

Avoiding Surprises During the Planning Process
NYSAPLS Annual Conference
January 14, 2010
1:30 - 5:00 p.m.

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1:30

Introduction:

- This session is about taking the initiative in the subdivision process
- The Surveyor plays a critical role in the planning process, from the initial site survey to the final as built
 - Subdivision is a surveyor's task
 - Surveyor not "just" the mapper
 - Reasons for the narrowing of the surveyor's role
 - 1964 requirements for Health Dept approval
 - The rise of GIS mapping
 - Complacency of Surveyors
- Challenge to Surveyors: how to reassert their leadership role?
 - Requires dealing with the public and Planning Board
 - Professional aspects -- working with engineers, planners, and lawyers
 - Business aspects--the client as a source of possible surprises

1:40-3:15

Practical ways to take the initiative, avoid delay, and facilitate timely approvals. To assert proper role, the surveyor needs to understand the whole process

1. Being retained by a client:

- The purpose of the initial meeting
 - Understand what the client wants.
 - What is client's relationship with property?
 - Show your competence
 - Spot issues
 - Facilitate retainer
- Preparing for the initial consultation
 - Good time management
 - Use of on-line resources, particularly DEC Environmental Resource Mapper--<http://www.dec.ny.gov/animals/38801.html>. [Attachment 1 is a list of helpful DEC websites]

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- Structure of the meeting
- Your office setting
- Setting time limits

- Answering common client questions:
 - "*How many lots will I get?*"
 - How much will it cost? Alternatives. Photographic or ground survey?
 - "*How long will it take?*"
 - Answering these questions may require further research. Avoid "guarantees."
 - Spotting the issues that will take time to resolve. Conservation easements, necessitate negotiations with Land Trust about development rights retained. Habitat issues/wetland issues may take a long time to resolve.

- Business arrangements with the client
 - Understanding the client's time schedule and goals.
 - Recognizing the difficult client. Should you work for a difficult or high-maintenance client?
 - Pricing the work
 - When do you know enough to price a job? Fixed price vs. hourly rates.
 - Price will be affected by Client's changes and redesigns
 - When to enter the contract
 - Surveyor's role in leading a team/ how will other consultants be paid?
 - When things start going wrong.
 - Knowing when to stop work

- Office management to avoid surprises
 - The professional side
 - Your staff
 - Returning phone calls
 - Calendaring systems
 - Knowing Board meeting dates and submission deadlines
 - Planning work with enough time for submissions
 - Keeping the client informed
 - The business side
 - Management of accounts receivable
 - When to stop work

2. Further research on applicable regulating environment: Office and Town research to be completed prior to fieldwork

Local zoning:

- The zoning law and map
- Town website; e-codes; the limits of e-codes
- What is the base map of the zoning map? How are districts defined? Are there questions about the applicable zoning district? e.g. District is 300 feet from road, but road has been relocated
- Examine the entire local code, not just zoning. Look for local wetlands laws, aquatic resource laws, steep slope laws, Historic District Laws. Read through table of contents of the code. What if there is no code?
- Is property in an overlay district? Steep slopes, visual resources, stream corridor, CEA. Is the datum of the overlay district the same as the zoning map?
- Visit town website or town hall for most recent changes in laws.
- Buy a large zoning map from the Town.
- The comprehensive plan. Other planning documents. Habitat studies.
- How old is the zoning? The code? The plan? Are revisions underway or contemplated? Check the Town website, read the paper, get the minutes of Town Board and Planning Board meetings for the last 6 months. Is video on the website? Attend several meetings, if possible.
- How does your client's proposed development relate to neighboring uses? Who owns neighboring property? Non-profits? Parks? Open Space? Anticipate potential opposition. Could project design limit opposition?
- Does the Town have a Conservation Advisory Council/Committee/Board? What are their activities and major issues? Check for their minutes, video.
- Who are the Planning Board's regular consultants? Engineer, Planner, Attorney, Biologist.

Local Subdivision Law:

- Can the Planning Board force a developer to cluster the lots?
- What are the frontage and access requirements?
- Are open development area/private road allowed? Will Town accept a public road?
- What are the private road specs?
- How is density calculated?
 - Are "constrained lands" deducted on a lot by lot basis, so that not more than X% of a lot (or of the required minimum lot area) can be constrained land?
 - Or are constrained lands deducted from the total site, and then the remaining land area divided by the permitted lot size?

