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PURCHASING VACANT LAND FOR RESIDENTIAL CONSTRUCTION

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I. Overview

When a client finds a piece of vacant land to purchase for a building site, the issues presented are significantly different from purchasing an existing home. This outline will address issues to consider when representing that client.

II. Is the land physically suitable as a home site?

A. Careful physical examination

1. The Purchaser should carefully examine the land and preferably with a builder or architect.
 - a) The site should be checked for unusual site preparation costs and evidence of fill.
 - b) Look for indications of easements (such as overhead lines, paths, or drives), which may not be recorded.
 - c) Look for evidence of underground storage tanks or other environmental concerns. Consider whether a Phase 1 Environmental Audit may be in order.
 - d) Check for proximity to wetlands.
 - e) Listen for unacceptable highway, airport or industrial noises.
 - f) If the site borders any undeveloped area, check the zoning of adjacent properties and advise the client to investigate any known development plans for adjacent or nearby properties which may affect the value or desirability of the site.
2. The purchaser may consider hiring an arborist to determine what trees may be cleared
3. The purchaser may consider soil borings at the proposed building site to determine if there are any unusual or unstable soil

conditions, such as high water table, fill, or other conditions that would make the cost of building a foundation unusually high. Unfortunately this is a costly endeavor and whether to obtain borings should be determined in consultation with the builder.

B. Boundary survey

1. It is advisable to obtain a boundary survey and sketch of the property. The survey should be performed after title work is received and should mark
 - a) boundary lines
 - b) the location of all easements
 - c) setbacks required by zoning and any recorded restrictions
 - d) the location of approved drain field sites, if applicable
 - e) elevations for flood plain determination.
2. A survey may be required for issuance of a septic or well permit
3. A survey will help the Purchaser to visualize where the structure can be placed and to determine if the building envelop is sufficient to build the desired home. In addition it will eliminate the possibility of creating an encroachment or zoning setback violation.

C. Determine accessibility to utilities.

1. Verify availability of gas, electric, phone and cable services. Consider the cost to bring in electric and phone service. In many areas of the County, gas is unavailable and alternate heating methods must be used.
2. If utilities are to be installed by a developer or the seller, make sure the work is completed prior to closing. If not, insist on adequate security to insure completion.
3. Determine whether municipal water and/or sewer service is available to the property.
 - a) If sewer service is available to the site, the Health Department will require hook up. The Purchaser should explore the likelihood of sewers being brought into the area in the near future in order to avoid installing an on-site

system, then having to hook up to municipal service a short time later.

b) If municipal water service is available, hook up may also be required.

(1) In some areas of the County, notably sections of Ypsilanti Township and Augusta Township, well permits cannot be obtained. Homebuilders will be required to hook up to municipal water service.

(2) Some municipalities will allow hook up only if the property is annexed. During the annexation process, which may take upwards of a year, the owner may incur a fringe service fee plus double the charge for utility services. This can be an issue in Scio Township, Ann Arbor Township, and some areas of Pittsfield Township. For information on annexation to the City of Ann Arbor check:

<http://www.ci.ann-arbor.mi.us/framed/planning/index.html>

Click on Petitions, then scroll down to Annexation.

4. If on-site water and/or sewage disposal are needed, obtain information about the site and the surrounding sites.

a) The Health department has designated certain areas in the County as “well first” areas.

(1) The Health Department publishes a map showing these areas (which may be obtained free of charge from the Health Department); however, the information as to any particular site should be confirmed with the Health Department as the designations periodically change.

(2) Designation as a “well first” area may result from a number of problems:

(a) low yielding wells in the area,

(b) methane gas,

(c) high salt content,

(d) hydrogen sulfate,

(e) dioxin

(3) In such situations, the Health Department requires the well to be drilled first and the water to be tested before a sewage permit will be issued.

b) Other good sources of information about the quality of the water and the depth (cost) of well installation can be obtained from local drilling companies and neighboring homeowners.

5. If an on-site sewage system is needed, the Health Department will conduct a soil evaluation and issue an approval letter.

a) If the land is represented as having “perked,” obtain a copy of the approval letter from the Health Department’s files and review carefully for unusual conditions or restrictions. Confirm against the survey and/or legal description that the approval letter is for the parcel being purchased.

b) If the property has not previously been “perked,” the purchase should be conditioned upon obtaining an approval letter from the Health Department. The parties need to arrange, at their expense, for test holes to be dug with a backhoe under supervision of the Health Department.

6. For additional information about well and septic permits check: <http://www.co.washtenaw.mi.us/depts/eis/Eisehper.htm#constr>

D. Verify Floodplain Status.

1. If the property is in a floodplain, the lender may require flood insurance, which will cost the Purchaser several hundred dollars additional per year. The lender may require the surveyor to certify whether the property is in a floodplain.

2. General records about floodplains can be obtained from the Department of Natural Resources or Federal Emergency Management Association (FEMA).

