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Revamping Atlantic City

How real estate development will be transformed under the new Tourism District legislation

By Jack Plackter

In legislation that represents a sea change in the governance and control of Atlantic City and its casino and tourism industry, the New Jersey Legislature adopted an act providing for the establishment of the Atlantic City Tourism District. The legislation also transfers the functions, powers and duties of the Atlantic City Convention and Visitors Authority to the Casino Reinvestment Development Authority (CRDA). These changes will assist the Legislature in achieving its goal of restructuring Atlantic City to be “the playground of the world and the major hospitality center of the Eastern United States.” The act, known as P.L. 2011, Chapter 18 (the Act), was approved on Feb. 1.

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Under the Act, the CRDA is directed to establish, by resolution, the Atlantic City Tourism District (Tourism District) and its geographic boundaries. In addition, the CRDA has the authority to impose land use regulations; implement a Tourism District “master plan” that promotes cleanliness, commercial development and safety; undertake redevelopment projects and institute public safety infrastructure and improvements. (See Statement to Senate No. 11, dated Nov. 15, 2010.) Though such powers are typically delegated to the municipality, under the Act, the CRDA will be a super zoning and planning agency, regulating and controlling all land uses, development and redevelopment, traffic, code enforcement and other matters.

More specifically, the CRDA has been given broad powers and responsibilities to, among other things: authorize studies and the development of preliminary plans and specifications relating to the creation and maintenance of the Tourism District; approve or deny road and highway projects within and proximate to the Tourism District; establish regulations concerning control and direction of traffic

within the Tourism District; implement a full-scale, 10-year, national marketing program for Atlantic City and the Tourism District; oversee the redevelopment of the Tourism District and implementation of master plan; collaborate with Atlantic City concerning code enforcement and administrative activities and coordinate with the police department regarding law enforcement in the Tourism District. (See, Statements to Senate No. 11 dated Nov. 15, 2010, and Dec. 13, 2010).

On April 19, the CRDA, by resolution, set the boundaries of the Tourism District. Those boundaries — different and actually broader than the default boundaries set forth in the Act — include an area known as Gardner’s Basin and the beach and Boardwalk area down to the southwestern limits of Atlantic City, at Jackson Avenue. The boundaries also include Bader Field, the Marina District, the convention center and the Boardwalk Corridor.

Now that the boundaries are set, the Act requires the CRDA to adopt the master plan on or before Feb. 1, 2012. In developing the master plan, the CRDA is required to consult with the City of Atlantic City and place special emphasis on the following: “facilitation of investment of private capital in the Tourism District in a manner that promotes eco-

conomic development; making use of marina facilities in a way that increases economic activity; development of the Boardwalk area; development of the Marina District; and development of non-gaming, family centered, tourism-related activities such as amusement parks.” See P.L. 2011 Ch. 18, Section 5h.

The master plan mandate recognizes that the city of Atlantic City has been negatively impacted by the dynamics of the gaming industry. The spread of gaming to other states has eliminated Atlantic City’s East Coast casino-gaming monopoly. The mandate to develop a master plan recognizes the need to transform Atlantic City from a resort area dominated by casino properties to a one with a wider variety of tourist-destination facilities that, among other things, happens to have casino gaming as an amenity. It is hoped that the master plan will enable Atlantic City to compete effectively against other resort and tourist areas throughout the region.

The Act substantially changes the land use process for development projects. Upon adoption of the master plan, the CRDA must propose and adopt development-and-design guidelines and land-use regulations for the Tourism District that are consistent with and in furtherance of the master plan. Such guidelines and regulations, once adopted by the CRDA, will supersede the master plan and relevant ordinances, regulations and zoning maps of the City of Atlantic City.

The CRDA is required to coordinate and collaborate with the City’s planning and zoning departments on enforcement and administrative operations relating to the implementation of the master plan. If the City determines it is unable to coordinate and collaborate with the CRDA, then, at the request of the CRDA, the Department of Community Affairs will assume jurisdiction over the Atlantic City planning and zoning departments and any other entities responsible for code enforcement and administrative operations. Thus,

the CRDA is given the ultimate authority over code enforcement in Atlantic City, as it has the authority to divest the City of its code enforcement powers.

As the CRDA has established the boundaries of the Tourism District, it has exclusive control over the review and approval or denial of site plans and development proposals for projects within the Tourism District. In performing these functions, the CRDA is required by the Act to utilize its development and design guidelines and land-use regulations. The procedures used by the CRDA for the approval of site plans and development proposals will be the same as those used by any county or municipal governing body under the Municipal Land Use Law (MLUL), including but not limited to procedures for hearings and the payment of application fees. When applying the MLUL, the CRDA has sole and exclusive jurisdiction to grant, for special reasons, a variance from the design and development guidelines. The affirmative vote of the majority of the members of the CRDA is required to grant a variance.

Implementation of the zoning and land use powers of the Tourism District present a number of interesting legal issues, including how hearings are to be conducted and how to resolve issues of conflicts of interest. It has been suggested that a hearing officer may be appointed to initially hear the application and then make recommendations to the CRDA Board. This procedure seems inconsistent with MLUL and cases that require board members to hear all evidence submitted regarding a particular development application. Moreover, the board members of the CRDA, unlike the local zoning and planning board members, may not have had the experience necessary to make findings of fact and apply the CRDA’s design and development guidelines, as would seasoned board members who have particular knowledge of their local communities. Issues of conflicts of interest need to be carefully considered under the MLUL. The

current CRDA Board includes a number of members of building trade unions, which would work on any large-scale project within the Tourism District. Those projects benefit union members, and thus it may be problematic for board members from the building trades to sit and decide an application for a new casino proposal within the Tourism District.

The Act gives the CRDA a number of other expanded powers. The CRDA may prescribe penalties for violations of its regulations concerning the enforcement of construction codes, development and design guidelines and land-use regulations. The CRDA can exercise the power of eminent domain within the Tourism District, which is necessary for the CRDA to accomplish its goal and legislative mandate. One of the most difficult tasks in Atlantic City, or any older urban area, is land speculation and site assemblage.

Finally, the CRDA is required to make available all its assets and revenues for purposes of promotion and development in the Tourism District and the Atlantic City community. Appropriately, the Casino Reinvestment Obligation, and revenue raised in the payment of such obligations, shall remain within the Tourism District and the Atlantic City community. Prior to this legislation, the CRDA revenues raised from required casino investments were spread throughout the state in addition to the City of Atlantic City. This provision will make additional funds available for needed projects and redevelopment and help ensure the success of the Act in realizing its goals and objectives.

With its new powers and responsibilities, it is hoped the CRDA can transform Atlantic City and the region into a true world-class tourism resort. This unique legislative tool kit will give the CRDA power to attempt to accomplish these goals and objectives. It is vital that the CRDA accomplish this goal, as the tourism industry is the economic engine that drives this region. ■