

# Due Diligence Issues in Commercial Real Estate



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The following pages list items, which may need investigation when considering a real estate sale or acquisition. Not every item will be applicable to every transaction. Also, there may be items, which need investigating missing from this list. After all, “we don’t know what we don’t know”.

This list can in no way replace expert advice and assistance, it is meant to be an outline for discussion of due diligence tasks commonly performed by someone in a real estate transaction.

I would appreciate your forwarding on to me anything you have encountered (or heard about) regarding due diligence in commercial real estate which you find missing from this list.

Hope this helps you in your business!

*Cindy Chandler*

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## Land Use Issues

- 1) Zoning/Planning/General Development Policies
  - a) In whose jurisdiction is the property located?
    - i) ETJ?
    - ii) Sphere of Influence?
    - iii) Annexation plans?
  - b) What is current zoning?
  - c) What does city want there?
  - d) Exactly what will it allow?
  - e) Is there a “sunset clause” or amortization on current use?
  - f) Is current use legal?
  - g) Can use be changed?
    - i) To what?
    - ii) What is needed? Change of Use Permit?
      - (1) What is the process?
    - iii) Can expansions and/or renovations be done?
  - h) What is the rezoning process?
    - i) Cost?
    - ii) Timing?
    - iii) Likelihood?
    - iv) Local issues such as politics?
    - v) Conditional zoning requirements?
  - i) Will a special Use Permit or Variance be needed?
    - i) What is the process?
  - j) Buffer requirements
    - i) Fencing Vs vegetation
    - ii) Type of vegetation
    - iii) Sizes of berms
    - iv) When required
    - v) What triggers buffer changes?
  - k) Moratorium?

- l) Subdivision process**
- 2) Signage**
  - a) Is there a sign ordinance?**
  - b) What is allowed?**
  - c) How are permits handled?**
  - d) What triggers a permit?**
- 3) What Acts or local ordinances/policies affect this property?**
  - a) CAMA**
  - b) Mountain Ridge Act**
  - c) Watershed regulations**
  - d) Wetlands?**
  - e) Lake setbacks?**
  - f) Smart Growth policies?**
  - g) General Development Policies?**
- 4) Is there any of the property in the Flood Plain? Flood Fringe?**
  - a) How current are the maps?**

## Site Issues

- 1) Size and Shape of site
- 2) Surveys available
  - a) How current?
  - b) Any of the site sold off since survey?
  - c) Timing to get current survey?
  - d) Any encroachments?
    - i) Anything *look* close to encroaching?
  - e) What type do you need?
    - i) Boundary
    - ii) Location
    - iii) Topographical
    - iv) Subdivision
    - v) Construction
    - vi) ALTA
- 3) Easements
  - a) On survey?
  - b) Can they be moved?
    - i) Process, time and cost
  - c) How does easement affect land use?
  - d) Types of easements
    - i) Utility
      - (1) Power
      - (2) Gas
      - (3) Telecommunications
      - (4) Drainage
      - (5) Water
      - (6) Sewer
      - (7) Cable TV
    - ii) Municipal/Public

- (1) Access
  - (2) Greenway
- iii) Private
  - (1) Access
- iv) Status of easements
  - (1) Recorded
  - (2) Not recorded but suspected/visible
- 4) Rights of Way
  - a) Recorded
  - b) Not recorded
  - c) Transitional rights of way
  - d) Additional land taking for slope of road, bridge
- 5) Local and State transit issues
  - a) Transit overlay zoning or additional requirements?
  - b) Road improvement programs?
  - c) Planned median additions?
    - i) Elimination of median cuts planned?
- 6) Environmental Issues
  - a) Environmental Study(s) done?
  - b) Wetlands
  - c) Watershed
  - d) Local issues
  - e) Drainage policies
    - i) View property during and after hard rain
- 7) Legal/Title
  - a) Title policy available?
    - i) Last updated?
    - ii) Exceptions? (Schedule B)
      - (1) Verified
  - b) Legal Description?
  - c) Legal Access verified?
  - d) Deed Restrictions?
    - i) Uses restricted?

