



A DEVELOPER'S LIFE

NOT WHAT IT USED TO BE

BY JACK GARSON

Close your eyes and picture a "Developer." He's tan and wrinkle-free. He (I am not being chauvinist here, just stereotypical) would be standing beside his Porsche, or maybe that new Bentley Continental GT Coupe (who wouldn't kill a few trees for that car!). You probably see a shiny gold Rolex watch on his wrist, a cigar in one hand, and a glass of twenty dollars a shot single malt scotch in the other. He has all the money in the world and not a care. Ahhh, to live the Developer's life.

Wrong.

The vision above is like imagining that every kid playing basketball on a playground achieves the success of Michael Jordan or LeBron James.

Reality is far different. Let's take a closer look at the life of a DC area developer.

First, you need to buy some land. If the land is big enough for any significant project, either the current owner has had the land in their family for generations and demands a fortune, or you are buying the land from someone else who paid a fortune and now wants their profit too. Either way, hand over your checkbook. Worst of all, this is definitely the easiest part of the development process. It is all uphill from here.

Second, you need the government's approval to develop your land. Hah! This is the process that put the "zon-ing" in Twilight Zone. Consider the developer who wanted to build a hotel-anchored resort on Kent Island. Reasonable people can disagree about the wisdom of this project, given its close proximity to the Chesapeake Bay. But, few can disagree that the developer was legally entitled to build it. The developer spent about eight years procuring every approval and permit known to man. The developer modified the project to address myriad concerns. The developer spent hundreds of thousands of dollars for studies and plans and countless consultants to usher the project through the process. The developer was just one wetland permit shy of beginning construction. And then it all came down to one vote, camera bulbs flashing. It was widely reported that the developer had complied with all of the rules and was entitled to the permit. Yet, the Board of Public Works voted 2-1 against approval. Ouch!

Third, if you do get all of your permits, you still need to navigate your way through countless construction requirements. There are height and size limits, noise and dust limits, sediment runoff and storm water management requirements, green space and tree saving requirements, limits on impervious surfaces, intersection improvement and traffic mitigation requirements, affordable and

workforce housing requirements, first floor retail requirements, FHA and ADA accessibility requirements, parking requirements, and adequate public facilities requirements and impact fees.

Developers must also battle the perception of unlimited profits and the idea that every budget can be balanced on their backs. Last fall, Montgomery County, Maryland considered a moratorium on certain new development and is now considering a new Annual Growth Policy, also known as "Moratorium, Part 2." The proposed AGP would impose new development tests and increase a variety of development related taxes and fees, tripling and almost quadrupling some current fees.

In addition, countless laws regulate the construction requirements for development. The Americans With Disabilities Act imposes requirements on virtually every aspect of commercial projects, down to the maximum 5-degree running slope and 2-degree cross slope of your sidewalks. Likewise, the Federal Housing Act regulates residential construction with requirements like a 48-inch height restriction for light switches. Just this past June, an accessibility advocacy group sued McLean, Virginia-based Kettler for alleged violations of FHA and ADA accessibility requirements, such as excessive light-switch heights, narrow doorways, and bathrooms and kitchens with insufficient wheelchair accessibility. Similar lawsuits have been filed in recent years against Avalon Bay Communities, Archstone-Smith Trust and Bozzuto Group.

Other societal controversies are also thrust upon Developers. With increasing regularity, Immigration and Customs Enforcement (ICE) agents have been raiding construction sites, searching for undocumented workers. On June 14th, ICE agents arrested 55 suspected illegal immigrants at a construction site at Dulles International Airport. Moreover, recently proposed national immigration legislation would require general contractors to determine the legal status of their subcontractor's employees. On the other hand, refusal to hire suspected illegal immigrants can violate anti-discrimination laws. Talk about threading a needle.

Fourth, let's say that by some chance, you have finally built your project. You got your certificate of occupancy without some announcement of a new legal requirement to, say, fireproof your trees. Now you actually have to sell or lease your project to make some money. But, what if all those folks who signed contracts to buy your condos decide they don't want them after all. In Maryland, there is some teeny-weeny fine print in a consumer protection law that hands a heck of a weapon to buyers. It seems that all a lot of purchasers have to do is ask and they can get their deposits back and walk away from their contracts. P.S., this is a secret, so don't tell anyone.

Or let's say you have a shopping center in one of the ritzy parts of Northern Virginia. One of your tenants, a coffee shop, doesn't like to pay the rent on time and maybe even filed for bankruptcy once or twice already. You plan on replacing the tenant. Forget the facts, next thing you know the Big Paper in town and a lot of people with too much time on their hands are accusing you of being part of a globalization conspiracy to drive small businesses out of business. Protests and boycotts are threatened. You are forced into renewing the lease of a less than stellar tenant. Maybe you will get the rent, maybe you won't.

Today's developer isn't a fat cat. A fat cat couldn't keep up with the challenges. If you want to develop in this town, you need to be a tri-athlete.

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