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Regional permitting:

- Check County websites: Real Property Tax Services; Soil and Water; Environmental Management Council
- County jurisdiction: Does your county Planning Dept. review subdivisions? Will your project require referral under General Municipal Law 239-m? [Attachment 2] Will it require referral to adjoining towns under GML 239-nn? [Attachment 3]
- County Health Department for water/SSDS/sewer
- County Highway access
- County Charter provisions
- County planning efforts, e.g. "Greenway Compact"
- DEC/NYS "Climate Smart Communities" pledge
<http://www.dec.ny.gov/energy/50845.html>; <http://smartgrowthny.org/index.asp>
- Agricultural Districts:[Attachment 7]
- Adirondack Park
- Catskill Park--NYC
- Erie Canal

State Permits:

- Will you need a state permit? DOT curbcut? Any DEC permits? State Health Dept? If so, you need OPRHP to "consult" with the state agency under Parks, Recreation, & Historic Preservation Law section 14.09 regarding historic/archeological issues. Similarly, the State Agency will need to assure itself that endangered, threatened, and rare species have been addressed.
- Archeology and species can be a SEQRA issue even if no State permits required

SEQRA and Environmental Issues:

- The site can't be viewed in a vacuum. The Surveyor must understand the site in context of its surroundings, and environmental resources that cross it, surround it, or relate to it. Town of Warwick requires a submission of a site context map showing natural and developed features within 2000 feet of the site boundaries.
- DEC websites are invaluable [Attachment 1] especially Environmental Resource Mapper--<http://www.dec.ny.gov/animals/38801.html>; Natural Heritage Program information: <http://www.dec.ny.gov/public/29338.html>
- Wetland mapping: NWI, DEC
- Issues to look for: wetlands, water bodies, watershed drainage, stormwater, streams, habitat, significant ecological communities. These can have significant impact on your site development, even if the primary resource is off-site.
- DEC has circulated proposed revisions in the FULL EAF which would require substantially more information relating to habitat on most project. [Attachment 4]

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- Habitat goes beyond Endangered Species; issue is not whether a particular species is present, but whether the habitat supports or would support the species.
- SEQRA asks about impacts to natural or cultural resources; to vegetation or fauna, fish, wildlife, significant habitat, and threatened or endangered species.
- Case law has held that the DEC Natural Heritage Letter is not dispositive on the issue of habitat/endangered species impact. *Kittredge v. Planning Board of Town of Liberty*, 57 AD3d 1336 (3d Dept. 2008) [Attachment 6]
- Many Towns are going beyond SEQRA by specifically providing that protection of habitat is a Town goal in their comprehensive plan and/or zoning laws - We can anticipate more substantive regulations based on habitat protection.
- In some towns habitat impacts can empower a Planning Board to mandate a cluster subdivision, even if the developer wants a conventional subdivision. Some Towns require cluster subdivision in virtually all cases. e.g. Town of Clinton: *"All developments must be clustered except where the Planning Board waives the requirement."* Others have contiguous open space requirements that force lots to be quiet small. This can substantially reduce the value of the lots.
- Trends in Planning Board Role.
 - Past practice: The surveyor was sole designer of the subdivision. If it met the checklist of requirements, such as lot size , frontage, etc., it would be granted Cluster permitted only if both landowner and Planning Board found it advantageous.
 - Modern trend: Planning Board (and even CAC's) see themselves as co-designers of the development plan. Some Towns require the landowner to meet with the Board before an application is filed, to obtain early input. Some Town's give the Planning Board primary authority in important elements of project design:

In consultation with the applicant, the Planning Board shall identify and prioritize features to be conserved. On the basis of the priorities and considering the context of the subdivision to resources on adjoining properties and the applicants development objectives, conservation areas shall be delineated so as set aside at least 50% of the gross lot area as protected open space.

Pine Plains Zoning Law §100-31.J(2)(b)

The Applicant must work with the Planning Board to create a list of resources to be conserved.

Town of Warwick

3. Site inspection and Field work

- Why early site inspection important
 - Look for red flags - resources that may inhibit development. Need on site investigation to confirm or refute on-line mapping.
 - May need wetland delineator and biologist to go out with field crew to assess resources.
 - If client has existing survey; looking for changes; new excavation.
- How long can the boundary survey be postponed?
 - Boundary or topo first?
 - Habitat issues require early assessment and may cover several seasons.
- Extent of off-site work required
 - Old Rule: 1" (at mapping scale) off site on topo survey
 - Better practice: Minimum 100' off site (to pick up streams)
Minimum 400' along a roadway for sight distance
 - Habitat issues may influence
 - Is there a "farm operation" within 500 feet of the property, which farm operation is located in an Agricultural District, even if your property is *not* in an Agricultural District? Town Law 283-a

