

LAND USE PRACTICE GROUP

OTTEN JOHNSON ALERT: SHOW ME THE WATER - COLORADO LEGISLATURE'S RESPONSE TO STERLING RANCH RULING

APRIL 2013

In May 2011, the Douglas County Board of County Commissioners (Board) unanimously approved a rezoning from agricultural to planned development for an approximately 3,400-acre residential and commercial development known as Sterling Ranch. The rezoning request for Sterling Ranch was fairly typical of its kind for a large-scale, multi-phase, mixed-use development.

In connection with the rezoning, the applicant submitted, and the Board approved, a water appeal, deferring (until subdivision) the Board's determination of whether the applicant has satisfactorily demonstrated a water supply will be adequate to serve the proposed development through build-out as required by C.R.S. § 29-20-301 *et seq.* An owners' association and certain neighbors in the vicinity of Sterling Ranch appealed and, in August 2012, the Douglas County District Court reversed the Board's approval of the rezoning and water appeal.

C.R.S. § 29-20-301 *et seq.* provides that a local government, such as Douglas County, "shall not approve an application for a development permit unless it determines . . . the applicant has satisfactorily demonstrated that the proposed water supply [for the development] will be adequate." The statute further provides such determination need be made only once during the "development permit" approval process and that the local government has the authority to determine at what stage in the development permit approval process the determination must be made.

Central to the court's decision to reverse the Board, C.R.S. § 29-20-103 defines "development permit" as "any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction . . ." The court, citing C.R.S. § 29-20-301 *et seq.*, found that the rezoning application is a "development permit" and that the legislature mandates the Board determine *prior to approval of the rezoning (development permit)* the applicant has demonstrated availability of an adequate water supply. The court opined that while the Board has discretion to specify at what stage before approval it must make the determination, such discretion is limited to the particular development permit approval process (here, the rezoning approval process).

In response to the court's ruling, the Colorado legislature proposed SB 13-258, which would amend the definition of "development permit" under C.R.S. § 29-20-103 to clarify that each application included in the definition of development permit (as noted above) may constitute, as determined by the applicable local government, a part of a single development permit approval process and that such applications need not each be considered a separate stage in that process. As such, SB 13-258 allows for a local government to decide at what stage (i.e., zoning, subdivision, site plan, conditional use permit, etc.) a determination of adequate water supply must be made. On April 22, 2013, the Senate passed the bill on final reading and on April 25, 2013, the House Committee on Local Government referred the bill unamended to the House Committee of the Whole. If adopted, the bill would apply to development applications pending on, or submitted on or after, the effective date of the bill.

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