- ii) Subdivision issues?
- iii) Setbacks?
- iv) Approvals needed?
  - (1) From whom?
- e) Restrictive Covenants?
  - i) POA/HOA details
  - ii) Enforceable?
  - iii) Violated?
  - iv) Architectural Review Committee?
    - (1) Who
    - (2) How
    - (3) What are the issues?
- 8) Taxing Authority
  - a) Back taxes paid?
  - b) Assessment amount and rate
  - c) City?
  - d) County
  - e) School district?
  - f) Utility district?
  - g) Special taxing district?
  - h) Special Assessments?
  - i) Assessment policies & methods
  - j) Protest procedures
  - k) Next valuation
    - i) When
    - ii) What's the word on the streets?
- 9) Interview Seller for property history
- 10) Services provided by? Additional Costs?
  - a) Police
  - b) Fire
  - c) Emergency
  - d) Garbage
  - e) Other

**11)Any mineral rights issues?**

**12)Visibility**

- a) **Current**
- b) **Announced changes**
- c) **Rumored changes**

**13)Access Issues**

- a) **Current Vs desired**
- b) **Authority**
- c) **Costs**
- d) **Proposed/rumored/announced changes**

## **Building Code/Development Issues**

- 1) **Building Code used**
  - a) **Local process when building/repairing/renovating**
    - i) **Moratoriums?**
  - b) **Buffer requirements – see zoning**
  - c) **Change of use permit required?**
- 2) **Subdivision Regulations**
  - a) **What triggers them**
  - b) **Process**
    - i) **Timing**
    - ii) **Cost**
    - iii) **Submission requirement**
    - iv) **Political/local issues**
- 3) **Utilities**
  - a) **Available?**
    - i) **Cost**
    - ii) **Process**
    - iii) **Time table**
    - iv) **Political issues?**
  - b) **Anyone who can share installation cost?**
  - c) **Reimbursable to installer (developer)?**
  - d) **What is needed?**
    - i) **Power**
    - ii) **Water**
    - iii) **Sewer**
    - iv) **Cable TV**
    - v) **Telecommunications**
    - vi) **Wireless service**
    - vii) **Gas**
  - e) **Moratoriums?**
- 4) **Soils**
  - a) **Test results – Soils Suitability Analysis**

- i) **Compaction**
        - ii) **Percolation**
        - iii) **Drainage**
        - iv) **Cost to fix any problems**
      - b) **Rock reported in area?**
    - 5) **Vegetation**
      - a) **Existing Vs desired**
      - b) **Process and permits**
    - 6) **Local Issues**
      - a) **“Dry” counties/towns**
      - b) **School tax**
    - 7) **Amount of site “usable” or “buildable”**
      - a) **Zoning/Regulations**
        - i) **green space**
        - ii) **Height limitations**
        - iii) **View corridors**
        - iv) **Impervious area**
        - v) **Watershed**
        - vi) **Road capacity**
        - vii) **Soils suitability**
      - b) **Buffers**
      - c) **Easements**
      - d) **Surrounding Properties**
      - e) **Roads**
        - i) **Capacity**
        - ii) **Decel lanes required?**
        - iii) **Turning lanes required?**
        - iv) **Sidewalks**
      - f) **Utilities available**
      - g) **Endangered/Protected species**

## **Transactional/Business Issues**

- 1) Approvals needed for sale?**
  - a) Deed restrictions**
  - b) Any rights of first refusal?**
- 2) Confirm true ownership and right to contract**
- 3) Lis Pendens?**
  - a) Any red flags?**
  - b) Rumors?**
- 4) Existing Loan?**
  - a) Is it prepayable?**
    - i) Terms**
    - ii) Cost**
    - iii) Timing**
  - b) Is it assumable?**
    - i) Terms**
    - ii) Cost**
    - iii) Timing**
- 5) Appraisal available? Date? Appraisal required?**
- 6) Insurance Issues?**

