

Land Assemblages – Don't be Stuck with an Overpriced Lot

Commercial redevelopment post-recession is likely to increase in urban and established suburbs. This redevelopment often requires the assembly and purchase of multiple adjacent residential and commercial lots to expand the redevelopment potential of an existing site. To minimize the risk that a developer will be stuck with an overpriced lot if the redevelopment is not completed, consider the following.

Start with a specialized purchase agreement (“PA”) for each lot being purchased. Do not be trapped with a standard residential or commercial PA. If properly explained, even residential sellers can understand the added complexity of the transaction and the need for a specialized PA. Especially, if the purchase price is above market.

All PAs need to be in sync with respect to timing. They need consistent contingency and closing dates. Dates should be out as far as possible and have multiple extensions to allow for the reality that assemblages take time. Each PA includes the following structure:

1. PA execution through escrow closing. Negotiated longer period during which developer completes due diligence. Developer can terminate the PA at any time and for any reason during this period.
2. Escrow closing through escrow release. An escrow closing occurs where seller documents are placed into escrow for a short period (i.e. 5-15 days) to allow multiple lots to close. Funds do not have to be provided by developer at this point. If one of the lots does not close into escrow, then developer can terminate the PA.
3. Escrow release through seller move-out. Once all lots are closed into escrow, developer funds and all documents are released. Seller remains at the property post-closing as a tenant for a limited period (i.e. 15-90 days).

This structure includes the execution of a separate escrow and holdover agreement that addresses the move-out period, rent (if any), responsibilities and move-out. A suggestion is to leave a percent (i.e. 10%) of the purchase price in escrow during the move-out period as an incentive for seller to move-out as agreed.

This structure balances the developer's need for flexibility and the seller's reality that time is needed to find a new home. It requires that sellers be selectively informed of the transaction from the beginning. Meetings with the sellers may be needed. A good broker can be helpful to organize and coordinate. An added benefit of disclosure is that sellers may be more cooperative with extension and delay.

Potential drawbacks are that more time and money may be needed for the redevelopment. Because of the move-out period, construction may be delayed. Disclosure may prevent developer from obtaining the lowest possible price for a lot. Also, a small non-refundable

amount of earnest money may need to be considered to convince sellers to agree to the uncertainty. Hopefully, these drawbacks can be minimized and are outweighed by avoiding the risk that a developer will be stuck with an overpriced lot if the redevelopment is not completed.

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