3. The Washtenaw County Planning Department has FEMA Floodplain Maps for most of Washtenaw County.

4. To determine whether any particular site is in a floodplain, the elevation must be determined by a survey.

5. For additional information about floodplains, check: http://www.fema.gov/mit/tsd/hm_main.htm

E. Check for Environmental Concerns.

1. Wetlands.

- a) Is the property wetlands?
- b) If so, is it regulated wetlands? (i.e. is the land contiguous to a lake, stream or pond, or is the contiguous geographic area of wetlands five acres or more?) To aid in determining whether property is wetlands, a Purchaser may contact the United States Department of Agriculture, on Jackson Road, which has a soil survey book for Washtenaw County. This provides a starting point. You may also check the National Wetlands Inventory, which is a division of the US Fish and Wildlife.
- c) If the land is regulated wetlands, then a permit must be obtained from the Department of Natural Resources in order to alter or build on it.
- d) Some municipalities have wetlands ordinances.
- e) For additional information see: See:
http://www.deq.state.mi.us/lwm/grt_lakes/wetlands/regs.htm

2. Has the property been determined to constitute a protected dunes area, an area governed by the Scenic Rivers Act, or any other Federal, State or local protective legislation?

3. Environmental contamination

- a) Environmental contamination has become a significant issue on acquisition of commercial property, particularly among lenders. Concern with respect to residential property is rising, but as yet, has not received the same level of scrutiny as in commercial deals. If the Purchaser fails to raise the issue, the lender may raise it later. Lending appraisal departments are becoming more sensitive to the risks, especially where municipal water is unavailable.
- b) A homeowner may consider a Phase I Environmental Assessment. Cost and time are considerations.
- c) If cost or time does not permit a Phase I Environmental Assessment on the site, the purchaser can still obtain

general environmental information from the Washtenaw County Health Department.

III. PERMITTED USE OF LAND

A. Verify zoning compliance.

1. All municipalities have zoning ordinances, however, there is a great deal of variance between municipalities. General assumptions about lot size, road frontage, depth to width ratios, setbacks, etc. should not be relied upon. For example, some Townships do not include regulated wetlands in the land area needed to meet the minimum lot size requirement. Where land is unplatted and the description of the parcel runs to the center of a river or into a lake, this should raise a red flag.
2. Access has become a significant issue with respect to zoning. Most municipalities have ordinances that restrict the number of homes that can be serviced by a private drive without upgrading the road. In order to obtain issuance of the building permit, the municipality may require that the private drive be upgraded. This can be very costly.
3. If the land is split from a larger tract it is especially important to confirm compliance with zoning requirements and obtain land division approval. Violation of the Land Division Act will result in inability to obtain a building permit.
4. Zoning problems can be avoided by obtaining a Zoning Compliance permit from the municipality. Such permits usually have expiration dates. A letter from the municipality's zoning officer certifying that the parcel meets all the current zoning requirements may be preferable because it will usually not have an expiration date. However, a Purchaser who plans to build in the future must be made aware that if the zoning ordinances change before obtaining a building permit, even a letter may not be binding.

B. Verify Access.

If access to the property is by a public road, a driveway permit will be needed. The Washtenaw County Road Commission can be consulted regarding whether a road is public or private and whether a permit can be obtained. Inadequate sight clearance may result in denial of a permit making the land unusable for residential purposes. A driveway permit can be obtained by filing an application with the Road Commission. For further information check: <http://www.wcroads.org/RDCDrwyPlyc.htm>

C. Review Easements and Restrictions.

1. Many properties, particularly developments, have restrictions that run with the land. The following are some common examples: usage; designated building envelopes; restrictions on fences, satellite dishes, pets, and storage of recreational vehicles; and restrictions on the size and characteristics of structures. Such restrictions are typically recorded and can be obtained from the title company. They must be examined closely and communicated to the Purchaser to avoid surprise.
2. Some developments require preapproval, by the developer or a designated committee, of all new structures and alterations to existing structures. If time permits, it is desirable to make the purchase contract contingent on the Purchaser obtaining approval of the proposed building plans.
3. Many developments (particularly newer developments) are subject to the authority of an Association that charges periodic fees.
4. Property may be subject to easements. Recorded easements will be disclosed in a current title commitment and the actual easement document can be obtained from the title company. Easements can be for utilities, ingress and egress, drainage, etc. Their location and impact on the use of the land must be considered. Blanket easements (i.e., an easement that covers the entire parcel) should be reduced to a specified area of the property as a condition of closing. In addition to recorded easements, the land may also be subject to unrecorded easements. Examples are paths, roadways, and overhead power lines. Careful physical examination of the site by the Purchaser is important. The Seller should also be required to represent in writing the existence of any unrecorded easements.

