

# Law & Accounting

## Vesting offers a sense of security in challenging times

If you think back to the early days of the 2020 pandemic, which was only three months ago (although it may feel like three years), you likely will remember the barren shelves at King Soopers, lines stretching entirely around Costco on a Saturday morning at 8:30 a.m. and, generally, the insane and insatiable demand for toilet paper. My personal conclusion on the cause for the run on toilet paper was as follows: Toilet paper is not necessarily hard to pursue, and although it may be difficult to get, if you are successful in getting it, it's extremely comforting.

For whatever reason, I saw an analogy in the commercial real estate world. With ongoing uncertainty, potential instability and (given the Great Shutdown) lack of mobility, what was out there for real estate developers to try to obtain and latch on to, that could bring peace of mind and the sense of security, akin to finding a 12-pack of Charmin sitting on a shelf at your local Target? The answer – vesting.

■ **Why vesting should be your favorite paper product.** Vesting can occur under common law and the Colorado Vested Property Rights Act. C.R.S. § 24-68-101, et seq. We'll focus on the Colorado statute. Vesting provides real estate projects that have an approved "site-specific devel-



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opment plan" (more on this below) with a time frame during which the projects' approvals cannot be overturned or modified (except under certain circumstances as specified in the vesting statute, one of which is the payment of just compensation for all costs, expenses and liabilities incurred by a landowner after receiving approval by the governmental entity), and provides developers with confidence that they can continue to invest time and money in entitling and designing their projects while significantly mitigating the risk that their approvals will disappear. To cite the Colorado statute, vesting of a property right "precludes any zoning or land use action by a local government ... which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in a site-specific development plan." C.R.S. 24-68-105(1).

In other words, vesting provides security that a governmental entity will not change a property right for a project. The owner

of a vested project does not have to worry unnecessarily, for example, that the local municipality will rezone the owner's residential subdivision for industrial use during the vesting period.

■ **How long is the vesting period?** Under the law, once the appropriate authorities approve a site-specific development plan for a project, the project owner has the right to develop the property under the terms and conditions of the site-specific development plan (and any subsequent amendments) for a period of three years. I know what you're thinking: In the current economic climate, and with health experts speculating that COVID-19 could stay around for another 12 to 18 months (or resurge during that period), three years may not sound like enough time to ride out this pandemic and recession, and then get back on your feet. Fortunately, in the course of obtaining your approval, you can negotiate with your governmental entity and contract for a longer vesting period than the statutory three-year period, "where warranted in light of all relevant circumstances." C.R.S. 24-68-104(2). Relevant circumstances include the estimated time required to complete design, and "the size and phasing of the development, economic cycles and market conditions." C.R.S. 24-68-104(2). Not to be glib, but

commencing a historic economic downturn and experiencing record unemployment, virtually overnight, certainly falls under the category of "relevant circumstances." Taking all of this into account, a prudent project owner operating in this climate will pursue a vesting period longer than three years.

■ **Can you wipe away any confusion as to the definition of a site-specific development plan?** It's important to break down the term "site-specific development plan" into its technical meaning. A "site-specific development plan" is defined in the statute as "a plan that has been submitted to a local government by a landowner ... describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property." C.R.S. 24-68-102(4)(a). However, each local government (e.g., any county, city, town or agency with final approval authority), through adoption by ordinance or resolution, is required under the statute to determine what form the site-specific development plan must take in order to vest property rights. C.R.S. 24-68-103(1)(a). Each local government will have a broad range of submittals from which it can select under the statute (e.g., any plan, plat, drawing or sketch that is substantially similar to a "planned unit development plan, a subdivision

plat, a specially planned area, a planned building group, a general submission plan, a preliminary or general development plan, a conditional or special use plan, a development agreement, or any other land use approval designation" as the local government may use). C.R.S. 24-68-102(4). Some municipal or county codes may in fact just mimic the vesting statute and provide the same list. It's essential that you review your local land use code and consult with local government planners to identify the specific submittal required that qualifies as the site-specific development plan for which you'll need approval in order to obtain vesting. It's also important to note that project owners have the right to enter into agreements with their local government entities that identify a specific submittal requirement that will constitute the site-specific development plan for a specific project (e.g., a submittal that is otherwise acceptable under the statute but not listed in the local code).

Strategically speaking, pursuing such an agreement at the outset of a project will provide specificity and certainty as to what approvals are required for vesting. It also may be possible to negotiate a vesting agreement that extends the vesting period

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# FORWARD

## GE Johnson

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ing as the permanent home of the Colorado Springs Switchbacks Football Club soccer team.

Speakers at the topping out included Colorado Springs Mayor John Suthers; Jim Johnson, CEO and president, GE Johnson; Ed Ragain, owner, Switchbacks; and Robert Carr, regional vice president, Weidner Apartments.

This is GE Johnson's first topping out since the COVID-19 pandemic.

"I've been to a lot of ground-

breakings, ribbon cuttings and topping out celebrations in my five years as mayor, but I think I'm going to remember this one the most," said Suthers.

Guests were invited to stay in their cars and honk their horns to celebrate.

"The most memorable topping out ceremonies are those that people who will use the facility enjoy and are excited about, and today is one of the best examples of that," said Johnson. "What a great journey it's been so far, and I look forward to coming to the

first game here, March of 2021, to celebrate with everybody in person."

As for any other challenges, "Sports projects require an immense amount of team collaboration to solve daily challenges or order to meet aggressive schedules," said Brian Tominov, GE Johnson project manager. "You can count on weather and site conditions changing daily, but opening day does not."

