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# EpiCentre wins state ruling on code violations

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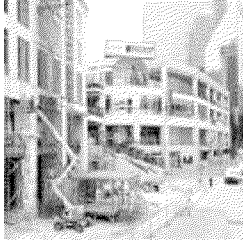


photo NANCY PIERCE

Tenants have been opening steadily in the EpiCentre uptown since June.

The EpiCentre is winning more than big crowds.

The uptown entertainment complex also got a big victory this week in Raleigh. State building-code officials sided with developer The Ghazi Co. in its long-simmering battle with Mecklenburg County.

The ruling rejected the county's contention that ownership agreements for different pieces of the 267,000-square-foot mix of bars, restaurants and stores violated the building code.

The county's stance threatened to close down businesses once their temporary occupancy certificates expired.

Nightclubs Howl at the Moon piano bar and Dale Earnhardt Jr.'s Whisky River club opened this summer in EpiCentre, which is still under construction on College Street. Other tenants such as Jason's Deli, PJ's Coffee, The Fudgery and Smoothie King open this month.

And now they can expect to operate without any concern over future county action.

"It's a complete victory," says developer Afshin Ghazi. "We won."

Ghazi expects the county will issue permanent occupancy certificates for most of the \$200 million development within weeks.

It's unclear how the ruling will impact legal battles between Ghazi and Flaherty & Collins Properties, which is building a condo tower on top of the EpiCentre.

In June, Flaherty & Collins filed a federal suit against a Ghazi subsidiary, seeking more than \$70 million in damages.

Ghazi shot back, suing a Flaherty & Collins unit for \$92 million. The suits center on disputes over the EpiCentre, built on the site of Charlotte's former convention center.

One issue stems from code violations that now appear to be resolved by the state action.

Last September, Mecklenburg County officials told Ghazi and Flaherty & Collins that EpiCentre was in code violation because of the way the complex's commercial section was separated from the residential tower.

The problem arose from the development's air rights, which the county said created horizontal property lines. Those property lines needed to follow the same codes as vertical property lines, including coordinated placement of structural and safety elements.

Ghazi disagreed.

County officials contended the issue could be resolved with a detailed agreement spelling out ownership and access issues.

Ghazi instead decided to appeal the county's ruling to the state.

The N.C. Building Code Council heard testimony from both sides Tuesday. Then the group met for about an hour before deciding in favor of EpiCentre.

"We came to the conclusion that having air rights did not constitute having a property line," say John Hitch, a Raleigh architect and vice chairman of the N.C. Building Code Council. "This was unusual, and I think that's why Mecklenburg County had trouble with it. But the answer became simple."

**Poyner & Spruill** attorney Lee Spinks, who represents Flaherty & Collins, says the ruling doesn't solve all of EpiCentre's problems. "We still don't know whether the county will require each owner to have access to each other's property for maintenance or emergencies," he says.

Further, he contends Ghazi knew about the code issue years before September 2007. Spinks says that timeline will be a matter for the ongoing litigation.

"We just don't understand why he didn't appeal earlier," Spinks says. "This is essentially a year or two late."

But Ghazi says the notice from the county last September was the first he had heard of code violations. "We did everything aboveboard before we started this project," he says. "We laid out the whole plan to the city and county years ago. And it wasn't until September that the county raised the issue."

County officials decline comment on the case.

Spinks says the ruling doesn't change Flaherty & Collins' suit against Ghazi. When the code violation was raised last year, financing for the Indianapolis-based developer dried up.

"The end result was it prevented us from closing financing," Spinks says. "We have been in discussions about getting financing for about three to four months. We hope this decision speeds that."

Spinks says Flaherty & Collins has about a four-month window to restart construction and get back on track so its buyers' agreements don't expire.

Ghazi's lawyers wouldn't talk specifically about the impact on the Flaherty & Collins battle but say the ruling bodes well for them.

"The impact can't be known," says Marty White, an attorney at Johnston, Allison & Hord, "but certainly it's very very positive."

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