IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Fall 2026 Term

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INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

No. 25-ICA-334

FOUNTAIN PLACE, LLC,
Plaintiff Below, Petitioner,

v.

CITY OF LOGAN DEVELOPMENT AUTHORITY, FOUNTAIN PLACE REALTY, LLC, NAMDAR DG REALTY, LLC and CITY OF LOGAN, WEST VIRGINIA
Defendants Below, Respondents.

Appeal from the Circuit Court of Logan County
Honorable Joshua Butcher, Judge
Civil Action No. CC-23-2023-C-106

AFFIRMED and REMANDED

Submitted: September 9, 2026
Filed: November 6, 2026

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JUDGE WHITE delivered the Opinion of the Court.

WHITE, JUDGE:

Petitioner Fountain Place, LLC ("Fountain Place") appeals the Circuit Court of Logan County's July 18, 2025, order granting a motion to dismiss filed by Respondents City of Logan, West Virginia (the "City") and City of Logan Development Authority (the "Development Authority") (collectively, the "Logan Respondents"). The issue on appeal concerns enforceability of a 1997 contract between Fountain Place's predecessor-in-interest and the Logan Respondents which was renewed by Fountain Place in 2017. For reasons stated below, we affirm the judgment of the lower court and remand for further proceedings.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND

The contract in question was a Development Agreement between the Logan Respondents and Fountain Place's predecessor-in-interest, Monterra. Sometime prior to

[1] None of the parties question the finality of this ruling for purposes of appellate review even though certain counterclaims brought by the City against Fountain Place remain pending and the circuit court did not certify this matter for immediate review under Rule 54(b) of the West Virginia Rules of Civil Procedure. Nonetheless, because this is a jurisdictional question, we have independently reviewed this issue and determined that the ruling of the circuit court approximates a final order pursuant to Syl. Pt. 2, *Durm v. Heck's, Inc*., 184 W. Va. 562, 401 S.E.2d 908 (1991). *See generally Antero Res. Corp. v. Pike*, 251 W. Va. 522, 529, 914 S.E.2d 757, 764 (Ct. App. 2025) (finding finality despite absence of Rule 54(b) language where a motion for summary judgment resolved all allegations in the complaint even though counterclaims for trespass and conversion were still pending). In finding that we have jurisdiction, we note that the lower court's order disposes of all of the claims against the Logan Respondents, and that no similar claims against other defendants are currently pending.

January 1, 1995, Monterra began work to develop a shopping center in Logan County (the "Property"). The property where Monterra intended to develop the proposed shopping center was located within an unincorporated area of Logan County.

To encourage and facilitate the completion of the shopping center, the City established the Development Authority. The City and Development Authority then jointly entered into the subject Development Agreement in 1997 with Monterra (the "Development Agreement"). Under the Development Agreement, Monterra would not object to the City annexing the Property. In exchange for Monterra's acquiescence in the annexation of the Property, the City and Development Authority were to remit to Monterra, or its successors or assigns, an amount equal to 57% of the annual revenue raised by the City from business and occupancy taxes ("B&O Taxes") collected from businesses and occupants operating at the planned shopping center.

The Logan Respondents were to create a "Special Allocation Fund" (the "Fund"), "pledge and apply" the moneys not yet paid to the Fund, and pay Fountain Place from that Fund. The agreement by the City and Development Authority to remit 57% of the B&O Taxes arising from the Property was for an initial term of twenty years (the "Initial Term") but could be extended by Monterra or its assigns at its or their sole option for an additional ten-year period (the "Renewal Term"), to begin at the conclusion of the Initial Term. The payments by the City and Development Authority to Monterra and/or its successors or assigns over the Initial Term and, if applicable, the Renewal Term, were in

consideration of Fountain Place's cooperation regarding the annexation of the Property[2] and were to incentivize and facilitate the development of the Property as a shopping center. Monterra continued to develop the Property after the Development Agreement was executed. When Fountain Place acquired the Property, it finished building the shopping center, which still operates on the Property as the "Fountain Place shopping center," or "Fountain Place Mall."

