

ABC's of Land Development

May 10, 2018

Developing land or repurposing existing structures can be profitable. It can also be frustrating, confusing and expensive. Before undertaking any development project, the developer must assemble a strong "team" of professionals. Usually, the team is comprised of:

- Site engineer
- Traffic engineer
- Architect
- Land Use Attorney
- Wetlands expert/engineer
- Depending upon unique circumstances, other specialties may be hired.

Team members must work cooperatively and collaboratively with the developer and each other. Communication is crucial to completely understand the project and the regulatory challenges the project will face. Teamwork results in an efficient presentation of the project, and the procurement of permits and approvals needed to begin construction. Team members seamlessly dovetail their work product into well thought-out plans and narratives. This, in turn, assists the boards, commissions and regulatory authorities in understanding the subtleties as well as the grand concepts of the project. Further, it demonstrates that the developer understands the many regulations, laws and by-laws that may affect the project. The desired image of professionalism and preparedness is created which engenders confidence in the quality and thoroughness of the plans and project presentation. The result is a more efficient permitting process.

Okay, the team is assembled. What next? First, meet (telephone will do) with all team members. Outline the project (i.e. purpose, number of buildings, location of the land, etc.) and the status of the land or building that is to be developed. Is the land already in the developer's portfolio? If so, proceed to the next step. Is the land under a letter of intent or purchase and sale agreement? If it is under a letter of intent, then use the team to help craft the operative terms of the purchase and sale agreement. You will want enough time to perform due diligence and then allow more time for permitting. Avoid standard form residential agreements. The agreement must be correct at the outset. It is your foundation. Your land use attorney is indispensable in this endeavor. If it is already under a purchase and sale agreement, then get organized and commence due diligence! Time is not your ally.

Second, during due diligence, have the title to the land researched. It is recommended that a certification letter and title insurance commitment be obtained from a title attorney (who can also act as your land use attorney). A survey is also suggested. An American Land Title Association survey is best since it is the most comprehensive, can be used as a basis for the development plans, and will probably be needed to issue a title policy anyway. During due diligence, environmental issues should also be explored as well as further research on the permits and approvals needed to accomplish the project.

Third, due diligence proves that the property is suitable for your development project. Move on to permitting. Your team is crucial to organize and implement this phase of the project. Each community has different protocols and procedures. A thorough review of the local by-laws and regulations is required. Although not necessarily the same in each community, the following are the traditional steps for permitting:

- Preparation of preliminary plans for informal presentation to a review committee.
- If work is proposed in a buffer zone or resource area, flag wetlands.
- Determine the sequencing of which applications to file (usually discuss this at informal meeting).
- Participate at informal review.
- Prepare detailed plans appropriate to the board or commission from whom relief is sought (usually after incorporating comments from informal review).
- Determine adjoining properties to the project and decide whether to have informal meetings with those property owners.

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- Review all submittals with the team and if all is in order, file the appropriate applications and supporting materials with the pre-determined regulatory board, commission or agency.
- Present to the appropriate board, commission or regulatory agency with detailed memorandum of findings and law.
- After vote, if relief is obtained, wait until the appeals period has run and record the decision if it grants the requested relief.
- If the requested relief is denied or conditioned such that development is impaired, decided whether to appeal.

Fourth, once all permits have been obtained and recorded, file for building permits and begin work.

A successful development project is brought in on time and within budget. Your team enhances the probability of success in a timely manner. Let us know how we can help you. Please do not hesitate to reach out to any member of our Land Use & Environmental team for additional information about our firm, lawyers, or services.

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