Due Diligence Workshop

Pro Tips on Maximizing your Developer Fee

Housing Now Conference - October 10, 2019
Introductions

Moderators:

● Joe DelZotto, President, Del West Development Corp
● Ron Mehl, Vice President and Project Partner, Dominium

Panelists:

● Erin Ganser, Vice President Underwriting, Citi Community Capital
● Melinda Pasquini, Attorney, Polsinelli

● David Knapp, Chief Commercial Title Officer, Land Title Guarantee Company
Workshop Focus

- Pre-Acquisition Due Diligence
- Avoiding Schedule Delays
- Preserve Developer’s Fee and Increase ROI
- Build a Strong Industry Reputation as an Organized, Efficient and Knowledgeable Developer
Timeline of an Affordable Housing Project

1. Pre-purchase Market Testing
2. Selection of Team
3. Public-Private Partnerships
4. Purchase Due Diligence
5. Preliminary Design
6. Lender & Investor Due Diligence
7. Closing & Acquisition
8. Construction
9. Lease Up/Stabilization
10. Resyndication
Timeline of an Affordable Housing Project

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So you’re sure this will cover against any unforeseen problem?
Key Elements of Pre-Acquisition Due Diligence

- Title
- Entitlements
- Environmental
- Survey
- Zoning
Environmental

As Is
- Phase I Environmental Site Assessment – Identification of Recognized Environmental Conditions
- Phase II ESA – if needed
- Sensitive environments: endangered species, archaeological sites, etc.
- Development Restrictions

Will Be
- Mitigation Plan / No Further Action confirmation from regulating agency
Entitlements: As Is and Will Be

As Is
- Annexation and Land Dedication
- Subdivision
- Governmental Master Plans
- Sufficiency of Water

Will Be
- Development Plans
- Landscaping Plans
- Drainage Plans
- Infrastructure Obligations

Interplay
Survey

As Is
- Purpose is investigative due diligence – identify issues that may impact cost, entitlements, design, timing, etc.

Will Be
- Purpose is to document proposed development
- Compliant with ALTA / NSPS Land Title Survey requirements
- Surveyor should be licensed in the jurisdiction of the property
- Dated within 90 days of closing
- Certified to Borrower, Lender, Successors and Assigns
- References current Title Commitment
Zoning: As Is and Will Be

As Is
- Zoning Reports
- Zoning Ordinances
- Number of Units
- Unit Mix
- Existing Covenants and Use Restrictions

Will Be
- Site Development Plan
- Condominium Maps and Declarations
- Parking
- Local Rent Control Ordinances
- Local Inclusionary Housing Ordinances
- Confirmation there are no Existing Violations or Notices
Title is Reiterative/Interactive

- Requirements
- Exceptions
- Mechanics’ Lien Coverage
- Survey
- Site Plan
- Zoning Report
- Entity Documents
- Endorsements
- Pro Forma Policy
Requirements

- Survey – ALTA/NSPS Land Title Survey
- Mechanics’ Lien Coverage
  - Financials
  - Construction Contract
  - Budget – Sources and Uses
  - Lender’s Construction Loan Agreement
  - Appraisal, Performance Bonds, etc.
  - Indemnity Agreement
  - Disbursement Agreement (if title company is disbursing)
- Zoning Letter or Report
- Site Development Plan
- Entity Documents
- Non-Imputation Affidavit
Exceptions

- Patents
- Mineral Reservations
- Easements
- Development Agreements
- Covenants, Conditions and Restrictions (use, building, setbacks, height, etc.)
- Districts – Metropolitan, Water, Etc.
- Oil and Gas Leases
- Subdivision Plats
<table>
<thead>
<tr>
<th>Endorsement</th>
<th>Rate</th>
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<tbody>
<tr>
<td>&quot;ALTA&quot; Owner's Policy 06-17-06 Reissue Rate</td>
<td>$25,394.00</td>
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<tr>
<td>Deletion of Standard Exception(s)</td>
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<tr>
<td>Endorsement ALTA 35.3-06 - Mineral Rights</td>
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<td>Endorsement ALTA 5.1-06 - PUD</td>
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<td>Endorsement ALTA 41.3-06 - Water Rights</td>
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<tr>
<td>Endorsement ALTA 26-06 - Subdivision</td>
<td>$1,500.00</td>
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<tr>
<td>Endorsement ALTA 17-06 - Access</td>
<td>$100.00</td>
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<tr>
<td>Endorsement ALTA 9.8-06 - CC&amp;R's</td>
<td>$2,000.00</td>
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<tr>
<td>Endorsement 8.2 - 06 - Environmental</td>
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<tr>
<td>Fairway - Partnership-06 - Change Partners</td>
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<td>Endorsement ALTA 34-06 (Maximum Loss) -</td>
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<td>Endorsement ALTA 18-06 - Tax Parcel</td>
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<td>Endorsement ALTA 17.2-06 - Utility Access</td>
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<td>Endorsement Arbitration Deletion-06 -</td>
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<td>Endorsement ALTA 3.2-06 - Zoning</td>
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<td>Endorsement ALTA 39-06 - Electronic Policy</td>
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<td>&quot;ALTA&quot; Loan Policy 06-17-06 Purchase Loan Rate</td>
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<td>Deletion of Standard Exception(s) (ITEMS 1 -3 ONLY)</td>
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<td>Endorsement Arbitration Deletion-06</td>
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<td>Endorsement ALTA 9.7-06 - CC&amp;R's, Encroachment</td>
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<td>Endorsement 8.2 - 06 - Environmental</td>
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<tr>
<td>Endorsement 103.7-06 - Access</td>
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<td>Endorsement ALTA 25-06 - Survey</td>
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<td>Endorsement ALTA 27-06 - Usery</td>
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<td>Endorsement ALTA 32-06 - Mechanics Lien Coverage</td>
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<td>Tax Certificate (will be ordered prior to closing)</td>
<td>$52.00</td>
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</table>