GE Johnson broke ground on the stadium in December and the project is scheduled to be complete in spring 2021. ▲

## Howell

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and huddle rooms have All-steel glass fronts that keep the space feeling open and bright, while the custom millwork pieces in the micro-kitchens provide employees an area to gather for coffee and lunch. The core restrooms were renovated on all floors to receive new tile, restroom fixtures and partitions, and back-lit mirrors.

The first floor at Cochlear boasts a high-end board room with switchable glass film, walls covered in floor-to-ceiling millwork and an executive dining area. The brand-new meal servery includes a raised platform with built-in planters and seating as well as a custom coffee bar with a tile face and waterfall edges. The entire space can expand and serve as a gathering area with garage doors opening to the refreshed outdoor area with a new deck, fire pit and landscaping. The recep-



Nearly all conference and huddle rooms have All-steel glass fronts that keep the space feeling open and bright.

tion desk features intricate detail and radius edges to match the Cochlear branding. The brand-new fitness area includes a yoga studio and new locker rooms. Several existing conference rooms on the first floor were refreshed and received operable partitions, window treatments and

a new audiovisual package.

"It was a lot of fun to bring this creative design to fruition," said Chad Lincoln, project manager for Howell Construction. "I'm very excited for Cochlear to occupy and enjoy their new space as they continue their mission of serving our community." ▲

## Food halls

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the pandemic, experiential concepts, including food halls, were among the strongest performers in both the retail and food and beverage world.

With that momentum, Cushman & Wakefield said food halls could be the driving force behind a resurgence of in-person dining, especially since the restaurant model can easily adhere to social distancing guidelines with its open-floor concept.

"Food halls that created spacious public areas are now poised to creatively adapt multiple queuing lines, wider aisles, programmable spaces and flexible seating strategies into a more separated, comfortable, yet still very social, customer experience," said Ed Eimer, president of Eimer Design, a firm that specializes in food hall design.

Many food halls have been able to stay open during the nationwide stay-at-home orders and continue to provide take-



The Source Market announced plans to expand its services to an outdoor patio this summer.

away meals to customers.

Locally, the Denver Milk Market, the Denver Central Market and the Source Market remained open with curbside and delivery options.

For the summer months, the Source Market also launched Out Source, an outdoor food hall concept that will be open for customers starting this month. Out Source will be an expansion of the Source Market's property at 3330 Brighton Blvd. and will

feature food from select Source Market vendors including Smök Barbecue. There also will be outdoor geodesic domes for more intimate, comfortable guest seating.

"The program will give (customers) exactly what they've been craving: human connection, great food, cocktails, wine, amazing service and finally putting the first part of this year behind us," a Source Market press release said. ▲

## Snowmass

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accessible to students working in software at the workstations. At the end of the space, the 4-axis CNC machine is built into an acoustically controlled environment, with removable walls for easy future access.

Integrating innovative technologies into an ever-evolving campus with historic log buildings meant embracing the tradition of experimentation at the core of the maker-ethos of Anderson Ranch. The work surfaces and tables are being made by Brad Reed Nelson, a longtime wood shop faculty member.

An existing covered deck functions as a communal area where fellow students and artists may gather and visit. Two existing glass garage doors open into the studio, allowing

for indoor-outdoor workspace for students, and providing a welcoming environment to observe the digital fabrication equipment in action.

"Working with Peter (Waanders) and the Anderson Ranch Fab Lab team has been enlightening and inspiring," said R+B Principal Sarah Broughton. "The Fab Lab perfectly blends a variety of R+B's project types and passions, including historical preservation, ranch master planning, historic institutional and cultural work. Incorporating modern amenities and advanced technical innova-

tions that will assist artists in their work is extremely rewarding. We look forward to its completion next month and to seeing how it advances experiences in our new reality." ▲

## Sonnenschein

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beyond the statutory three years or extends the vesting period if certain development milestones are accomplished. This also can be advantageous where the local government has not passed any ordinance or resolution identifying or defining a site-specific development plan.

■ **Help! My vesting period is almost up – what can I do?** If you're approaching the third anniversary of your site-specific development plan approval or the end of your longer negotiated vesting period (your last roll, so to speak), the local approving authority can contract with you to extend the applicable vesting period where, as mentioned above, such extension is "warranted in light of all relevant circumstances." C.R.S 24-68-104(2).

■ **Take stock.** Make sure to review your ongoing development projects to determine if a governmental entity has

approved vested rights that are applicable to a site-specific development plan for your project and, if so, determine the end of your vesting period. If that date is approaching, pursue a development agreement or an amendment to an existing vesting agreement with your governmental entity to extend your vesting period. If your project is at its inception, or has not progressed to submission of an application for approval of a site-specific development plan, it is critical to review any vesting requirements set forth in the local land use code and start negotiations with your local government with the goal of entering into an agreement with a long vesting period and a site-specific development plan that is attainable under the circumstances. That way, you're covering your behind.

Rick Rubin, Scott Ross and Will Soper of Fox Rothschild LLP contributed to this article. ▲

## Boulder

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two-building project, and with the guidance of Studio Architecture, Graham Street realized that the overall rentable square footage could be grown by approximately 10% by merging the two structures into a single, larger building, offering more efficient leasing spans and floor-to-ceiling window lines."

The renovation added approximately 4,700 square feet to the existing 28,451 sf for a total of 33,151 sf. Features added during the renovation include an elevator to serve the newly constructed central lobby, a fire sprinkler system

and a new glass curtain wall across a significant portion of the building's usable area. A second-floor deck and new landscaping with an outdoor amenity area also were added.

The property can accommodate up to four office tenants at a time, or a single-tenant user for up to approximately 30,000 sf. Abrahamson said there are currently two tenants leased to the property, with other prospective tenants showing significant interest. With its newly completed renovation and attractive location, he's confident the team will see continued tenant growth. ▲