

NAIOP Development Series Session IV – Due Diligence

Brownstein | Hyatt
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Tristin Gleason Co-Founder and Principal



- Tristin Gleason, co-founder and principal, has more than 20 years' experience in commercial construction, working on more than 150 projects totaling more than \$2.5 billion dollars.
- She has worked on over 100 projects, providing project management and owner representation services on single projects ranging from less than \$1 million dollars to nearly \$400 million dollars in value. Tristin's career has included several positions in development, including field engineer, project manager and estimator. Prior to founding Project One, Tristin worked for leading building contractors in San Francisco and Denver.
- Tristin's project experience includes multi-family residential, clean rooms, office buildings, light industrial facilities, healthcare, tenant finish, call centers, research and development labs, educational facilities and hotels.

Justin Hay, RLA

Director – Entitlement, Planning & Landscape Architecture

- Justin has over a decade of extensive experience in the creative design and real estate industry.
- Project experience spans all use types with successful implementation in both national and international markets. Justin's projects have been featured in a number of publications including The New York Times, Architectural Record, Metropolis Magazine, IQ Idaho, The Seattle Times and CREJ.
- Justin leads multi-discipline teams on a number of projects ranging in all scales from 1 to 1,000 acres. He thrives at providing design and vision solutions to complex mixed-use projects.
- Masters Real Estate and Construction Management – DU Daniels College of Business
- BS, Urban Design and Landscape Architecture – Colorado State University
- Licensed Landscape Architect



Carolynne White

- Brownstein Hyatt Farber Schreck
 - 80/20 private/public
 - land use, zoning, urban renewal, green building,
- Colorado Municipal League
 - Lobbying
 - Legal resource for municipalities
- Denver Water Department
 - Real estate, employment, water
- JD, 1993, DU Sturm College of Law
- MPA/MURP, 2006, UCD
- Certificate of Mixology, 1984, Silver Spring Bartender's Academy



Definition of Due Diligence



- Opportunity to, or taking action to, confirm all material facts relative to a sale
- Generally, due diligence refers to the care a reasonable person should take before entering into a real estate transaction
- The period of time in a purchase and sale agreement during which the buyer may change his mind and cancel the contract before deposits become non-refundable
- The inspection and investigation of real property, personal property or a business entity before a buyer makes the final decision whether to consummate an acquisition, merger, or loan transaction.

- Goal of due diligence: To ensure that you can use the property as planned after purchase, either to develop or redevelop, or operate ongoing concern.



Levels of Due Diligence

- What kind of project is this?
- Infill / Greenfield / Brownfield
- Size / Cost
- Location
- Personality of the site
- Client Vision, Goals and Objectives



General Categories of Due Diligence

- Physical
- Environmental
- Regulatory
- Title/Survey
- Schedule
- Cost





"Someday, all this will be infrastructure."

Physical

- Adjacencies
- Topography
- Road Circulation/Access/Traffic
- Utilities – Wet and Dry
- Site Improvement and Drainage
- Geotechnical
- Parking/Loading
- View Corridors
- Site Conditions
- Building Systems - Mechanical / Electrical / Plumbing / Structural
- Landscaping
- Rail Roads / Ditch
- Mineral / Water Rights



Environmental

- Phase I/Phase II Environmental Assessments and Reports
- Underground Storage Tanks/Above Ground Storage Tanks (USTs and ASTs)
- Wetlands
- Watershed Protection Area
- Floodway / Floodplain
- Endangered Species
- Hazardous Materials Contamination / Remediation



Regulatory & Entitlements

- Zoning
- Subdivision/Platting
- Code Compliance
- Title/Survey
- Permits
- Applicable Building Codes
- Building Department Requirements
- Fire Department Requirements
- Encumbrances & Restrictions
- Overlay Districts



Zoning Issues

- What is the current zoning?
- Does it allow for your planned/proposed use?
- If not, what is the process to change it, and how much risk/time/resources are involved?
- What is the property's designation in the applicable planning document?
- Is the property currently in compliance with zoning?
- Is the current use legal, non-conforming, accessory, or illegal?
- How is the site listed in the city's comprehensive plan?
- Is the site located within an "overlay" district?
- Are there any restrictions specific to zoning?
- What are the adjacent zoning and uses of the property?
- Are there any special requirements due to adjacent zoning?
- Lenders will also be interested in the answers to these questions

Subdivision Issues

- Is the property properly platted?
 - In Colorado, land smaller than 35 acres may not legally be transferred unless/until it is platted.
- Will the property need to be subdivided to effect the sale?
- If not, does the property fall within any exception to the platting requirements?
- If already platted, does the plat on the property need to be vacated, replatted or amended?
- Jurisdictions and time limits for approval?
- Preliminary and final subdivision plan required?
- Is plat approval discretionary/does it require a public hearing, or is it administrative?
- What plat notes, restrictions, or reservations are required on the plat?
- What type of exactions are expected?
- When does the preliminary plat expire?