The Development Agreement provides that it "shall be binding upon and inure to the benefit of the [p]arties [thereto] and their respective authorized successors and assigns." Due in part to the immense cost of the project, which involved considerable excavation, Monterra declared bankruptcy in 1999. By Order of the United States Bankruptcy Court for the Southern District of West Virginia, all rights and title to the Development Agreement (and the payments due to Monterra by the City and Development Authority thereunder) were assigned, without objection, to Fountain Place. Under the Development Agreement, Fountain Place collected annual payments from the Logan Respondents in the amount of 57% of the total B&O Taxes collected from the Fountain Place Property for several years after it replaced Monterra.

[2] In addition to receiving annual payments of 57% of the B&O taxes collected from businesses operating on the subject property, Monterra and its successors and assigns were excused from paying any B&O taxes related to construction, rental, and leasing activities for the subject property. To date, neither Monterra nor Fountain Place have paid any B&O taxes related to the shopping mall property.

Sometime in or around 2013, the Development Authority dissolved;[3] but Fountain Place continued to receive annual payments directly from the City. On June 28, 2016, Fountain Place informed the City in writing of its decision to renew the Development Agreement for an additional ten years, until July 22, 2027. The City did not object to Fountain Place's exercise of its renewal option and continued to make payments directly to Fountain Place through May 2021, when the City decided that it was not legally obligated to do so.

On August 9, 2023, Fountain Place filed an action for breach of contract and declaratory judgment in the Circuit Court of Logan County. The Logan Respondents moved to dismiss the complaint under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. On July 18, 2025, the circuit court issued an order granting the motion to dismiss on the grounds that the Development Agreement created an unconstitutional "indebtedness" under Article X, Section 8 of the West Virginia Constitution; the City was statutorily immune from the liabilities of the Development Authority, which had dissolved in 2013; and the Logan Respondents were not estopped from contesting the lawfulness of

[3] It is unclear from the record whether the City intentionally dissolved the Development Authority, or it simply withered away. According to the City, one member of the Development Authority may have died while other members moved away. In any event, by 2013 the Authority was no longer active, and the parties agree that the authority was dissolved, although they disagree as to exactly how and why that occurred.

the development agreement even though they had made payments under it for many years.[4] Fountain Place appeals from this order.[5]

II. STANDARD OF REVIEW

"Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*." Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc*., 194 W. Va. 770, 461 S.E.2d 516 (1995); *see also State ex rel. Perdue v. Nationwide Life Ins. Co*., 236 W. Va. 1, 5-6, 777 S.E.2d 11, 15-16 (2015). The interpretation of a statute is subject to de novo review. *Motto v. CSX Transp., Inc.*, 220 W. Va. 412, 415, 647 S.E.2d 848, 851 (2007). "Constitutional challenges relating to a statute are reviewed pursuant to a de novo standard of review." *Morris v. Crown Equip. Corp*., 219 W. Va. 347, 352, 633 S.E.2d 292, 297 (2006).

III. DISCUSSION

[4] The circuit court also held that continued payments under the Development Agreement would conflict with West Virginia Code § 7-12-2 (1986) which states that "[t]he purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created[.]" In this case, Fountain Place is no longer building or maintaining the shopping center. The money it receives from the City is now used to support activities outside of the City limits. Fountain Place argues that the City continues to benefit from the shopping center it developed, but we need not resolve this issue given our other rulings.

[5] The State of West Virginia filed an amicus curiae brief in support of the Logan Respondents. We acknowledge the contribution of the State and thank it for its assistance.

