

NAIOP Development Series
Session IV – Due Diligence
Due Diligence Checklist

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I. Physical

- Look at the land. Touch the dirt. There is no substitute for physically viewing the property. Is it near sensitive land uses such as churches, schools, public parks, hospitals, or airports?
- Topography. The variation in topography and elevation can have a significant impact on the goals for a potential development. Depending on the use that is planned for the property it is imperative to understand all grading issues early in the process. Coupled with the geotechnical report, one must understand the compaction of the site, how much cut or fill there will be required and if the site will balance, be an export or import site.
- Geotechnical. Soil conditions of a site are important to know depending on what will be constructed. This can have significant cost impacts. A soils report from a geotechnical engineer will reveal the 'anatomy' of your site for grading and construction. A soils report is typically required by most jurisdictions for the entitlement process, but may be necessary as part of due diligence.
- Floodplain. A floodplain is a designated zone that adjoins a stream, river or water conveyance system that frequently floods seasonally or in unanticipated events. The floodplain has been or may be covered by the 100-year flood. There are limited levels of site improvements and development that can occur in floodplains. To better understand the floodplains and zones, obtain information either through local municipalities or local jurisdiction's planning and engineering departments. Additional information can be obtained through the FEMA map service or state water resources center.
- Site Improvement and Drainage. Know your flow! Part of the configuration of a property will rely on where your drainage goes. Along with topography and the grading of a site, drainage is held to numerous local and state requirements. For example, how much detention (on or off site) will be required; what water quality standards will need to be upheld for discharge into streams, rivers and the adjacent storm water infrastructure. Most sites reside within master drainage districts, which will govern how the drainage of a site must be improved to fit within the district. In addition to on-site improvements, one must consider off site improvements that may need to be completed such as roadway improvements, utility runs and landscaping.

□ Road Circulation/Access/Traffic.

The framework of a site will define circulation patterns and access points. At some point, a planner will need to perform a conceptual site to build the desired framework, circulation and organize the overall uses on a particular site. First, understand the existing and proposed vehicular and pedestrian access. Existing access points may need to be enhanced to accommodate for the proposed use. Access (depending on the road designation) may need to go through a separate permitting process, for example, state highway access is processed through the department of transportation. Depending on use-type, a traffic study will be critical to understand the traffic loads and patterns given the proposed use. Most jurisdictions require a traffic study for entitlements.

□ Parking/Loading.

Depending on the desired land use and project type, parking will have a large impact on a site in terms of size and configuration. All land use designations are required, by code, to have a specific parking requirement. In many instances, there is discrepancy in what a user or owner desires verses what the jurisdiction requires. There are variations to the code and opportunities to minimize or add parking, but overall, having a broad understanding of how much parking is required on a site will be beneficial in determining what a site can yield. Having a planner devise a conceptual site plan is critical to determining what the site can yield.

□ Utilities – Wet and Dry.

Wet utilities include: sanitary sewer, storm sewer and water lines.

Dry utilities include: electric, gas, telecom, data, CATV and fiber optic.

Utilities may be one of the single most upfront, important components in the due diligence process. The importance of utility infrastructure could mean major cost and time implications. Understand where all utilities, both wet and dry are located; determine utility easements and what entity/district will be controlling service. Second, determine if these utilities will have the capacity to serve the proposed use. Third, quantify tap fees and construction cost for the proposed system.

II. Environmental

□ Phase I/Phase II Environmental Assessments and Reports. A Phase I Environmental Report or Assessment (usually referred to as a "Phase One") is an overview of the environmental conditions affecting the property, focusing on the possible presence of hazardous materials. It is based primarily on historical documentation, regulatory databases and a walk-through inspection. A Phase I is intended primarily to identify issues that may require further investigation. A Phase II Environmental Report or Assessment is a more detailed review, that involves physical inspection and testing of the property, such as core samples, ground water testing, or other investigation, typically focusing on the specific issues of concern identified in the Phase One report.

□ Underground Storage Tanks/Above Ground Storage Tanks (USTs and ASTs). USTs and ASTs. If underground storage tanks ("USTs") or aboveground storage tanks ("ASTs") are located

on the property, there may be affirmative reporting, removal and/or closure obligations for the property owner related to those tanks. USTs and ASTs are also often the source of hazardous materials contamination. If USTs or ASTs have been removed from the property, the buyer will want to ascertain that proper site closure procedures were followed and completed in connection with the tank removal.

- Wetlands. The presence of wetland conditions can have a significant effect on the operation and development potential of a property. As a result, it is important to check with the applicable municipality to determine whether any portion of the property is considered wetlands or shoreline. Wetlands and certain uplands located near navigable waters are under federal jurisdiction (U.S. Army Corps of Engineers) under section 404 of the Clean Water Act, 33 U.S.C. § 1344, and there may be significant restrictions on the use or development of land in those areas. In addition, there are significant regulatory hurdles related to filling, cutting, or relocating wetlands areas. It is important to remember that wetlands are not always "wet" or obvious to the casual observer. Generally, the analysis of what constitutes a wetland is focused on vegetation and wildlife characteristics, rather than the presence of surface water.
- Threatened or Endangered Species. The presence of endangered or potentially endangered plants and animals may significantly restrict the development potential and value of a property. Typically, initial inquiries on this subject can be made at the local planning agency to determine whether there are species of concern in the area. If there is the potential for the presence of such species or habitat on the property, the buyer should consider retaining an appropriate consultant to examine the property for the presence of the species and/or habitat in question. While the endangered species issue is typically related to undeveloped properties, it can also affect fully-developed properties. For example, in one instance, the owner of a high rise urban office building ran into endangered species hurdles related to building signage caused by the presence of falcon nests in the crooks of some of the existing letters on the exterior of the building
- Prairie Dogs. Although prairie dogs are not threatened or endangered, in Colorado, some jurisdictions have regulations governing how and when prairie dogs may be removed from a site. It is important to be aware of local regulations governing prairie dog removal.