**Total**: $96,912.00
Key Elements of Pre-Acquisition Due Diligence

- Title
- Entitlements
- Environmental
- Survey
- Zoning
Case Study 1
Globe Mill Apartments (Mixed Use)

What Happened:

- 149 units in Utica, New York
- Buyer acquired a building – this was an historic building to for an adaptive reuse
  - Affordable housing development
- The Title Company did not do a great search of all the parties with an interest in the building - not everyone was included.
  - Not all parties with an interest where included in signing off on the acquisition – one was no longer among the living…
- Beyond the obvious title issue what was the real issue that had equity investors concerned?
  - The failure of the property to meet the 10-year hold would have made any acquisition credits ineligible for tax credits.

How it was resolved:

- Parties where tracked down and sign off was eventually resolved – luckily the 10 hold was not broken.
Case Study 2
Baker School Apartments

LIHTC 142 Units

1. Special Warranty Deed
1. Quit Claim Deed
1. Single Family Home

Lowell Blvd
64th

1. 2
1. 3
One 1/2 of 1 acre or there about and this said school district No(91) shall hold the said parcel of land as long as the same is used as a site for a schoolhouse and no longer.

Eugenie Putz Deed
Dated March 17, 1877
Cost Impact

- Shinn settlement
- Eight months added
- Complicated re-zoning
- Additional time = additional interest on land loan
- Legal costs
- Developer fee reduced
Case Study 3
Legends of Church Ranch (Senior / LIHTC)

What Happened:
● Dominium is currently working on a development in Westminster – 205 unit senior LIHTC development (Legends of Church Ranch)

● 6.5 acre parcel of land that had been under the same ownership for well over 100 years. Ten-year hold rule was obviously not a concern.

● With the property under the same ownership for so many years it had a lot of different uses over its lifetime (a stage coach stop, ranching and the family business of R.E. development offices) – the title work is complicated.

How it is being resolved:
● The way we are dealing with this is with a detailed “Title Matrix” and work through each item prior to construction loan closing.
### Title Summary and Action Steps

<table>
<thead>
<tr>
<th>Exception Number</th>
<th>Title</th>
<th>DDA Action Steps</th>
<th>WW Action Steps</th>
<th>Additional Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Zoning and Reclassification - Book 719/Page 420 recorded 3/23/1951</td>
<td>DDA - Confirm status of the wells. Per call on 21/1/9, might be capping one or more wells during construction and one well may be within building footprint.</td>
<td>WW - Request a zoning endorsement from CPT</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Agreement (for water rights) book 3003/page 248 5/11/1977</td>
<td>DDA - Confirm status of the wells. Per call on 21/1/9, might be capping one or more wells during construction and one well may be within building footprint.</td>
<td>WW - Ask CPT to remove this item, CPT to confirm how it affects our property or remove exception</td>
<td>Wells are there - one is in the footprint of the building. There will be capped. Discussing the sale of three wells but need to find a buyer.</td>
</tr>
<tr>
<td>12</td>
<td>Water line Easement #63101034</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>PRELIMINARY DEVELOPMENT PLAN CHURCH RANCH HOME PLACE RECORDED AUGUST 17, 1988 UNDER RECEPTION NO. 88080484, AND AMENDMENTS RECORDED APRIL 15, 1997 UNDER RECEPTION NO. F0399563, F0399564, AUGUST 5, 1998 UNDER RECEPTION NO. F066624 AND FEBRUARY 16, 2001 UNDER RECEPTION NO. F066624 AND FEBRUARY 16, 2001 UNDER RECEPTION NO. F1186032</td>
<td>DDA - Request that the city states that the new PUD releases and terminates all the previous PUDs recorded against the property, or if the City won’t do that, then in the event of conflict between the old PUD and the new PUD, that the new PUD shall control</td>
<td>WW - Ask CPT to remove this item, CPT to confirm how it affects our property or remove exception</td>
<td>Residential has a density of 20 units per acre. This has building height restrictions based on the plans. There is public land dedication for projects with residential purposes. Set back requirements of 50' from Wadsworth and 35' from Church Ranch Blvd.</td>
</tr>
<tr>
<td>15</td>
<td>Amenity Agreement #2551989 #88080485</td>
<td>DDA - Confirm with Charlie that there are no more fees under this agreement.</td>
<td>WW - Ask CPT if there are copies of all the exhibits listed in this document.</td>
<td>RCM to call Stephanie - can we get these cleared up. Several old docs that require fees to be paid - Charlie confirm if they have all been paid. Can the City confirm and enter into a formal release.</td>
</tr>
<tr>
<td>16</td>
<td>Fee Assessment - 104TH AVENUE SPECIAL IMPROVEMENT DISTRICT, AS EVIDENCED BY INSTRUMENTS RECORDED SEPTEMBER 07, 1988, UNDER RECEPTION NO. 88087637 AND 88087638, SEPTEMBER 21, 1990 UNDER RECEPTION NO. 90081502, MARCH 7, 1991 UNDER RECEPTION NO. 91018817, NOVEMBER 13, 1991 UNDER RECEPTION NO. 91055577 AND NOVEMBER 8, 1992 UNDER RECEPTION NO. 92184474</td>
<td>DDA - Confirm with Charlie if there have all been paid.</td>
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Questions + Feedback

For attendees of Housing Now looking for additional information or having questions, please contact Tom Kimball, 303.877.2127, tkimball@ltgc.com