The Logan Respondents rely in part on Article X, Section 8 of the West Virginia Constitution which limits the ability of municipalities to assume indebtedness and requires the approval of three fifths of all votes cast for or against the proposed measure.[6] In this case, the Development Agreement was not submitted for public approval by the voters. Because we find West Virginia Code § 7-12-8 and 7-12-13 (1986) and our jurisprudence concerning estoppel to be dispositive, we decline to address this constitutional issue. *See Cogar v. Sommerville*, 180 W. Va. 714, 716, 379 S.E.2d 764, 766 (1989) ("established law… compels us to avoid deciding constitutional issues whenever

[6] Article X, Section 8 of the West Virginia Constitution provides:

> No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein, in the ratio, as between the several classes or types of such taxable property, specified in section one of this article, separate and apart from and in addition to all other taxes for all other purposes, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years. Such tax, in an amount sufficient to pay the interest and principal on bonds issued by any school district not exceeding in the aggregate three per centum of such assessed value, may be levied outside the limits fixed by section one of this article: Provided, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three fifths of all the votes cast for and against the same.

possible…"); *Silver Creek Ass'n, Inc. v. Irby*, 251 W. Va. 172, 175 n.4, 909 S.E.2d 844, 847 n.4 (Ct. App. 2024) ("When it is not necessary in the decision of a case to determine a constitutional question, this Court will not consider or determine such question. Syl. Pt. 5, *In re Tax Assessments against Pocahontas Land Corp.*, 158 W. Va. 229, 210 S.E.2d 641 (1974).") (internal quotation marks removed).

Similarly, we do not address whether the Development Agreement was unconscionable or there was a lack of consideration for the renewal of the Development Agreement. Those issues were briefed and argued below, but not resolved by the circuit court. *See IPI, Inc. v. Axiall Corp.*, 249 W. Va. 544, 566, 897 S.E.2d 572, 594 (Ct. App. 2024). Instead, we begin our analysis by focusing on the language of West Virginia Code § 7-12-8 (1986), which provides in pertinent part:

> No indebtedness of any nature of the authority shall constitute an indebtedness of the governing body of the municipality or county commission of the municipality or county in which the commission is intended to operate or any municipality situated therein, or a charge against any property of said county commission, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

This section clearly states that municipal governments are not responsible for any debts incurred by the Development Authority. Furthermore, the rights of creditors are solely against the authority and shall be satisfied only out of its property.

Fountain Place contends that West Virginia Code § 7-12-8 does not apply in this case because the Development Authority's obligation to pay Fountain Place under the Development Agreement was not a form of "indebtedness." Fountain Place reasons that, since this obligation was not indebtedness, West Virginia Code § 7-12-8 does not preclude the obligation from reverting to the City. We disagree. While "indebtedness" is not explicitly defined in Article 12 of Chapter 7, the Supreme Court of Appeals of West Virginia ("SCAWV") has used a broad definition in prior cases addressing indebtedness for constitutional purposes:

> the state of being by voluntary obligation, express or implied, under legal liability to pay in the present or at some future time for something already received, or for something yet to be furnished or rendered. This includes every kind of indebtedness, no matter in what manner created, or voluntarily brought about; or for what purpose, whether it be for municipal self–preservation or not; whether for pure air, pure water, good light, clean and convenient and safe streets and sidewalks; whether it be payable now or hereafter, payable quarterly or annually, or at any date running on for 34 years; whether for current expenses or fixed and definite debts or charges; whether for personal property or real property, leasehold or freehold[.]

Spilman v. City of Parkersburg, 35 W. Va. 605, 615, 14 S.E. 279, 282 (1891); *Allison v. City of Chester*, 69 W. Va. 533, 536-37, 72 S.E. 472, 473 (1911). As West Virginia Code § 7-12-8 expansively bars "indebtedness *of any nature*" from devolving to the City, we find that the SCAWV's broad definition of "indebtedness" is appropriate. (Emphasis added). Under that definition, we have no trouble concluding that the Development Authority's obligation to pay Fountain Place a portion of B&O tax receipts constituted a form of

indebtedness. Therefore, West Virginia Code § 7-12-8 precludes this ongoing obligation from reverting to the City.

