Fundamental Skills for Real Estate Development Professionals II (cont'd) - Project Entitlement

October 17th, 2012
Objectives:

- What are Entitlements
- Why you should care about Entitlements
- How to manage the Entitlement Process
- The Process: The “Who” and the “How”
- Tips and Techniques: Sustainability to Civic Engagement
Entitlements are legal rights conveyed by approvals from governmental entities to develop a property for a certain use, intensity, building type or building placement.

Entitlements can be a major factor in the ultimate use, viability, and value of your property.

Form of:
Land Use Approvals, Zoning, Site Plan Approval and Permits
The Layers of Regulation

Comprehensive Plan/General Plan
Zoning
Land Dev. Regs.
Permits

Multi-Layer Cake

Entitlement Process

Comprehensive Plan/General Plan
Zoning
Land Dev. Regs.
Permits
Why Should I Care About Entitlements?

Under the ordinance, the City banned the development of “discount superstores,” which it defined as discount stores that exceed 100,000 square feet.

“The lawsuit against the US Fish and Wildlife Service, the corps and the Interior Department asks a judge to revoke a 2006 permit for Mirasol…”

New lawsuits filed against Mirasol development

A pile of lawsuits over plans to build new homes and golf courses in the Cocohatchee Slough in northern Collier County got taller Wednesday.

Since 2000, environmental groups and developers have scored victories in their fight over development in wetlands and wood stork habitat northwest of Immokalee Road and Collier Boulevard — and neither had given up.

The latest challenge, which landed Wednesday in federal court in Fort Pierce, renews the battle over a U.S. Army Corps of Engineers permit for Mirasol, which is planned for up to 799 homes and 36 golf holes.
“Despite governmental approval, the 136 occupied apartments violated the county’s comprehensive plan....”

FLORIDA COURTS AGREE: IF BUILDINGS VIOLATE LAWS, THEY MUST BE RAZED

By AISLING SWIFT
Published Tuesday, September 5, 2006

Four years ago, a Florida appeal court affirmed a ruling ordering a developer to raze a $3.3 million, five-building apartment complex that towered over neighboring homes, despite its approval by the Martin County Commission.

The District Court of Appeal’s 2001 ruling conceded the issue raised in a lawsuit by a neighboring property owner was unprecedented in Florida. But the court ruled that the law required demolition of The Villas at Pinecrest Lakes in Jensen Beach, a beach town north of Palm Beach County.

Despite governmental approval, the 136 occupied apartments violated the county’s comprehensive plan and were built closer to neighboring homes than the law allowed.
Bad “Entitlements” Day:
Layers of Regulation

- Comprehensive Plan/General Plan
- Zoning
- Land Dev. Regs.
- Permits

Vested Rights

Entitlement Process

Property Value
Approval Process - OVERVIEW:

Tips From The Trenches

- Be careful not to bring assumptions from one state or region to another.
- Every place is different and has their “thing”.
- You are playing a “role” – try not to take denials and trash talk personally.
Concurrency:
Roads, Utilities and Government Services in place when they are needed.

Exaction:
A condition for development imposed on a parcel of land requiring land or funds to gain approval.
See: assessment, blackmail, charge, claim, coercion, compulsion ...

Mitigation:
Compensation for an impact to the environment or offsite infrastructure.

Sunsetting:
A government approval/permit expires due to lack of use.

Vesting:
Point at which certain approvals can no longer be taken away or modified.
The Process: Engaging Consultants

Typical Consultants for Entitlement Work

- Planner (zoning and land use)
- Engineer (technical reports and plans)
- Land Use Attorney (zoning and legal agreements)
- Ecologist/Biologist (endangered species and wetland studies)
- Architect (building design and site layout)
The Process: Managing Consultants

Consultant Management

• Be Specific about scope and deliverables – zoning, permits, approvals etc.
• Carefully check invoices monthly and report discrepancies quickly
• Be prepared for “unforeseen” costs and delays – budget for these but do not share with consultant
• Request proposals in “menu” format to account for potential problems/tasks
• Professionals are not equally qualified
• Know the personality of each consultant
• Document milestones and missed milestones keep your emails
The Process: Jurisdictional Interaction

- **Tiered Entitlement System**
  - More detailed permits must be consistent with more general permits

- **Interdependent**
  - Each level can prevent a project from going forward
  - Not all reviewing agencies share the same perspective on approval criteria – resulting in a disjointed, non-linear and sometimes conflicting process
The Process: Permitting Agencies

Federal Commenting Agencies
- US Fish and Wildlife (FWS)
- Environmental Protection Agency (EPA)
- Army Corps of Engineering (ACOE)
- Housing and Urban Development (HUD)
- Department of Energy (DOE)

