

OFFICE OF THE PROPERTY RIGHTS OMBUDSMAN
Advisory Opinion #67
May 4, 2009

TOPICS:

- (#7) Requirements imposed upon Development
 - (#15) Other Topics (Interpretation of Ordinances)
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Question

Do the terms of a development agreement override requirements found in a local government's zoning ordinances?

Background

A Developer and a City entered a Development Agreement which governed a town home project. The Agreement provided that "each dwelling unit shall not be less than 1300 square feet." The Developer proposed units that were over 1300 s.f. total (including basement), but the above-ground area was less than 1300 s.f. The City contended that the Agreement was intended to mean units with 1300 s.f. above ground, in accordance with City ordinances. The Developer argued that the Agreement did not specify above ground, and that the planned units exceeded the minimum area requirement.

The Agreement also contained a provision that when there was a conflict between a requirement expressed in the Agreement and one found in the City's code, the more restrictive requirement would control. The City's zoning ordinance required that dwelling units have a minimum of 1200 square feet above ground (excluding basement).

Analysis

A contract may be considered ambiguous if the terms are capable of more than one interpretation. Extrinsic evidence may be used to clarify and interpret ambiguous terms, but outside evidence cannot create the ambiguity. Under this rule, the phrase "each dwelling unit shall not be less than 1300 square feet" is not ambiguous, and refers to total area, not above-ground area.

The Agreement provides that a more restrictive standard will control when there is a conflict between the Agreement and the terms of the City's ordinance. Since the City's zoning ordinance requires dwelling units to have at least 1200 s.f. above ground, that is the more restrictive requirement, and so it controls the size of the units.