Moreover, the statute governing dissolution of a development authority confirms that its obligations do not revert to the sponsoring municipality. When the Development Authority dissolved, its assets reverted to the City, but not its liabilities. *See* W. Va. Code § 7-12-13 (1998) ("Upon the dissolution of the authority, all of its assets and property shall revert to and become the property of the county or municipality for which said authority was created."). Fountain Place argues that liabilities as well as assets should be transferred to the City upon dissolution, but this section is silent concerning liabilities, and we are not at liberty to rewrite the statute by adding language which the Legislature did not include. Syl. Pt. 11, *Brooke B. v. Ray*, 230 W. Va. 355, 738 S.E.2d 21 (2013) ("It is not for this Court arbitrarily to read into [a statute] that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted."); *Price v. Raleigh Gen. Hosp., LLC*, 251 W. Va. 508, 515 n.6, 914 S.E.2d 743, 750 n.6 (Ct. App. 2025); *Thompson v. W. Constr., Inc.*, 248 W. Va. 578, 582, 889 S.E.2d 300, 304 (Ct. App. 2023).

If the Legislature had intended liabilities, as well as assets, to go to municipalities and counties when a development authority dissolved, it could have drafted the statute to say so, as it did with several other agencies and authorities. *See, e.g.,* W. Va.

Code § 8-38-15(c) (2011) (Municipal Economic Opportunity Development Districts) ("Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the municipality"); W. Va. Code § 8-13A-15 (1994) (Business Improvement Districts) (same language); W. Va. Code § 7-22-15(c) (2014) (County Economic Opportunity Development Districts) ("Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission.").[7] The fact that the Legislature did not expressly provide that municipalities

[7] Alternatively, if the Legislature wanted to protect parties contracting with development authorities, it could have provided that development authorities could not be dissolved until their debts and obligations had been settled, or some provision had been made for their payment or retirement. *See, e.g.*, W. Va. Code § 8-27-26 (1971) (requiring "full and adequate provision … for payment of all of the debts of an authority" prior to dissolution of Urban Mass Transportation Authorities and distribution of remaining property among participating municipalities or counties); W. Va. Code § 8-29-18 (1969) (requiring "full and adequate provision … for the payment of all of the debts of an authority" prior to dissolution of Regional Airport Authorities and distribution of remaining property among participating municipalities or counties); W. Va. Code § 7-25-7a(e) (2015) (Resort Area Districts) ("[A]ll debts or other obligations outstanding against the resort area district must be settled in full prior to the dissolution."); W. Va. Code § 31-18E-14(a)(2) & (c) (2014) (Land Reuse Agencies) (all outstanding liabilities must be satisfied prior to dissolution; upon dissolution, all assets become the assets of the relevant municipalities or counties).

and counties would assume the liabilities of development authorities when the authorities dissolved, as it did in statutes dealing with many other authorities and agencies, supports our conclusion that § 7-12-13 was not intended to transfer liabilities as well as assets.[8]

Fountain Place argues, however, that providing the City with immunity from debts or obligations incurred by the Development Authority would constitute an unconstitutional taking of private property without due process. We disagree. No property right exists where there is no reasonable expectation of payment based on private contract, or under state or federal law. As the court set forth in Syllabus Point 6 of *State ex rel. Anstey v. Davis*, 203 W. Va. 538, 509 S.E.2d 579 (1998):

> To have a property interest, an individual must demonstrate more than an abstract need or desire for it. He must instead have a legitimate claim of entitlement to it under state or federal law. Additionally, the protected property interest is present only when the individual has a *reasonable* expectation of entitlement deriving from the independent source.

