

Question of the Month: Going public - What's the right time to engage the municipality?

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Too often development teams find themselves within a contentious permitting process for a commercial development because they either engaged a municipality too soon or too late in the design process. Yet, at some stage between when the developer has procured an executed land agreement and when the A/E firms submit an official application to the municipality, there exists a time when discussions with the municipality can be beneficial, and even crucial, to the success of a development. But can a development team determine the optimal moment to engage a municipality?

There is no general playbook that if followed will guarantee the approval of any development. Understand that the optimal moment to release the confidentiality of a project is not a static, set point along the permitting process. It is a dynamic phase that is influenced by numerous factors, which often change from one project to the next. What was the appropriate time during one permitting process could be the worst possible time for another.

Several factors can cause a development team to hesitate approaching a municipality. Competition among developers is a key issue. Quality sites are becoming scarce as development in our region continues. So when one does become available, confidentiality becomes very important. Just as competing corporations vie for market share, developers too are trying to gain advantages over their competition. As a direct effect, consultants are often placed in positions that do not allow them to gather information that can better guide them on how the permitting process will unfold. Thus, begins the delicate dance along the tightrope of when to go "public."

Yet, a development team can take vital steps in minimizing their risk of exposure. For instance, a developer will spend tens to hundreds of thousands of dollars during their market analysis and due diligence phase. Stacks of binders are amassed, filled with charts on population projections and forecasts of earning potential of the target market. Title commitments are ordered and excavators are hired to dig test pits for soil evaluations. But due diligence shouldn't stop there. There are many avenues of performing due diligence on the municipality without exposure. Hiring a first-rate broker and legal counsel with both an established history with the municipality and local connections can be a crucial asset in gauging the openness of the municipality to the proposed development.

Research on the municipality needs to extend beyond a thorough zoning and regulations review. Answers are needed to key questions. What is the reputation of the municipal planner or conservation agent? Is he or she someone who keeps confidentiality or someone who tends to let informal discussions seep out into the community? How receptive will the community be toward the development? Are the governing authorities flexible or stringent with their bylaws? Are there political stakes, unassociated with the development, that can directly impact the permitting process? Each of these questions is a tributary to an important overall question that due diligence of the community

needs to identify: What is the general trend toward your development type within the municipality? Once you feel you've tested the temperature of the community waters, the next step of the process is due diligence on yourself. Are you at a stage in the design process that you are able to express the vision of the development? It is important to present a development layout that clearly expresses the intent of the project but does not come off as "completed". It can often be misinterpreted as a developer simply bulldozing his desire onto the community. Yet, if you present an unrealized layout, you open yourself to being handcuffed to the planner or agent's vision, at the detriment of your own objectives. It is important to remain flexible and to keep your goals in mind. Of course, diplomacy and presentation are critical as well. Are you prepared to present your project in the best possible way? Have you overlooked a factor that could completely undermine your project? You only get one chance to make a first impression with municipal officials. Make it count. They can either be a hindrance or a guide along the process. Clearly state your objectives for the development and be receptive to the information received. This is a fluid step in the permitting process that will indicate the approachability or hostility the project will receive.

So, can a development team determine the optimal moment to engage a municipality? The short answer is no. But the team can significantly increase the receptiveness of a project by eliminating variables through various facets of due diligence. Preparation and adaptability are paramount in all things. Prepare for the numerous factors that will influence your project, but adapt to the inevitable unforeseen factors that come along the way. Developments are born through partnerships... partnerships between the land owner, the developer, the A/E firms, the town officials, and the community. But, remember that when all the checks are cashed and the till has been counted, there is no substitute for a sound design. Build a strong design foundation, through the theory of new diligence, to position your development in a better situation for approval.

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