IV. TITLE ISSUES.

A. Obtain a current title commitment and copies of all documents referred to in the commitment, including a copy of the plat or subdivision plan.

B. Review site condominium documents.

Site condominium developments have lengthy recorded documents, including the Master Deed and Bylaws, all of which should be carefully reviewed. In a new development, it is important to point out to the Purchaser, the “must be built.”

C. Review Site Development Agreements.

Many developments are subject to a “site development agreement” between the developer and the municipality. These agreements should be reviewed and the status of the developer’s compliance with the agreement should be verified with the municipality. The municipality may be willing to issue a letter of closure. If the developer has not fully complied with the site development agreement then further assurances may be needed to protect the Purchaser.

- D. Determine whether the roads in the development are public or private.
 - 1. Under Michigan Law, if property is sold which does not abut a public street or road, the Seller must inform the Purchaser that it is a private road and is not required to be maintained by the Road Commission. The notice must be in writing on a separate instrument conveying the interest in the property. Otherwise, the transaction is voidable at the option of the Purchaser. (MCLA 560.262)
 - 2. Maintenance of Private Road
 - a) When a development has private roads, the recorded documents will usually provide for maintenance to be paid by the owners of the sites in the development.
 - b) When property is not in a development, there should be a recorded private road maintenance agreement. If one does not already exist, it should be obtained as a condition of closing, not only for the protection of the Purchaser, but also to avoid potential problems with the lender.
- E. Check for a Farmland Development Rights Agreement.

If title work discloses that the property is subject to a farmland development rights agreement with the DNR under the Farmland Preservation Act, additional steps will be needed to avoid unexpected tax consequences to the purchaser. For additional information check: <http://www.mda.state.mi.us/prodag/farmland/faq.htm>
- F. Check for oil and gas leases, especially on out-county acreage. Such leases may have expired, even though they are still of record. Michigan has a statutory procedure for terminating an expired oil and gas lease. MCL 554.281, et.seq.
- G. Watch for property that is split from a larger tract.

1. If the land is part of a larger tract (example: the title commitment states “taxes unallocated as to this parcel”), a land division approval will be needed from the municipality.
2. Pending new tax assessments from the municipality, the parties will need to agree upon an allocation of prior tax bills for purposes of the tax proration and for sharing upcoming bills until the new assessments are in place. Some municipalities will prepare a courtesy split.
3. If the Seller is a land contract vendee under a contract which covers additional land, or if the property is subject to a mortgage which covers additional land, Purchaser should verify that all obligations are current and obtain a copy of the underlying land contract and all mortgages to assure that there are appropriate release provisions.

H. Obtain Title Policy.

1. As with all real estate purchases, it is important to obtain a title policy without standard exceptions. Even if the land is undeveloped there is still the possibility of construction liens - for survey or engineering work.
2. An Owner’s title insurance policy, even if issued without standard exceptions, will not insure against environmental violations, zoning violations, or violations of the Land Division Act (formerly the Plat Act).

V. FINANCING

A. Land Contracts

1. The most common method for financing vacant land acquisition is by land contract.
2. When title is not obtained at closing, it is important to verify that title can be obtained when the vendee is prepared to pay off. This is a concern when the land is subject to mortgages or an underlying land contract that covers additional lands. Putting a deed from the Seller in escrow with the title company is helpful, but will not solve all of the problems if the land is subject to underlying interests of others.

B. Mortgages

1. Mortgage financing of land acquisitions is sometimes available, particularly in developments.
 2. Financing is usually based on shorter amortization with a short-term balloon.
- C. As a general rule, the Purchaser must fully pay for the land before construction financing will be made available by a lender.

VI. CHECKLIST OF PROVISIONS FOR SALES CONTRACTS

A. Conditions

1. General Provisions
 - a) Title insurance policy to be issued without standard exceptions.
 - b) Representations by Seller as to existence of fill, underground storage tanks, contaminants or other toxic wastes, and unrecorded easements or agreements.
2. Additional provisions that may pertain
 - a) Private road notification, if applicable
 - b) Provisions for allocating prior tax bills for proration and future bills pending new assessment
 - c) Compliance with Land Division Act

B. Contingencies

1. General Contingencies
 - a) Attorney Approval of the Sales Contract
 - b) Attorney Approval of current title commitment including copies of all documents referred to in the commitment
 - c) Approval of boundary survey and survey sketch
 - d) Approval of zoning or issuance of zoning compliance permit or other certification
 - e) Approval of site by Builder/Architect, including a soil analysis
 - f) Acceptability to Purchaser of availability of utilities

2. Additional Contingencies that may pertain
 - a) Approval of proposed building plans by developer/architectural control committee
 - b) Approval of environmental audit
 - c) Issuance of driveway permit
 - d) Obtaining acceptable private road maintenance agreement
 - e) Municipal approval of land division
 - f) Health department approval for well and on-site sewage disposal with conditions/requirements acceptable to Purchaser