See also Syl. Pt. 5, *Zaleski v. W. Va. Physicians' Mut. Ins. Co*., 220 W. Va. 311, 647 S.E.2d 747 (2007) (same); *YMCA of Parkersburg v. W. Va. DHHS*, No. 22-ICA-54, 2023 WL 4838229, *8 (Ct. App. 2023) (Scarr, J., concurring) ("A 'property interest' protected by due

[8] In fact, it is possible that the Legislature purposely did not include the transfer of liabilities in order to avoid a constitutional question as to whether debt of a development authority could be deemed a debt of a municipality when considering the constitutional limit on debt. This would not have been an issue with other statutes that created a separate revenue source distinct from the general revenue of the creating entity. For example, the Business Improvement District Act involved services paid for by business improvement service fees. *See* W. Va. Code § 8-13A-12 (2024).

process must derive from private contract or state law, and must be more than a unilateral expectation of a benefit. *Major v. DeFrench*, 169 W. Va. at 251, 286 S.E.2d at 695 [1982].") (citation modified).

Given the language of § 7-12-8 and § 7-12-13, no reasonable expectation existed that payment would continue when the City dissolved the Development Authority. Indeed, the Development Agreement itself recognized that any duty to pay was limited by relevant laws affecting creditor's rights such as § 7-12-8. *See* Development Agreement, Article II, Section 2.1(c) (stating that the agreement was enforceable "except as enforcement hereof may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting creditor's rights as may from time to time be in effect.").

Parties who contract with government entities are presumed to know the law, and to assume the risk that their agreement may not be enforceable if a government entity acts outside its authority. *See Martin v. Pugh*, 175 W. Va. 495, 504, 334 S.E.2d 633, 642 (1985) (a state actor is "not bound by the legally unauthorized acts of its officers and all persons must take note of the legal limitations upon their power and authority."); Syl. Pt. 1, *Samsell v. State Line Develop. Co*., 154 W. Va. 48, 174 S.E.2d 318 (1970) ("The s[t]ate is not bound by the unauthorized or illegal acts of its officers, … and all persons who deal with such officers do so at their peril, in all matters wherein such officers exceed their legitimate powers."); *Burgess v. City of Cameron*, 113 W. Va. 127, 132, 166 S.E. 113, 115 (1932) ("[O]ne contracting… with a municipality is charged with a knowledge of the

limitations imposed upon it by charter."); *Heckler v. Community Health Servs. of Crawford Cnty., Inc*., 467 U.S. 51, 63 (1984) ("[T]hose who deal with the government are expected to know the law and may not rely on the conduct of government agents contrary to law.") (footnote omitted).

Fountain Place argues that the City was estopped from arguing that it was entitled to the statutory immunity conferred by West Virginia Code § 7-12-8 and § 7-12-13 because it made payments for several years after the Development Agreement was extended. We disagree. Section 7-12-8 clearly precludes municipal governments from assuming the debts of a development authority, and estoppel cannot be used to compel a municipality to exercise powers which have not been granted to it. *See City of Martinsburg v. Miles,* 95 W. Va. 391, 395, 121 S.E. 285, 286 (1924) (holding that a city's ultra vires act does not lead to any validation); *State ex rel. Town of South Charleston v. Partlow*, 133 W. Va. 139, 169, 55 S.E.2d 401, 416 (1949) (Haymond, J., concurring) ("No rights or interests, cognizable or enforceable, at law or in equity, arise, or can arise, in favor of the board against the town, from the honest but ultra vires and invalid acts of both[.]"); *Burgess,* 113 W. Va. at 132, 166 S.E. at 115 (internal quotation marks omitted) ("The mere fact that the municipality has received the benefits of the contract which has been performed by the other party, does not make the municipality liable, either on the theory of ratification, estoppel, or implied contract[.]"). Thus, the City was not required to continue making payments after it realized, perhaps somewhat belatedly, that it was not authorized to do so. *See generally* 28 Am. Jur. 2d *Estoppel and Waiver* §131, Westlaw (database updated August

2026) ("A current governmental official is not duty-bound by equitable estoppel to continue the improper acts of predecessors.") (footnote omitted).