## Existing Structure Issues

- 1) Existing structure compliance
  - a) Copies of original permits
  - b) Permits for all alternations?
  - c) ADA compliant?
  - d) Fire Code issues?
  - e) Complies with current code or non-conforming?
    - i) If non conforming
      - (1) Amortization period?
      - (2) Sunset clause?
      - (3) What will trigger bringing into compliance?
  - f) Signage legal?
    - i) What happens when ownership changes?
    - ii) What happens if use changes?
- 2) Proper permits for tenant's use?
- 3) Any health code issues?
- 4) Environmental issues?
- 5) Must tenant approve sale?
- 6) Any rights of first refusal? Options?
- 7) Property Inspection
  - a) Done by whom?
  - b) Exterior – condition of:
    - i) Parking lots
      - (1) ADA compliant?
      - (2) Meet code/zoning? Enough?
      - (3) Pavement
      - (4) Striping
      - (5) Traffic patterns
    - ii) Site entrances
    - iii) Loading areas
    - iv) Dumpster pads and trash areas

- v) Signage
- vi) Landscaping
- vii) Outside irrigation
- viii) Sidewalks
- ix) Curb and gutter
- x) Retention/detention ponds
  - (1) Fenced?
  - (2) Safety hazard?
  - (3) Health issues?
- xi) Lighting
- xii) Utilities visible
- xiii) Location of fire hydrants
  - (1) Whose responsibility to maintain?
- xiv) Roof
  - (1) Type
  - (2) Condition
  - (3) Warranty
- xv) Building exterior (siding)
  - (1) Glass
  - (2) Windows
  - (3) Flashing
  - (4) Curtain wall
  - (5) Parapet
  - (6) Foundation
  - (7) Soffit vents
  - (8) Gutter and downspouts
- c) Interior
  - i) Building entrances
    - (1) ADA removal of barriers?
    - (2) Thresholds
    - (3) Doors
    - (4) Walk off mats
    - (5) Locks

- (6) Security system?
  - (7) Smoking urns
- ii) Alarms
  - (1) Fire
  - (2) Theft
  - (3) Other
- iii) Interior lighting
  - (1) Emergency lighting
  - (2) Ambient lighting
  - (3) Bulbs and grid condition
  - (4) Standard size, easily replaced?
- iv) Ceiling
  - (1) Grid
  - (2) Panels
    - (a) Size and type (can they be easily replaced?)
  - (3) Signs of leaks
  - (4) Plenum area
- v) Overhead sprinklers, grills, ducts, vents
  - (1) Signs of damage
- vi) Flooring
  - (1) Carpet condition
  - (2) Hardwoods
  - (3) Vinyl
  - (4) Stone
  - (5) Other
- vii) Elevators
  - (1) When inspected last
  - (2) Type
  - (3) Speed
  - (4) Capacity
  - (5) Maintenance contract expiration
  - (6) Condition
    - (a) Interior

**(b) Exterior doors and lobby area**

**viii) Stairs**

- (1) Signage**
- (2) Treads**
- (3) Lighting**
- (4) Doors**

**ix) Fire extinguishers**

- (1) # required**
- (2) Location**
- (3) Charged?**

**x) Building signage - condition**

- (1) ADA – Braille?**
- (2) Tenant's signage**
- (3) Lobby**
- (4) Directionals**
- (5) Emergency**

**xi) Restrooms**

- (1) Location**
- (2) Adequacy? (#)**
- (3) Condition**
  - (a) Sinks**
  - (b) Floor**
  - (c) Commodes**
  - (d) Hardware**
  - (e) Floor drains**
  - (f) Mirrors**
  - (g) Paper towel holders**
  - (h) stalls**
- (4) ADA compliant**
- (5) Signage**
- (6) Evidence of plumbing leaks**
- (7) Floor drains**

