



The Trouble with Outparcels

When a developer purchases a large tract of land, one or more “outparcels” may exist. An outparcel is a relatively small tract of land — such as land surrounding a farmhouse or shopping mall — not included in the sale.

An outparcel’s existence is not necessarily always problematic, but outparcels can sometimes alter development plans. Let’s examine some dangers of these often over-looked development accessories.

Watch Your Density

One landowner filed a site plan with the county specifying that his outparcel’s open space requirements must count toward the developer’s open space requirements. After selling the bulk of his tract to a developer, the landowner subsequently sold the outparcel as well.

For various legal reasons, the site plan did not bind the outparcel’s new owner. Fortunately, the owner and developer came to an amicable settlement. But, in a more contentious situation, the developer buying the larger tract could have been required to reduce the density on his land, which would have adversely affected the price of his subdivided lots.

Avoid Dirt Roads

Dirt roads running from the outparcel may also affect large tracts of land. How? The title insurer may take the position that a “pre-scriptive” or nonrecorded easement exists, complicating how you can delineate your development’s boundaries. This becomes especially complicated if the dirt road continues onto the lands of a third party on the other side of the developer’s tract.

No Easy Easements

You may also find recorded easements troublesome. When purchasing a large tract of land, inquire about existing easements. If one looks like trouble, negotiate a clause to reroute undesirable easements into the purchase agreement.

Otherwise, outparcel easements running across the developable land may disrupt your lot division plans. Ultimately, these conflicts could seriously hinder your project’s profitability.

Go Out to the Mall, Carefully

Real estate developers not only buy land including outparcels, they may sell such land as well. For example, many chain restaurants buy outparcels adjacent to shopping malls.

In these types of transactions, the developer and the purchaser must consider the attitudes of anchor tenants and major retailers in the mall toward the potential outparcel buyer. Dominant retailers in the mall may worry that the outparcel will block visibility, eat up parking space, create security problems, increase common maintenance costs and pre-sent customers with a less than desirable view (such as the rear side of a restaurant). And a restaurant’s long operating hours may require additional security and lighting services.

Other conflicts may arise as well. Government licensing entities, political groups and even local citizens may try to block the outparcel-based restaurant development on the basis of increased traffic, irritating lights, disruptive noise and security issues. Neighbors may even complain about an unattractive view or the smell emanating from its trash area.

Tenants and OEA Agreements

When developing outparcel land for a shopping mall, anchor tenants and major retailers will usually attempt to impose their restrictions in an operating and easement agreement (OEA). This is where you must make your move and negotiate to protect your best interests. Structure the OEA to specify whether outparcels are:

- Included with the mall for common area maintenance purposes or parking easement benefits,
- Encumbered with height, parking ratio, signage and use restrictions, and
- Subject to the developer’s approval of the required elevations, signage, screening or landscaping, parking rights, and any other common area expense or service matters.

Make sure your outparcel contracts or leases require your agreement to any future OEA amendments. Even when anchor tenants anticipate outparcel-based restaurants, they may restrict developers from addressing a particular restaurant’s distinctive details. For example, height restrictions may exclude arches or other hallmark architectural elements of some chain restaurants.

Is This Outparcel for You?

To avoid outparcel disasters, engage in a due diligence search for recorded and unrecorded easements before purchasing large tracts of land. And record any agreements reached with outparcel owners or other neighboring properties.

For more information on outparcels — or other “hidden” real estate development complexities — contact **Bull Realty at (404) 876-1640**.