Moreover, estoppel does not apply when a government entity acts in a governmental, rather than a proprietary capacity. *Martin v. Pugh*, 175 W. Va. 495, 503, 334 S.E.2d 633, 641 (1985); *Cawley v. Board of Trustees*, 138 W. Va. 571, 584, 76 S.E.2d 683, 690 (1953). "The basic test in determining whether a public corporation, in its operations, is engaged in a discharge of a governmental function or is acting in a proprietary capacity is whether the act performed is for the common benefit of the public or is for the special benefit or profit of the corporation." *McFillan v. Berkeley Cnty. Planning Comm'n*, 190 W. Va. 458, 465, 438 S.E.2d 801, 808 (1993) (quoting *Shaffer v. Monongalia General Hosp*., 135 W. Va. 163, 169-70, 62 S.E.2d 795, 798 (1950)).

In this case, the City was acting in its governmental capacity when it created the Development Authority, annexed the property where the shopping center was to be built, used its taxing powers to generate funds that would be used to facilitate and incentivize the completion of that project, and abated B&O taxes related to the Property for Monterra and its successors and assigns. Annexation, taxation, and the allocation of public funds are clearly core functions of government. *See City of Beckley v. Wolford*, 104 W. Va. 391, 393, 140 S.E. 344, 345 (1927) (taxation is an act of sovereignty); *Coffman v. Nicholas Cnty*. *Comm'n*, 238 W. Va. 482, 490, 796 S.E.2d 591, 599 (2017) (determination of geographic boundaries "is essentially a legislative function into which the courts

generally should not intrude unless the process is unconstitutional or invalid"); 2A McQuillin Mun. Corp. § 7:44, Westlaw (3d ed database updated June 2026) (ordinarily, no estoppel can arise against municipal corporations in annexation proceedings); 28 Am. Jur. 2d *Estoppel and Waiver* § 140, Westlaw (database updated August 2026) ("…the doctrine of estoppel generally is not applied in matters involving or affecting a municipal corporation's governmental or public functions, such as the taxing … power.") (footnotes omitted).

The City was exercising governmental powers when it created the Development Authority to promote economic growth and prosperity in the Logan area. Only counties and municipalities can create and establish development authorities. *See* W. Va. Code § 7-12-1 (1986). The code sections authorizing the creation of development authorities designate them as "public agencies," W. Va. Code § 7-12-1 (1986), and "public corporations," W. Va. Code § 7-12-6 (1963), and state that their purposes are to promote, develop and advance the business prosperity and economic welfare of the municipality, its citizens and industrial complex; encourage and assist in the locating of new business and industry within the municipality; stimulate and promote the expansion of business and industrial activity; provide maximum opportunities for employment; improve the standard of living of the citizens; and furnish money, credit, land, and technical assistance to approved applicants. W. Va. Code § 7-12-2 (1986). As the Legislature expressly recognized in West Virginia Code § 7-12-7(a) (2015), expenditures by development authorities, in the execution of their powers and authority, are "determined and declared as a matter of

legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state." The Development Agreement itself recognizes at page 1 that "the powers exercised hereunder are … in furtherance of a public use and essential to the public interest." Other WHEREAS clauses of the agreement further state:

> **WHEREAS,** City has determined that it is essential to the economic and social welfare of City that City promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth; and
>
> **WHEREAS**, City believes a retail shopping complex and other improvements on the Property will help to improve the social and economic welfare of City[.]

The Development Agreement required the City to exercise governmental powers related to zoning when it provided in Article III, Section 3.2:

> **Section 3.2 Zoning. Permits and Land Use.** The City shall cooperate with Monterra to provide zoning and annexation sufficient for the construction of the Development and the uses therein. The City shall provide the highest level of business and light industrial zoning for the development site, consistent with the plans of Monterra. The City shall assist Monterra in obtaining any and all permits, approvals of this Agreement, and development plan approvals necessary to proceed with the development, including but not limited to parking and street requirements, curb cuts, building permits, sign permits and any other permit or requirement of any Federal, State or Local Agency.

Zoning is usually regarded as a governmental, rather than proprietary, function, not subject to estoppel. *See McFillan v. Berkeley Cnty. Plan. Comm'n*, 190 W. Va. 458, 465, 438 S.E.2d 801, 808 (1993).

