clerk to County Council

APPROVED AS TO FORM:


William R. Sims
County Attorney

1st reading: 2/28/2005
2nd reading: 4/04/2005
3rd reading: 4/25/2005