

Added Value in Entitlements

Knowledge gained through the approvals process can maximize project potential.

By **Bemmie Eustace**

Though the entitlement process can be lengthy, time consuming and costly, a thorough understanding of how such local processes are implemented for a particular project can reveal unforeseen benefits for the land owner and developer.

An entitlement essentially grants a landowner or developer the right to use a specific parcel of land for a designated purpose. It can also be considered a valuable asset in the real estate development arena, applicable to both small and large projects across the board. The process may be triggered in a variety of circumstances at different points in the life of a project for developers and sellers.

Land use is generally regulated by local and state laws, with rules promulgated through statutes and ordinances. Such regulations have been used to carry out growth-management plans, which have been popular throughout the country in the last 20 years in an effort to more effectively utilize resources and prevent urban sprawl.

Sometimes a property's current classification is inconsistent with the future land use and/or existing zoning classification.

When rezoning for larger developments, it is prudent to consider pursuing the Planned Unit Development (PUD) zoning classification, which offers benefits to both the municipality and land owner or developer. Instead of being relegated to one zoning classification, such as C-3, which might allow low-intensity commercial development, PUDs allow the flexibility of applying various standards from other zoning designations to the overall project and can incorporate a broader range of uses that are consistent with the adjacent uses. All of the standard zoning issues applicable to densities and intensity of development—parking, loading, open space/landscaping, pedestrian ways, access, etc.—are discussed and negotiated until both the municipality's and developer's concerns are resolved.

The municipality however, may restrict the intensity of uses within the PUD to ensure the development is consistent with available services. Ideally, the developer would attempt to secure the maximum amount of flexibility within the PUD so that prospective buyers will already have the entitlements in place for development.

In some cases, a property may be zoned properly to permit a particular use, though ensuring all the requirements will fit on the parcel can be challenging. In the case where space does pose a problem, a variance may be necessary to entitle the owner to move forward. Variances are usually only granted under circumstances where the owner or developer can offer compelling evidence to the city to allow a variance by demonstrating how the property's circumstance is different from other similarly-zoned parcels. In no case will building permits be issued unless the variance is granted thus permitting the owner to vary from the code requirements.

Under circumstances where an owner is developing a large tract of land and wishes to sell portions of it, the tract must be subdivided into smaller parcels and in the case where access roads are needed for those tracts, a plat will be required as well. The plat legally documents and describes the new parcels and ensures that easements for utilities and access are in place. Once approved, the plat documents the improvements that create legal lots in accordance with the development regulations. In order for the owner to secure entitlements to proceed with building permits, the plat must be approved.

In the case where entitlements need to be secured, the process is often held in a public forum, which can add significant time to the development process. Nonetheless, public hearings afford neighbors and interested parties the opportunity to review the proposed changes and voice opinions that will be considered by the governing body prior to reaching a conclusion.

Since entitlements may be required at any point in time within the life of a property, it makes good sense for land owners to obtain basic entitlements from the outset. This is beneficial both to the owner as a prospective developer and also to the owner as a seller who will be well-positioned to attract a range of potential buyers. Land owners are usually familiar with local politics and strength of neighborhood associations capable of raising objections to a proposed development. Since a prospective buyer does not always have a pulse on local residents who yield the power to halt a project, the required public-hearing process could erode the developer's confidence in securing approvals.

The major advantage of putting entitlements in place early is that the time required for the developer's construction start can be markedly reduced if previously obtained entitlements are in place. For example, the rezoning process or amendment to a municipality's comprehensive plan can take months or years to finalize, and that has a direct impact on the time needed to obtain building permits and initiate the construction process. While not all entitlements may be available until an end user is identified, there are definitive steps that can be taken by the landowner prior to marketing the property. If these steps are initiated, the closing date may be moved forward ultimately attracting developers who want to minimize opening date delays. **SLDT**

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