Thus, the Development Agreement requires the City to do things which only a governmental entity can, such as annexation, tax collection and abatement, zoning, allocation of public funds, and the creation of a development authority, strongly undercutting the argument that the City was acting in a proprietary capacity. *See generally Southern Power Co. v. Cleveland Cnty*., 24 F.4th 258 (4th Cir. 2022) (applying North Carolina law) (development agreement requiring county to expedite the processing of permit applications and waive all fees normally charged in connection with development projects involved governmental rather than proprietary functions for purposes of estoppel). Moreover, as both the legislature in its findings, and the parties in the Development Agreement, have recognized, the expenditure of public funds was intended to benefit the public. Given the facts of this case, we conclude that the City was engaged in government functions "performed for the common benefit of the public," rather than "for the special benefit or profit of the corporation."[9] *McFillan*, 190 W. Va. at 465, 438 S.E.2d at 808 (citation modified). Accordingly, equitable estoppel does not apply.

[9] This case is distinguishable from cases such as *Ashworth v. City of Clarksburg*, 118 W. Va. 476, 190 S.E. 763 (1937) (city as park proprietor); *Ward v. Cnty. Court of Raleigh Cnty.*, 141 W. Va. 730, 93 S.E.2d 44 (1956) (county operating a lake); Syl. Pt. 3, *Hatten v. Mason Realty Co*., 148 W. Va. 380, 135 S.E.2d 236 (1964) (construction of sewer line within city limits); and Syl. Pt. 1, *Wigal v. City of Parkersburg*, 74 W. Va. 25, 81 S.E.

Fountain Place argues that declining to impose estoppel in this case would violate public policy, but judicial reluctance to apply equitable estoppel to government entities is long-standing and based on its own compelling policy considerations. *See generally* Syl. Pt. 7*, Samsell v. State Line Dev. Co.*, 154 W. Va. 48, 174 S.E.2d 318 (1970) ("The doctrine of estoppel should be applied cautiously, only when equity clearly requires that it be done, and this principle is applied with especial force when one undertakes to assert the doctrine of estoppel against the state."). As the Court explained in *Cawley v. Bd. of Trustees of Firemen's Pension or Relief Fund of City of Beckley*, 138 W. Va. 571, 584, 76 S.E.2d 683, 690 (1953): "The reason for refusing to apply equitable estoppel to municipal governmental functions is clear. To permit such estoppel on the basis of mistake or ill advised action by a former municipal authority would hinder and hamper governmental functions; and may be contrary to the public interest in many cases." *Cawley v. Bd. of Trustees of Firemen's Pension or Relief Fund of City of Beckley*, 138 W. Va. 571, 584, 76 S.E.2d 683, 690 (1953). Furthermore,

> When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant.

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554 (1914) (maintenance of waterworks system) where the court found that the government entity was acting in a proprietary capacity. In this case, the City did not own, build, operate, or derive profit or rent from the Fountain Place shopping complex. Instead, it facilitated and incentivized this development through the exercise of its governmental powers to promote economic growth in the Logan area.

Martin v. Pugh, 175 W. Va. 495, 504, 334 S.E.2d 633, 642 (1985) (quoting *Heckler v. Community Health Services of Crawford County, Inc.,* 467 U.S. 51, 60 (1984)).

IV. CONCLUSION

We affirm the order of July 18, 2025, dismissing the action filed by Fountain Place because West Virginia Code § 7-12-8 provides that the City was not responsible for the debts of the Development Authority, the only remedy of creditors was against the Development Authority, and its debts could only be satisfied from the assets of the Development Authority. Further, section 7-12-13 provides that any assets of the Development Authority shall revert to the creating municipality upon dissolution but makes no such provision for its liabilities. The fact that the City continued to pay 57% of the B&O taxes collected from the subject property after the Development Authority was dissolved did not require the City to continue making such payments after it realized its error. This matter is remanded for further proceedings consistent with our opinion, including resolution of the pending counterclaims.

Affirmed and Remanded.