

Winning the Zoning Fight ... What Does it Take to go the Distance?

By Ross Weiss, Esq.

The “Perfect Location.” It catches your attention as you drive by, giving you whip lash in the process. Usually surrounded by retail and other development, the Perfect Location is ripe with possibilities ... yet somehow remains chastely undeveloped.

From experience, you know the reason why – the zoning is all wrong. If you want to be the developer who changes this picture, what are you getting yourself into? Will it be worth the fight – and what will you have to do to make your project a reality?

The Whys of Zoning Restriction

Zoning is restricted for a variety of reasons. Sometimes municipalities intentionally restrict the zoning, knowing that such a prime location will automatically attract suitors. That kind of playing hard-to-get puts the township in a position of power – all the better to extract concessions from the developer throughout the zoning negotiation process.

A more common situation is that the zoning laws are simply outdated. Ordinances may have been written pre-urban sprawl, 30 or 40 years ago, when the area really was used for farmland or light industry, for example. Municipalities don’t always stay a step ahead of development trends – more often, what they do is react to trends as they unfold. The current state of zoning affairs may exist because the township hasn’t gotten around to making a change – and probably won’t until the issue is raised.

Of course, the third scenario can’t be ignored. Non-commercial zoning may be in place to prevent development.

In each of these cases, there are two ways to effect a change — litigation or legislation.

Litigation vs. Legislation

There is a time and place for litigation – although the developer has to decide if it is going to be worth the time and money spent to go through the courts. The premise that you have to remember is that while ownership of ground is a God-given right in America, the local government is permitted to impose rules as to how the ground is used. Saying that, government can't go beyond what is reasonable and justifiable regarding zoning -- every municipality has to bear its fair share of development.

When a developer puts his hand on his gun and challenges a municipality to a legal shoot out, the fight is often protracted and costly. However, there are times when it is worth it. For instance one developer I know went to court over the zoning of a piece of land that had been in his family for a long time. What did he really have to lose?

But if you don't own the ground you want rezoned, or have the desire to litigate, how else might you make that Perfect Location yours?

In three words, compromise, compromise, compromise.

Take a Tactical Approach

- **Do your homework.** Investigate the property to find out what has been attempted previously that obviously hasn't succeeded. What is it exactly that the municipality has on its wish list?
- **Know what you can afford to offer up front.** If the township wants a traffic light put up and some green space preserved, that may be fine. If they're

demanding that a road be widened or a driveway added to connect two different grades within the shopping center, the cost may preclude a profit.

- **Look at the big picture.** Too often, the developer is in a big hurry to get in, get the zoning changed and leave the scene. If he hasn't done his homework and prepared a coordinated approach to meeting the township's concerns, he'll be shot down at the first community meeting. A show of good faith and a neighborly attitude will count for a lot.

A Case in Point

In this particular case, the Perfect Location was at the intersection of two four-lane state highways. Three of the four corners were developed – our guy had a powerful desire to develop that fourth corner. He found that the municipality was willing to consider his zoning change request, but that all predecessors had been unwilling to provide two additional traffic lights and coordinate internal circulation among the proposed development and existing adjacent parcels.

It was also important to this township that the development be easily accessible to seniors who would be walking from a proposed senior housing behind the center. And one other point – an existing stream should stay in place as an amenity, not be piped and covered over.

Time was on the developer's side. The last time that the zoning issue had been raised about this property, the real estate market was flat – making the requested concessions cost prohibitive. This time, better economic times translated to higher rents, making the township's requests feasible.

This developer really went the distance to get this project done. Not only did he put in the needed traffic lights and coordinate internal traffic, he also proposed a restaurant with outdoor dining facing the stream, made provisions for some additional open green space and agreed to deed restrict future use of the property, addressing residents' concern about seeing car dealerships or on-premise dry cleaning facilities in the shopping center. He also agreed to install state of the art noise abatement equipment to defray truck and refrigeration noise at the supermarket.

All of this wrangling and negotiation didn't happen overnight. It took three years to get the deal done and the shopping center built. But for this developer, all the factors converged to make this particular Perfect Location an opportunity he couldn't pass up.

So the next time you see a Perfect Location with your name on it, think about what it takes to make it yours. And whether or not you're prepared to go the distance.

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