



nerelj

Focusing on legal aspects of R.E. can help for the future

January 13, 2010 - Front Section

Like all real estate professionals, I like to close deals. I especially enjoy finding the way over, under, around and through the hurdles and seemingly unmovable mountains in the way of getting to closing. But it's not the same as winning an Olympic medal. You don't put it on the shelf to admire. Signing an agreement or closing a deal is only the "end of the beginning" of the journey. For many, however, this past year created unforeseeable detours for existing projects and pending deals. It's time to find the way over, under, around and through the current hurdles in order to keep your projects or even your business on track.

In every successful deal, the business and legal aspects of the project work hand in hand. Lately the focus has been overwhelmingly, and unavoidably, about the numbers. If you were dealing with legal issues related to your real estate interests this year, it may not have been for a positive reason. But it's hard to juggle with one hand. Here's how focusing on the legal aspects of real estate can help better position you for the future.

1. Focus on the Road Ahead. Set aside time to revisit your growth plans. Consider: What is the highest and best use of my existing real estate interests and where are the new opportunities?
2. Get Local. With fewer applications to review, municipal officials are looking at initiatives ranging from economic development opportunities to revising outdated bylaws. First, determine whether local regulations have changed or been proposed since your project was permitted. Your existing project may be grandfathered, but your ability to modify it to adapt to economic conditions may be affected. Towns are now preparing for 2010 Town Meetings. If the highest and best use is not achievable under current regulations, consider proposing changes that will both maximize your site and create new revenue for the municipality. Second, many municipalities are preparing inventories of their own surplus property for potential sale. Keep an eye out for RFPs for land in desired locations.
3. Study the Plans. Pull out your existing site plans. Is there existing land to expand on or to sell? Would acquiring adjacent parcels now position your existing site for future expansion? If tenants are vacating, can space be reorganized?
4. Review Existing Documents. You may have sent the documents off to your accountant to track rent, loan payments, and operating expenses, but what about all those legal provisions? Did the title and zoning memos from the closing attorney make it to the file or did you "go green" and send it to the recycling bin? Ask your real estate counsel to (a) review the relevant documents for provisions that affect your ability to maximize your property's value and (b) suggest a legal game plan for pursuing identified options, including possible strategies for overcoming existing constraints. Be sure that review includes the terms of use restrictions which may expire under Mass. law if certain actions are not taken by the party benefitting from those restrictions, regardless of what the agreement provides. Then evaluate your best options in light of that review.

6. Follow the Growth. Taking the above steps will at a minimum leave you organized and prepared to address the twists and turns of the current market, but may also reveal the potential for maximizing value and seizing opportunities now and in the future. Businesses that have taken the time to identify the shifting needs and wants in their market are adapting, and even growing, despite the overall state of the economy. It's true even in the legal field. While many large firm real estate departments are retracting, firms like mine are growing by providing the same level of service but with the flexibility to be cost efficient and to quickly respond to the changing needs of developers, landlord and tenants in all sectors of the real estate market. Focused legal advice in these transitional times can help you do the same for your real estate business.

Susan Murphy, Esq. is counsel at the law firm of Brennan, Dain, Le Ray, Wiest, Torpy & Garner, P.C., Boston, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540