

LAND USE AND LAND ACQUISITION

An Overview of the issues and tasks needed to evaluate the acquisition of a specific piece of property for its optimal development.

By: Arthur L. Pearlman, Chairman of Arthur Pearlman Corporation

INTRODUCTION:

There is not good definition of the word “Developer” because a Developer does more than just merely develop and construct a piece of property. It is difficult to describe a finite set of tasks which best defines what a Professional must do to become a Developer. MBA programs do not provide a degree in Development. That being said, this paper is a compilation of the pertinent pre-development and development tasks that one undertakes to understand the issues needed to analyze the Land Use and Land Acquisitions issues necessary to begin and then complete the development of a property. More specifically, this paper will focus upon the initial issues and the many tasks one must undertake to begin and complete a property’s Land Use and Land Acquisition tasks.

As one reviews the job of a Developer, it becomes apparent that the Developer must become “all things to all people”. In summary, the Developer’s tasks start with understanding the site and its economics before he begins to think about the final uses of a specific site. This paper will explore these basic analyses and, more specifically, will discuss many of the initial Pre-Development tasks that will have to be undertaken.

The following presents a broad outline of the Pre-Development Process, followed by a brief discussion of the Pre-Development tasks. This will then lead into the Land Use and Land Acquisition process.

OVEVIEW OF DEVELOPMENT PHASE:

If one assumes that the land will be used to develop a shopping center, then we must explore the basic Development Phase, the function and requisite tasks one must undertakes The Pre-Development phase is inter-connected and, most importantly, are very iterative, i.e., they cycle (and re-cycle) throughout the process and continue until consensus is either derived or the tasks are completed. The Land Use and Land Acquisition processes are imbedded as an early part of the Pre-Development Phase.

The real estate professional must remain cognizant of the “outside” pressures and the political climate for any type of development. The Developer must maintain an involvement with the local community, City and State politics from the very beginning of the land use and acquisition process through completion of the proposed project.

We are primarily focusing upon the first Pre-Development Phase wherein the Land Use issues must be reviewed early. The following identifies some of the key tasks which represent a part of the Pre-Development Phase that must be analyzed early so the critical issues of the project can be quickly resolved.

PRE-DEVELOPMENT PHASE – A PROCESS:

This is the phase of development wherein the Developer begins some of the over 100 tasks that make up the analysis of the site's viability. These early steps include (a) Economic analysis of the site area, community, city and extended trade area of 5 or more miles. (b) This is followed by engineering feasibility which includes a critical "Phase one" study. This is the study that reviews the past 50 years of ownerships and uses. Based upon prior uses, one may have to undertake some "Phase Two" Civil Engineering borings to better understand the technology and chemistry of the soils. (c) Tenant selection is either a process for the Developer to seek out and begin the marketing to one or more key tenants or a key tenant that will (or has) requested the Developer to locate their store / use into a specific site / location. (d) The political concerns are many. This can only be resolved by the communication process between the Developer and the City. It is the authors suggestion that the initial contact be made by the Developer to the City's CEO, i.e., the City Manager. This is critical in that the City must be treated and considered as a "partner" in the process. (e) The final part of this analysis is the financial plan / proforma for the resultant project. It is suggested that a simple proforma, such as Excel, be used because it must be easy to change and update throughout the pre-development process. This creates the basis for a go-no-go process. The Developer must continue their meetings with the Equity / Construction / Take-Out lender and keep them involved as a party to the Pre-Development Process. These tasks may seem to be linear but are continuously interactive and iterate back and forth throughout the pre-development phases. As noted, these tasks are typically presented in a simple linear fashion, they iterate back and forth and are interactive with one another.

Prior to the 2006 – 2007 time-frame, the Land Use and Land Acquisition portion of the analysis, including normal public hearings, lasted about 6-to-12 months in duration. Today, due to increased land costs, the changing financial and economic climate as well as the many new CEQA and EIR regulations, it takes between 12-to-24 months to develop a new project.

The Pre-Development Process requires the Developer to determine and continually "test" their preliminary concepts for the project on a continual basis. One must quickly determine if they are at a go-no-go decision point. This will be based upon an internal (owner's) analysis that will be tested by the community, tenant demands as well as by the politics of the City or County, i.e., the governing agencies. As noted, this process simultaneously begins with a tenant commitment (site interest), followed by an economic analysis of the U.S., followed by the needs of the State, City and Community within which the development is planned. Once the "State of the Economy" is known it can be shared with the all parties. Of course, the prospective tenant(s). and governmental entities each has its own set of rules that will impact upon your proposed project.