**xii) Mechanical rooms**

- (1) What's in there?
    - (2) Who has access
  - xiii) Telecommunications rooms
    - (1) Condition
    - (2) Access
    - (3) Policies
    - (4) Sufficient for tech needed?
  - xiv) Maintenance engineer shop
  - xv) Janitorial closets
  - xvi) Storage areas
    - (1) What is stored?
    - (2) Adequate inventory of long lead-time items?
  - xvii) Pay phones
    - (1) ADA compliant
  - xviii) Tenant spaces
    - (1) Upfitting financed?
    - (2) Fixtures financed?
    - (3) Appear to comply with code? (Building and zoning)
  - xix) Common areas shared by tenants
    - (1) Mail
    - (2) Storage
    - (3) Concession
    - (4) Other
  - xx) Attic
    - (1) Signs of asbestos?
    - (2) Infestation?
    - (3) Insulation
  - xxi) Lobby
    - (1) Appearance
    - (2) Finishes
    - (3) Directory
    - (4) Furniture
- d) Mechanical Systems

**i) HVAC**

**(1) Controls**

**(2) System**

**(3) Condition**

**(4) Maintenance records**

## **Financial Issues**

- 1) Existing Loan(s) (see Transaction/Business issues)
  - a) Unrecorded leases
  - b) Proforma
    - ii) Current
    - iii) Feasible
    - iv) Lease audit
      - (1) Tenant's right to cancel lease
      - (2) Tenant's right to sublet/assign
      - (3) Credit of major tenants TODAY
      - (4) Right to go dark
      - (5) Operating hours
      - (6) Continuous operation
      - (7) Non compete clauses (both LL and tenant)
      - (8) Enforcement (or lack of) of lease provisions
      - (9) Reimbursables
        - (a) What
        - (b) When
        - (c) How
      - (10) Special tenant requirements
        - (a) Parking
        - (b) HVAC
        - (c) Metering
        - (d) Cleaning
        - (e) Trash
        - (f) Right of first refusal
        - (g) Stops
      - (11) Assignable leases?
      - (12) Estoppels required? Available?
    - v) Expenses
      - (1) Contracts

**(a) Expiration**

**(b) In whose name?**

**vi) Confirm square footage**

**(1) How is space measured?**

**(2) What do the tenant leases say?**

## **Market Issues**

- 1) Position of Subject Property**
  - a) Possibility of repositioning**
- 2) Position of Surrounding Properties**
  - a) Current Uses**
  - b) “Word on the street” regarding them**
  - c) Zoning**
- 3) Competition**
  - a) Recent comps**
  - b) Status of comps**
- 4) Local Economy**
  - a) Current status and proposed changes**
    - i) Major industries**
    - ii) Government**
    - iii) Financial issues**
    - iv) Politics**
    - v) Other Local issues**
    - vi) Roads**
      - (1) Current**
      - (2) Planned**
      - (3) New roads**
      - (4) Traffic counts**
      - (5) Major corridors**
- 5) Interview those “in the know”**
  - a) Owner**
  - b) Adjacent property owners**
  - c) “Old timers”**
  - d) Planning/zoning/building code officials**
    - i) Deals permitted**
    - ii) Deals announced**
    - iii) Deals rumored**
  - e) Elected officials**

- f) Tenants
- 6) Demographics
  - a) Current
  - b) Projections
- 7) Trade area
  - a) Other developments in the area
- 8) Location of amenities
  - a) Restaurants
  - b) Residential
  - c) Hospitals
  - d) Shopping
  - e) Education
  - f) Arts

## Personal Issues

- 1) **Re: Buyer/Seller**
  - a) **Reputation**
  - b) **Motivation**
  - c) **Brokers involved**
    - i) **Reputation**
    - ii) **Competence**
  - d) **Other properties owned**
    - i) **Next door?**
    - ii) **Close?**
    - iii) **Restrictions?**
  - e) **Warranties & Indemnifications**
  - f) **Financial stability?**
    - i) **Can he/she close?**
    - ii) **Willingness to creatively structure?**
  - g) **If seller:**
    - i) **When acquired?**
    - ii) **Price and terms?**
    - iii) **Why selling?**
  - h) **If buyer:**
    - i) **What recently bought?**
    - ii) **Price & terms?**