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Murphy of Krokidas & Bluestein, LLP - Business improvement districts, no more opting out

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On August 7th, governor Patrick signed An Act Relative to Infrastructure Investment, Enhanced Competitiveness and Economic Growth in the Commonwealth into law, and altered the law regarding Business Improvement Districts (BIDs). The act amends Massachusetts General Law Chapter 40O to require all property owners with property in a BID to participate in the BID and pay district fees. The law also provides for more oversight through renewal voting, and a new procedure for BID discontinuation.

Property owners form a BID by petitioning their municipal government. Once formed, BIDs promote business growth and keep the area safe and clean by providing services beyond those provided by the local municipality. A BID must have an improvement plan establishing the services and programs it will provide and the strategies, financing, and management that will enable it to do so. At least three-fourths of area covered by a BID must be zoned or used for commercial, industrial, retail, or mixed uses.

The recent changes to the law eliminate procedures that had previously allowed property owners to elect not to participate in a BID. Now, when a BID is formed pursuant to the statutory procedures, every property owner within the area designated in the petition must participate. The new participation requirement is intended to prevent property owners within BIDs from benefiting from their neighbors' district fee payments without contributing themselves. While new BIDs benefit immediately from these participation requirements, currently existing BIDs will have to bring property owners in to the BID membership through a renewal vote. The law automatically brings non-participating property owners in to existing BIDs after the first vote to renew the BID at a renewal meeting.

Renewal meetings must take place at least every five years after the organization of a new BID. Boards of Directors of existing BIDs must hold their first renewal meeting with the membership on or before January 1, 2018. At the meeting, members must review the last five years of the BID, propose an updated improvement plan and vote either to renew or discontinue the BID. The BID shall continue after each renewal meeting if a majority of participating property owners who are present in person or by proxy vote to renew the BID. After the first vote to renew a currently existing BID, all property owners within the BID will be required to participate and pay district fees. For this reason, it may be advantageous for the Boards of Directors of existing BIDs to call renewal meetings as soon as possible.

The new law also promotes accountability through new provisions for termination of a BID. If at the renewal meeting, a majority of members vote not to continue the BID, the BID will begin the discontinuation process. BID members would then update the improvement plan in light of its discontinuation. The BID then accomplishes the final goals of its membership through this updated

improvement plan, and concludes business before the sixth anniversary of its formation or of the last renewal vote. Formerly, the only means of discontinuing a BID was dissolution, resulting in the refunding of district fees to the membership. Now, during discontinuation, these fees go toward the updated improvement plan. Discontinuing a BID better serves members who would like to see the BID meet certain goals as it ceases operations.

If you have property in a commercial area, whether or not you are in a BID, you should keep tabs on BIDs. Consider whether your municipality is meeting your needs; if not, you and your neighbors may want to form a BID and take advantage of these new participation requirements. For currently participating BID members, the new law provides you with potential new membership and better oversight for your organization.

A special thank you to Katie Behan, recent law clerk at Krokidas & Bluestein and student at Northeastern University Law School, for her assistance with this article.

Kathryn Murphy has been practicing in the area of commercial real estate law for over 30 years and joined Krokidas and Bluestein in 2006. Murphy has been a Fellow of the American College of Real Estate Lawyers (ACREL) since 1993, served as secretary in 2012 and was recently elected treasurer for 2013. She serves as a member of ACREL's board of governors and executive committee. In addition, she is a member and former steering committee member of New England Women in Real Estate (NEWiRE) and a member of the Urban Land Institute. She is co-chair of the board of YWCA Boston, vice-chair of the board of the Emerald Necklace Conservancy, and an honorary trustee of the Boston Children's Museum. Murphy has served as a panelist for the ALI/ABA Modern Real Estate Transactions and Commercial Leasing programs and has contributed to the ABA Mortgage Foreclosure book and the State-by-State Guide to Commercial Real Estate Leases.

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