So, find out who the interested governing agencies are and meet with each of them early. Herein begins the needs to uncover the needs of the special interests (groups) as well as the “history” behind the site. Once everyone is “on the same page” with an understanding of the technical, financial, historical issues and prospective use of the site, then the determination of the economic use of the project can be further analyzed. Ultimately the iterative process of questions and answers will define the “project’s best use”, which leads to the determination of its financial and community viability.

The project’s proforma should reflect the financial desires of the partners with regards their internal Rate of Returns and the Return on Investment. The viability of the project, most likely, may initially be based upon criteria other than land cost (acquisition). As noted above, the needs (and / or timing) of the City, Community, Lender or Tenant are critical for the proposed development. The architectural layouts of the site (i.e., proposed project) needs to be cost effective and must be continually adjusted. Finally, the Civil Engineering, soils work is critical and may be a problematical part of the Land Use and Land Acquisition process.

RECAP of ABOVE:

Let’s assume we’re developing a Shopping Center. More specifically, one must carefully understand the acquisition terms and price and the proposed use of the real property. This is the first step (“test”). One must analyze all aspects of use and cost to be “sure” the land’s use is in total synchronization with the governmental and community’s needs. Then, and only then, will there be a basis from which one can proceed through the remaining Land Use and Land Acquisition processes.

In Summary, the first Land Use task is Market research. This task continues throughout the process; it never stops. Detailed site (Civil Engineering) evaluation and technical land use analyses continue throughout this phase, as well. Nothing is as simple as merely making an offer to purchase and then closing the escrow. This is but one step within a multi-tasked process. Financial arrangements and review of Title must begin early in the Land Use and Land Acquisition process. It’s not unusual to find incorrect ownerships identified in the Title report. Selection of a bonafide land expert or Title Company must be hired to undertake a 50-year (“Phase One”) title report to understand the past ownerships and uses on the site. Architectural selection also begins early within this phase. The Civil Engineer is critical in that he must review the title report from several perspectives i.e., Ownership and parcel lines, easements across the site, prior uses and the conditions of the soil. Then the initial site planning and some project design concepts can begin. The environmental investigations also begin early in this phase. Meetings with Special Interest Groups, the City and its Staff along with the Community leaders need to begin as soon as the land is under contract. Local Homeowner meetings and other Special Interest Groups must begin prior to conceptual site plan definition.

Your primary anchor and secondary tenant designations begin Day One. The project’s concept must be shared with the surrounding home and land owners in order to get them onto your team. All of the City / Agency / Community / Special Interest groups require

an honest and straight forward presentation of what you want to do. They, in turn, will share with you what they desire. As your iterative process continues, you will prepare the initial project proforma, which becomes the basis for ongoing go-no-go decisions for the project.

Prior to 2007, the above tasks required 6 to 9 months of time to complete. Today they typically take twice as long because of the current Economic conditions and due to current Environmental and CEQA considerations. After all, one never wants to own or speculate land on which one cannot build a viable project, e.g., a shopping center.

As noted above, the many Land Use and Land Acquisition tasks are not linear. This can best be shown as a diagram wherein all of the information flow of the tasks moves up and back, top to bottom and then return until each task is “solved” or completed. The Land Use and Land Acquisition process consists of a series of iterative and interactive tasks. For the more complex development projects, it is not uncommon for the Developer to use such software as CPM, “Critical Path Method”. The critical path method was originally used by the U.S. Government in the early 1950’s when it was developed as a concept known as PERT, “Program Evaluation and Review Technique”. In the 1950’s, it was used to track the schedules and costs for Military programs. Years later, the construction industry picked up this concept and created software that was more people-friendly and was to be known as CPM. This CPM concept permits the user to enter a beginning date, ending date and estimated completion date and cost for each task. The software will identify each task along with the linear flow of lines that connect all tasks and then computes the critical path along which one cannot slip one day without impacting the entire schedule. CPM is only recommended by this author for larger and more complex projects.

SUMMARY OF LAND USE & LAND ACQUISITION TASKS:

Land Use and Land Acquisition is best shown as a linear set of eight major functions, as follows:

- Governmental Issues
- Financing
- Marketing
- Legal & Title
- Site Surveys & Architectural Studies
- Soils analyses
- Environmental Audit

Each of the above tasks & functions are demanding of the Developer’s focus and time. Each task must be resolved and solved around a single question, i.e., “is this truly a good site on which a Project e.g., a viable shopping center, can be developed and financed”? Therein lays a conundrum of issues, questions and their prospective answers. Today, approximately 12 to 24 months is needed just to complete the initial go-no-go decisions and questions for the Land Use and Land Acquisition process.