State & Regional Commenting Agencies
- Local Government (Planning, Zoning, Building)
- Regional or State Planning Agencies
- Department of Transportation (DOT)
- Dept. of Environmental Protection (DEP/DNR)
- Department of Agriculture or Forestry
- Fish and Wildlife Commission (FFWCC or FWC)
- Water Management District
Entitlements – Comprehensive Plan (General Plan)

- **Comprehensive Plan Amendments**
  - Statement of Community Vision (Values)
  - Blueprint for future (long range) growth
  - Protects natural resources
  - Focuses infrastructure investment
  - Usually includes both map and text

- **Key elements**
  - General land use categories
  - Goals and objectives
Entitlements – Future Land Use Map

The data used in this study is maintained in a geographic information system (GIS) that systematically stores parcel boundaries and land use information. The inventory is a collection of land and improved parcels that include parcel information, property taxes, and other data. This database helps update the inventory data and can be used for planning and decision-making, especially for comprehensive planning purposes. It is used in a variety of modeling software to predict impacts on future land use scenarios. Note: Land-related data may include that used for agricultural purposes, and areas unrelated and may not have been developed after the map was completed. Also, not all undeveloped land is suitable for development due to environmental and other constraints.
Entitlements – Land Development Codes

- **Zoning (Right-to-Use)**
  - Specific use, density, intensity, height, setbacks consistent with Comprehensive Plan
Entitlements – Types of Zoning

“Zoning, that’s a slam-dunk...right?” (anonymous)

- Conventional Zoning Districts
  - Commercial, C1
  - Residential, R1
  - Industrial, I
  - Mixed Use, MU
- Site Specific Zoning
  - Planned Unit Development – PUD
  - Residential Planned Development – RPD
  - Commercial Planned Development – CPD
Entitlements – Conventional Zoning

- Right to the use
- Right to the density
- Government may still regulate “how” the use is built
Entitlements – Planned Developments

- **Planned Development Approvals**
  - More flexible, but usually requires Master Plan to tie down details
  - Negotiated site-specific zoning category
  - Creates more certainty for local government and public
Entitlements – Review of Zoning

Review Zoning use limitations
- What tenants/uses can occupy the property?
- How much demand is there for the allowable uses?
- How much of the land is useable due to shape or preservation requirements?

Some (older) zoning is irreplaceable and cannot be replicated today

Avoid “sunsetting” (loss of site specific zoning due to inactivity on the site)

Pros and Cons of Conventional versus Site Specific
Entitlements – Land Development Codes

- **Land Development Codes & Regulations**
  - Detailed regulations implementing the Comprehensive Plan
  - Typically include height, setback and lot dimension regulations, etc.
  - Establish rules for Construction permits
Entitlements – Plats and Development Approvals

- **Subdivision / Plat Approvals**
  - Requirements of dividing land
  - Impact fees, exactions and other government requirements are imposed here

- **Site Plan & Engineering Approvals**
  - Final plans which detail civil engineering or related requirements
  - Necessary to build horizontal improvements

---

**DIVISION 5. PLATS**

Sec. 10-211. Required.

All subdivisions as defined in this chapter are required to have a plat of the parcel of land...
Entitlements – Plats and Development Approvals:
Entitlements – Permitting (Environmental):

Wetlands/Unique and Sensitive Lands
• Determine if property is “Jurisdictional”
• Must demonstrate avoidance and minimization of impacts – the mitigation

Endangered Species
• State or Federally regulated species (Endangered Species Act)
• Impacts and Mitigation (Take Permits)

Water Quality
• TMDLs & Numeric Nutrient Standards
• Must demonstrate minimization of adverse impacts
Entitlements – State and Federal Environmental Permitting:

• Federal Wetland Jurisdictional Determination
  – Wetlands – complex
  – Uplands and other types – not as complex

• Dredge and Fill Permit

• Federal Commenting Agencies
  – Often more onerous than the primary agency
State and Federal Environmental Permitting:

- **General 404**
  - Clean Water Act
  - Permits designed for predetermined impact
  - Usually easier to obtain due to their standardized nature

- **Individual ERP**
  - Permits that are unique and require specialized evaluation
  - Require Public Notice
Understanding Entitlement Negotiation – What are the tools?