Code Compliance Issues

- Is the property (use and structure) currently in compliance with applicable codes?
 - Accessibility, Fire, Density, etc.
- How old are your Entitlements? Have they expired?
- Is it conforming or nonconforming?
 - If nonconforming, is it legally conforming?
 - How will the governing body treat the in the event of catastrophic damage such as flood or fire?
- Will codes change during your development timeline?



Title/Survey

- Order as early in the process as possible
 - ALTA Survey
 - Title Commitment
- Should be ordered early enough so that all information provided by both can be reviewed and addressed
- Can be most useful document in due diligence process
- Make sure you obtain and review copies of the actual title commitment exception documents

Issues Highlighted by Title/Survey



- Confirm that property to be purchased is as expected – boundaries, area, improvements
 - Are you getting the entire “bundle of sticks” or just a few twigs?
- Identify recorded or unrecorded easements that may encumber or benefit the property
- Identify possible encroachments across boundary lines or easements
- Highlight access to a public street or lack thereof
- Identify flood zones
- Identify evidence of any use by other parties
- Information regarding adjoining property and owners

CCR's/REA's -- Covenants, Conditions and Restrictions/Reciprocal Easement Agreements

- Recorded against the property, binding on all subsequent purchasers
- If recorded and in chain of title, buyer is presumed to take subject to and with knowledge of
- Nature is private contract; not enforceable by, and may be in conflict with, municipality ordinances and regulations
- Common provisions include:
 - architectural controls, signage
 - access rights
 - landscape maintenance obligations
 - standards of upkeep
 - hours of operation
 - restrictions on allowed uses
 - process for amending
 - process for obtaining consent from other property interests for renovations/upgrades/modifications

Development Agreements (DA)

- A rose by any other name
 - Subdivision Improvement Agreement (SIA)
 - Public Improvement Agreement (PIA)
 - Site Development Agreement (SDA)
- Usually recorded, and will show up in title
- Can contain requirements applicable to the property for improvements to be constructed, or fees to be paid
- Need to ensure that property is in compliance, or that DA will not apply to new project



Jargon

NIMBY - Not In My Backyard

NOPE - Not On Planet Earth

BANANA – Build Absolutely Nothing Anywhere Near Anything

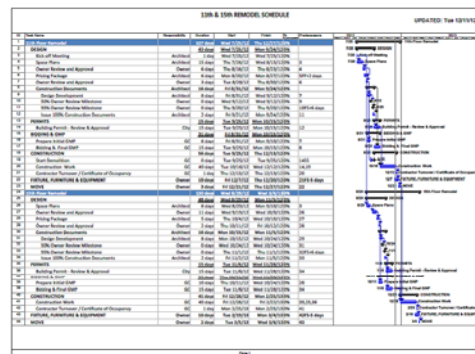
LULU – Locally Undesirable Land Uses

CAVE – Citizens Against Virtually Everything

DUDE – Developers Under Delusions of Entitlement

Schedule

- Client Milestones
 - Purchase Options, etc.
- Market Timing
- Entitlement Process Timing
- Design Duration
- Permitting
- Construction



Cost

- Level of Due Diligence
- Hard Costs
- Soft Costs
- Studies Costs
 - ALTA, Survey, Phase 1s, Geotech, Building Assessment, etc.
- Impact Fees
 - City, Utilities, Taxes, Inclusionary housing, etc.
- Construction
- Financing



"Does 'high-rise' refer to the building or the budget?"

Key Takeaways

- Honestly evaluate the information gathered, don't make emotional decisions
- You must analyze the balance of cost AND schedule
- Know when to say when
- Stay true to your vision



Questions?

Always There™

Contacts

- Justin Hay, Director, CLC Associates, jhay@clclassoc.com
- Tristin Gleason, Project One, tristing@projectoneis.com
- Carolynne White, Shareholder, Brownstein Hyatt Farber Schreck, cwhite@bhfs.com