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In the Zone: A Primer on Land Use

Q: COULD YOU DEFINE LAND USE?

MATTHEW H. SNELL: Land use law is a broad term that can encompass a wide range of federal, state, and municipal laws governing the development and use of property. In Massachusetts, the development of property is regulated in large part locally, and encompasses local zoning, environmental permits, and other approvals necessary to develop and operate a property.

Q: HOW DOES AN UPFRONT ZONING AND PERMITTING ANALYSIS PAVE THE WAY FOR DEVELOPMENT?

MHS: Understanding a developer’s overall goals and plans for a property, the potential relief necessary and the pressure points (for example, municipal or neighborhood support or opposition) is essential to a smooth permitting process. First, consider whether the project description is firm or flexible? What is the nature and length of the developer’s control of the land and the time necessary to complete the permitting process? Other considerations include financing or lease deadlines, if the property is build to suit, extension rights, and licensure or other regulatory constraints.

The plan for the property should then be analyzed to determine the constraints imposed by local zoning, including use or dimensional provisions, as well as other permitting requirements/timing applicable to a particular property and title restrictions. Because each property is different, such as being developed or vacant, whether it contains wetlands, other sensitive areas or endangered species, and because every municipality has its own variation of zoning, there is no one-size-fits-all approach. Thus, every project needs to be reviewed comprehensively at the outset to understand all of the permitting processes that may be applicable.

Once all of the above is understood, we generally recommend, and many municipalities require, that the project be presented informally to key departments and the public. This process allows for confirmation that the project as proposed is permissible under the applicable laws and allows for comments and revisions to the project before significant expenses have been incurred by the developer.

The developer, working with their consultants and legal team, can then coordinate the different permitting processes applicable to the project to meet any project deadlines within the time available and avoid delays.

Q: WHAT STEPS CAN DEVELOPERS TAKE TO SMOOTH RELATIONS WITH A TOWN?

MHS: Regulatory uncertainty and how a particular municipality will react to a project are big question marks at the outset of a project. Land use is generally dependent on volunteer local boards applying municipal laws and is often influenced positively or negatively by how a particular project is received by abutters and municipal representatives. Reactions to a project can vary widely, resulting in delays. The process will go more smoothly if developers engage the stakeholders and are forthcoming and upfront. Developers should figure out what they can do, then go to the town, present their plan, and receive the town’s comments. They may need to contact the neighbors and key municipal officials, such as the local aldermen and city council.

Q: HOW DOES TIMING PLAY INTO NAVIGATING THE LAND USE ASPECT OF DEVELOPMENT?

MHS: The timing to obtain permits can throw a wrench into a developer’s best-laid plans, even though the market is strong and financing is available. Municipal zoning approvals can occur in as little as three months; however, if there is opposition to a project or requested changes, approval can extend much longer. Local permitting is often straightforward, in that developers will learn early on about potential opposition and if plans can move forward or not.

In addition, because several overlapping permitting processes may be required for a particular project, such as obtaining approvals pertaining to wetlands or under Chapter 91 (the Massachusetts Public Waterfront Act) or the Massachusetts Environmental Policy Act Office (MEPA), the timing and sequence of permitting must be taken into account. It is not unusual that from start of permitting to obtaining a building permit for a large project takes over a year, with several rounds of approvals occurring in sequence.

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