- **Understand Community Values:**

- **Design - Density and Appearance**
  - Basic changes to density and intensity need to be carefully evaluated
  - Good design components may convince local governments to allow higher density/intensity

- **Exactions/Impact Fees**
  - Need to negotiate and understand

- **Strategic and Tactical Initiatives**
  - Utilizing “appropriate” tools and programs to enhance the acceptance of your project in your local community

**How can you solve other people’s problems?**
Strategic and Tactical Initiatives – Community Values:

Decision Drivers:
• Density/Context
• Environment
• Economic Development
• Retirees – Families – or Worker Bees
• Community Aesthetic
• Rental versus Condo
• Open Space
• Community Icons
• Community Involvement
Strategic Initiatives - Sustainability:

“Sustainable development is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come…….” – The Brundtland Commission

- **Environmental Sustainability**
  - Carrying Capacity
  - Protection of Natural Systems
  - Material Selection
  - Efficiency

- **Economic Sustainability**

- **Sociopolitical Sustainability**

- ME green versus WE green
Strategic Initiatives - **Smart Growth:**

“Smart Growth generally refers to development that supports the economy, the community, and public health.” – EPA Definition

- Compact Development
- Create Strong Local and Regional Economies
- Concentrated Infrastructure and Public Services
- Conservation of Resources
- Mix of Uses – Integrated Communities
- Walkable Neighborhoods – Transportation Choices
- Integrated Open Space, Recreation and Water Management
- Large areas reserved for farm and forest
Strategic Initiatives - Civic Engagement:

- Information Harvesting (WIIFM)
- Value of Establishing a Brand
- Identify Potential Opposition
- Identify Community Advocates
- Intentional Communication
  - Internet Site
  - Small Group Meetings
  - Presentations to Civic Groups
  - One on One with Opposition
- Accept Feedback
- Incorporate Tactical and Strategic Refinements
Case Studies – The Good, The Bad and the Ugly
Case Study – Horse Creek Estates and Compatibility:

- Last 86 acre parcel of established subdivision
- Used as a “public” area for last 30 years
- Conventional RSF-3 zoning allows up to 249 units/lots
- All utilities (water, sewer, power and phone) available at property boundaries.
- Easy access from at least 2 existing roads
Case Study – Horse Creek Estates – Community Issues:

- Significant environmental issues with wetlands and endangered species
- Subject County has history of stiff “anti-growth” opposition
- Proposed “new” development in an established neighborhood
- “Externalized” impacts
- Children “not welcome” by wealthy development to the west
- New development not considered compatible with older development
Horse Creek – The Process

- Used land use attorney to represent developer at public hearings
- Neighbors also hired an attorney
- Neighbors organized and protested project approval at hearings
- Other adjacent developments joined in opposition
- After 10th hearing land use attorney fired
- Public meetings with upset neighbors
- Many one-on-one meetings with most vocal neighbors
- Many cups of coffee and iced tea with neighbors learning about concerns and fears.
- Made friends with neighbors
Case Study – Horse Creek Estates

How many units will I end up with?
- Zoned Density = 249
- Pro Forma Yield = 141
- Realized Yield = 109
Submitted initial plan – July 1999

Received input

Revised Plan

Repeated this process through 16 public hearings over 4 years until adequate analysis was conducted and community support achieved

Spent over $1 Million to win approval only to lose property for taking too long to entitle property.
Case Study – Horse Creek Estates Final Plan

- Approved for 109 lots
- Created onsite 16 acre Gopher Tortoise preserve
- Paid for offsite speed humps to reduce speeding by cars and construction traffic
- Paid for plaque in GT preserve to educate public about historic road that once traversed property
- Paid for $130k for offsite improvements to landscaping on west side of project
- Agreed to limited construction hours to build project from 9am-2:30pm on weekdays
- Internalized project “impacts”
Case Study – WalMart

- Local Government did not want to have a big box store in the area.
- Neighbors objected to having a Wal-Mart in their back yard.
- Had to prove/demonstrate to government and neighbors that use would be compatible with existing uses.
- Had to make significant concessions regarding store hours, delivery hours and architecture to win approval (2003).

Store to open in 2014 as road concurrency is now satisfied.
Case Study – Colonial Plaza

- Local Government desperately wanted quality development in general area. Government allowed flexible swaps of land uses within project.
- No objections from neighbors.
- Had to prove/demonstrate to government site development would be themed and have internal compatibility with planned uses
- Significant road capacity issues and had to agree to pay a “proportionate share” of the cost to widen the roads at a total cost of $7.5 million.
- Significant endangered species issues costing $1.1 million for mitigation

Entitled property sold for $26 million in 2005 and is vacant today with a value of $2 million.
Case Study – St Croix

- 43 acres on St Croix north shore
- Near the “Salt” River
- Adjacent land use is commercial and multifamily
- Potable Water available
- No wetlands
- Significant topography
Case Study – St Croix
Case Study – St Croix
Entitlements – Take Away Value

1. Understand Time and Cost involved
2. Develop and Implement a Sound Entitlement Strategy
3. Proactively think about Interactivity between permitting entities
4. Understand “Community Values”
5. Frame Justification in a Larger Local/Regional Planning Context
6. Think Long Term About the Project/Property and Long Term About Setting Precedent in the Entitlement Process