



Richmond's Master Plan Update: A Rare Opportunity for the Real Estate Development Industry

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On July 18, 2017, the City of Richmond formally initiated an update to the City-wide Master Plan, which it named "Richmond 300: A Guide for Growth".^[i] Intended as a roadmap for the City's development over the next 25 years, the name evokes the City's approaching tricentennial in 2037. This multi-year planning effort marks the first comprehensive, City-wide re-evaluation of the City's land use priorities in more than two decades. The City-led undertaking will have significant legal and practical implications for the trajectory of commercial real estate development for the long term.

Legal Significance of Comprehensive Planning in Virginia

The City's effort follows a statutory framework imposed by the General Assembly, which affects all local government jurisdictions in the Commonwealth. Specifically, since 1980, each locality has been required to prepare a "comprehensive plan",^[ii] which the courts have defined as a "guideline for future development and systematic change, reached after consultation with experts and the public" for the territory within the locality's jurisdiction.^[iii] As a land use document that makes recommendations concerning long-term future land use,^[iv] the comprehensive plan, along with its accompanying maps and exhibits, is both general and aspirational in nature.^[v] This stands in contrast to the zoning ordinance and maps of the jurisdiction, which directly concern the legal rights of underlying parcels and their respective owners.

Despite being an advisory document, the comprehensive plan has an important legal bearing on land use decisions by the governing body for the jurisdiction. The document typically is one of the key sources, if not the key source, that guides land use decisions by the governing body, such as rezonings and special use permits. A city council that acts in conflict with the recommendations of the comprehensive plan invites judicial scrutiny in connection with an appeal, potentially offering evidence that the decision was arbitrary or capricious.[vi] When briefing the planning commission and city council on a pending land use application, planning staff customarily offer analysis of the application's conformance (or lack thereof) with the applicable provisions of the comprehensive plan.

Richmond's current Master Plan was adopted in 2000. Although state law requires periodic review of the comprehensive plan by the Planning Commission at least every five years[vii] localities often go much longer between revisions. The Code of Virginia provides that comprehensive plans be adopted or amended only after "careful and comprehensive surveys and studies of the existing conditions, trends of growth, and the probable and future requirements of the territory and its inhabitants." [viii] The cost for a jurisdiction to embark on such an update can be significant, especially to larger, more fully-developed jurisdictions. Some localities often elect to adopt neighborhood plans concerning discrete areas of the jurisdiction, which allow for a deeper dive into the dynamics within a smaller area that is projected to undergo change that diverges from the prior adopted plan. These smaller plans are enacted as an amendment of the locality-wide plan and therefore gain the same legal effect.

Practical Importance of Influencing Revisions to the Master Plan

Beyond its legal significance for City Council actions, the City's Master Plan may also be considered the clearest articulation of the City's vision and strategy concerning future land use and development policy. The scope of the document includes a range of interrelated issues, including transportation, affordable housing, gentrification, environmental stewardship and conservation, public infrastructure, and more. Each of these areas has a potential impact on future development projects proposed by private property owners, regardless of whether the project at issue requires a rezoning or other entitlement to be approved by City Council. The commercial real estate development community, as a collection of actors who undertake risk and leverage and deploy capital, and whose projects are the primary driver of growth in the tax base of the locality, should be given a weighted voice in these deliberations. A cursory review of the "Richmond 300" process helps illustrate why this weight is unlikely to be given.

As with any civic initiative, the process can be a helpful predictor of the substantive result. As an important initial step, City Council approved a budget that included funds to support a multi-year master plan update process, including a consultant to assist the Director of Planning and Development Review in managing the process. Next, the City initiated the first phase of Richmond 300, focused on planning the process. This included soliciting applications for a 15-person "Advisory Team" to steer the process, which will be chaired by two representatives of the Council-appointed City Planning Commission. Although the final composition has not yet been announced, the City has articulated its desire to ensure a diverse representation on the group. While this diversity is positive, many anticipate that a minority of the Advisory Team will possess subject matter expertise in commercial real estate development, finance, or other substantive areas that inform how land use decisions should be made.

The second phase of Richmond 300 (from late 2017 to early 2019) will develop the content of Richmond 300, relying extensively on the civic engagement strategy formulated by the City's consultant. The challenge for the commercial real estate development community will be to ensure that their voice has an influence equal to the "not-in-my-backyard" perspective that often arises in the community meeting context. This perennial refrain of "no" from various well-established gadflies who excel in fomenting coalitions in opposition and are drawn to community meetings and charrettes, has the potential to erect new barriers to the trend of redevelopment and growth in the City. Efforts to ensure a broad-based community engagement strategy of individuals with a lesser understanding of real estate development principles may inadvertently bias the process toward these "no growth" perspectives, offering compelling justification for a high level of engagement from commercial real estate development stakeholders.