III. Regulatory

- Authority. Who is the regulatory authority? Are there more than one? It is important to understand which jurisdiction or jurisdictions are the decision makers with respect to the property. Regulations and power of cities and counties differ, and there may be overlapping jurisdiction, either through an Intergovernmental Agreement (IGA), which may or may not be recorded, or by virtue of statute. State or federal entities may also have some jurisdiction over the property.
- Zone District. What is the current zoning? Does it allow the proposed use? If not, what is the process for rezoning? How much risk does it include, and how much time and resources will be required to rezone?

- Comprehensive Plan Designation. What does the jurisdiction's comprehensive or master plan say about the property or area? Is your proposed use consistent with this designation? If not, even if the property is already zoned for your use, it may be difficult to accomplish or obtain approvals.
- Airport Overlay Zone. If the property is near an airport, it may be within a zone which has noise or height restrictions. There also may be restrictions on water features (which attract birds and can be dangerous to aircraft). There may be additional governmental entities with jurisdiction over development within an airport overlay zone, including the Federal Aviation Administration (FAA), or local or regional airport or transportation authorities. These entities may have additional sets of regulations or policies which govern.
- View Corridors. Many jurisdictions have enacted view corridors designed to protect unique or scenic vistas. There may be height restrictions, or architectural restrictions affecting property within a view corridor.
- Historic Preservation. Federal, state, or local authorities can designate a structure, property, or district as suitable for or protected for historic preservation purposes. The ability to demolish, build, or alter existing structures within such areas may be limited. Regulations and legal meaning of designation can vary among the different types of designation (federal/state/local or structure/property/district).
- Noise Restrictions. In addition to airport noise restrictions, restrictions may apply to property which is near existing residential property, hospitals or hospital zones, or areas where endangered or threatened species are known to nest during certain times of year.
- Code Compliance. In addition to zoning, the property should be reviewed for compliance with applicable building and life safety codes. In addition to a physical review or inspection, inquiries should be made with the applicable jurisdictions, and the files for the property should be reviewed. If possible, a letter certifying compliance or lack of violations should be obtained.
- Political/Community. The political environment and community perceptions with respect to development can impact the project, even if all required entitlements are already in place.
- Other approvals/licenses required. Depending on the proposed use, additional permits or licenses may be required. A thorough due diligence process will investigate the process and availability for all permits required to operate the proposed project, including but not limited to air quality permits, liquor licenses, gaming licenses, sign permits.

IV. Title / Survey

- Title Commitment. The first thing a prospective buyer should do is order a Title Commitment from a title company. This report will list all of the documents affecting the property's title, and will list as exceptions to the title insurance it is willing to provide any documents which may

- ALTA Survey. An ALTA (American Land Title Association) Survey is a comprehensive survey of the existing, as built state of the property, locating the parcel boundaries, existing improvements, adjacent infrastructure, and observed and recorded easements and interests. This survey is a critical tool for confirming that the property to be purchased is as expected; identifying apparent physical encroachments; and locating or highlighting potential issues such as easement conflicts.
- Water Rights. Confirm whether the property you are purchasing includes the water rights. If not, who owns them? If so, will you be required to dedicate them to the governing body in order to obtain water service? What type of water rights are they? A separate due diligence on water rights may be required.
- Oil and Gas/Mineral Leases. It is important to determine whether the property to be acquired excludes mineral, oil or gas rights or is subject to third-party timber rights. To the extent that the mineral, oil and gas rights have been severed from the fee ownership, it is critical to determine to what extent, if any, those severed rights affect the use of the property by the buyer. For example, surface rights may accompany oil and gas rights. However, because of the dynamics of oil and gas deposits, in combination with lateral extraction technologies, it is often possible to extract oil and gas from under a property without entering onto the surface of that property or otherwise disturbing the occupant of the property. On the other hand, timber, sand and gravel rights would all include surface use of the property and may be more likely to have a significant effect on the use and value of the property. In Colorado, special statutory requirements apply to notification of the owners of severed mineral interests.
- Easements/Leases/CCR's/REA's. Covenants, Conditions and Restrictions, and or Reciprocal Easement Agreements. These agreements are recorded against the property and should appear in the chain of title for the property. They are contracts that the purchaser agrees to and signs by virtue of buying the property, and are binding on the purchaser. It is critical to learn whether any such restrictive documents apply to the property, and what requirements they contain.
- Taxes and Assessments. It is important to obtain a current statement from the assessor's office indicating what taxes are due and owing, and whether the property is current. If not, these may become negotiated deal points. Additionally, research should be performed to understand what other governing bodies or entities may levy fees or assessments against the property and what the status is.

V. Schedule

- Itemizing and syncing the layers of due diligence into a concise, critical path schedule is imperative. Take the following into consideration when building a project schedule:
 - Project milestones
 - Entitlements
 - Design duration
 - Entitlement processing
 - Financing Requirements

- Permitting
- Construction

VI. Cost

- 'The Time Value of Money', let us not forget that time and money go hand in hand in the real estate industry.

Depending on the detail or depth of your due diligence, understand all hard and soft costs. As important as the hard cost of construction is to understand (physical materials and labor costs), many areas of the soft costs (everything else) get missed. Make sure to be inclusive in your pro forma and address the costs related to all of the areas addressed above.