The third phase of Richmond 300 (from second to fourth quarter 2019) will focus on presenting the draft plan to the community for public comment and feedback. This will be a critical period during which stakeholders will have an opportunity to participate in town halls to offer feedback. The development community's participation will be critical to inform any potential revisions to the draft plan. The final plan will then go to the City Planning Commission and City Council for adoption, which is projected for late 2019 or early 2020.

Looking Beyond the Master Plan: City-Initiated Neighborhood Rezoning

The final step in the Richmond 300 process is the implementation of its various recommended actions, some of which may include City-initiated rezoning of specific neighborhoods. A recent example of this result came about through the adoption of the Pulse Corridor Plan, an amendment to the City's Master Plan whose scope included the property adjacent to the under-construction bus-rapid-transit corridor known as the "Pulse". A portion of the plan concerned the Scott's Addition neighborhood, located immediately north of the Pulse Corridor, which in recent years has evolved from primarily industrial uses to a mix of multifamily residential, commercial and light industrial – now home to the highest concentration of Richmond's craft breweries.[ix] A similar rezoning is proposed for Monroe Ward, located west of Downtown, south of Broad Street, east of Belvidere, and north of the James.

Consistent with the objectives of the City's Master Plan, these comprehensive rezoning proposals recognize the evolution of these neighborhoods and seek a corresponding alignment of parcels' land

use entitlements, which allows redevelopment to occur by right. By eliminating the pre-requisite of a rezoning or special use permit from City Council, the City dramatically reduces risk for property owners and developers, while accelerating the timeline in which projects can commence in response to market demands. It likewise removes the impediment of a protracted negotiation with community stakeholders who oppose these changes. Such stakeholders received ample opportunity to participate in the Richmond 300 process, which focused on larger concepts of land use and change for a neighborhood, rather than focusing on the proposed change of use for a specific piece of property and thus triggering NIMBY-oriented opposition from adjacent property owners.

Conclusions

The legal and practical implications of the City's Richmond 300 update to the City-wide Master Plan offer considerable opportunity for the development community. The prospect of allowing greater by-right redevelopment in the City, while eliminating the time and risk associated with the current land use entitlement process, offers benefits to both developers and the City. Developers benefit from reduced costs, a shorter development timeline, and a more predictable permitting process. The City benefits from a growing real estate tax base, while fostering redevelopment in areas targeted by the Richmond 300 Plan which was developed with a broad range of community input. In order to realize these benefits, the development community must be active and engaged early and throughout the process to ensure a final result that achieves these goals. Williams Mullen will continue to advise its clients and friends of ongoing opportunities to do so.

[i] See <http://www.richmond300.com>.

[ii] Va. Code ann. § 15.2-2223 (1950).

[iii] *Town of Jonesville v. Powell Valley Limited Partnership*, 254 Va. 70, 76, 487 S.E.2d 207, 211 (1997).

[iv] See, e.g. *Board of Supervisors of Fairfax County v. Snell Construction Corp.*, 214 Va. 655, 658, 202 S.E.2d 889, 892 (1974) (describing the comprehensive plan as a product of the state statutory scheme that assures that land use changes are not "made suddenly, arbitrarily, or capriciously but only after a period of investigation and community planning.?).

[v] See, e.g., *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975); *Board of Supervisors of Stafford County v. Safeco*, 226 Va. 329, 310 S.E.2d 445 (1983); see also *Huber v. Loudoun County Board of Supervisors*, 55 Va. Cir. 318 (2001) (as an advisory document, the comprehensive plan cannot be the basis for a declaratory relief action since no injury arises from its approval).

[vi] See, e.g., *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980); *City Council of City of Salem v. Wendy's of Western Virginia, Inc.*, 252 Va. 12, 18, 471 S.E.2d 469, 473 (1996).

[vii] Va. Code ann. 15.2-2230.

[viii] Virginia Code ann. § 15.2-2224(A)(1); see *Huber v. Loudoun County Board of Supervisors*, 55 Va. Cir. 318 (2001) (planning commission not required to survey and study all of the matters set forth in Virginia Code § 15.2-2224; only required to study "such matters as" those listed in the statute).

[ix] Concurrent with the adoption of the Pulse Corridor Plan by City Council, the City's Department of Planning and Development Review initiated a rezoning of the Scott's Addition neighborhood from an industrial district classification to a to-be-defined mixed-use designation, as recommended by the plan. If adopted, the neighborhood would be rezoned to a mix of B-7 and the new TOD-1 ("TOD" for transit oriented development).

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