4. The Surveyor's role in developing a working schedule and a project team, in consultation with client.

- It is only after the in-house research and field work that you will be in a position to recommend to the client a plan, a tentative schedule, and a proposed project team for approvals.
- When will you need other professionals on the team? Engineer; Planner; Attorney; Wetlands; Habitat Biologist; Archeologist
- How do you coordinate with them as a professional and business matter? Who will take the lead in project development, calendaring with Town?
- How to develop a proposed project schedule
 - Limited number of Board meetings per year
 - Submission deadline often make it impossible to be on the agenda for more than half of them.
- Two ends of the spectrum on timing:
 - Design overall project strategy, and complete most of the work to support permitting for the whole project before first appearance before Board; or
 - Complete only enough to submit a sketch plan and bare bones EAF Part I, and design strategy in reaction to board and public comments.
 - Many permutations in between
 - Discuss advantages and disadvantages of each approach with client.
- Very important to know your SEQRA approach before developing a schedule. Resources are available for every Surveyor to understand the basic workings of SEQRA. See the following DEC websites:
 - <http://www.dec.ny.gov/regs/4490.html> (the regulations)
 - <http://www.dec.ny.gov/permits/6188.html> (the SEQRA Handbook)
 - <http://www.dec.ny.gov/permits/357.html> (informative booklet)
 - <http://www.dec.ny.gov/permits/36860.html> (DEC SEQRA publications)
- Working schedule should be based on reasonable time for consultants to develop necessary studies (factoring in delays) plus a reasonable time to process through the Boards, based on other recent similar projects.

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- Studies should be done at the appropriate time of year, anticipating issues. Habitat/species issues can cause major delay.
- It is helpful to have one or more conference calls or meetings with the full project team and client to discuss schedule and the necessary depth of supporting studies.
- As noted above, some Planning Boards and CAC's want to meet with you before your application so they can influence your project design.
- Often, taking the time to prepare the studies before you meet with the Board and taking the time to develop your clients optimum plan, will give you the knowledge necessary to refute the design suggestions of Planning Board or CAC members.
- Surveyor should take active role in project schedule development.

5. Preparing the submission to the Town

- The best way to be an asset to your project is to be prepared. Do not ever submit sloppy or incomplete documents just to "make the agenda."
- The two products that best reflect your professionalism: good maps and good written documents.
- First consider what documents you will need. It is helpful to prepare them in draft early on.
 - The description of the action. Know the difference between the "action" (the project) and an "approval" (one of the permits granted for a project).
 - What level of review will you receive at your first meeting? Does the Town have a planner, engineer, lawyer, wetland consultant that attend every meeting?
 - To start SEQRA you will need an application for at least one of the permits you will need from the Town, and perhaps more than one application. Consider which application to bring first. It may affect lead agency designation.
 - Will you need a Short or a Full EAF? The Board can request a Full EAF even for an unlisted action. Even if you are starting with a Short EAF, have a list of all other agencies and the permits they must issue. Consider the benefits of coordinated review
 - Will you need an Agricultural Data Statement? [Agriculture & Markets Law 305-a; Town Law 283-a; Village Law 7-739 [Attachment 7]
 - Town Law 283-a (2): *Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review, and approval by the town board, planning board, or zoning board of appeals pursuant to this article, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement.*
 - What preliminary studies are necessary to support your EAF to document that your proposal deserves a negative declaration. What are the "hot button" issues in your community? What resources appeared in your preliminary research?
 - What Maps and other illustrative materials will best explain your proposal? What are required for submission? How should you show the project setting?

- Even if you plan to do a sketch review before a formal application, your work in, drafting the application and EAF will prepare you for the discussion with the board. This is a time investment that can save lots.
- The pros and cons of the optional pre-application meeting
 - the alternative of meeting with staff
- Maps:
 - Maps to fulfill requirements of application and permitting
 - Maps are also a most persuasive "sales tool" for the project
 - Evaluate maps for clarity, readability, understandability
 - Top sheet as simple graphic
 - If project similar to neighboring development, show context
 - Consider using rendered maps for presentation.
 - slope analysis
 - area features
 - appearance of proposed project when built
- Rules for all written documents that leave your office:
 - Your documents make an important first impression
 - Neatness counts: avoid handwritten materials
 - Spell check.
 - Have someone else proof read
 - Avoid white-out
 - Use an original form, not a xerox of a xerox
 - It is helpful to examine documents that the Town has accepted in the recent past. How much detail does the Town want in the EAF? Does the Town want the applicant to prepare a draft Part 2 of the EAF?
- Anticipating issues in the preparation of your materials
 - Fill out the part 2 as a draft, even if the Town won't allow you to submit it. What issues of environmental concern will be raised? Are you ready to address them?
 - If you are seeking a Negative Declaration, don't use the term "mitigation" to describe your efforts to limit impacts. Instead, describe it as "measures that have been incorporated as integral aspects of the proposed action to assure that there will not be a significant adverse impact...."
 - Should you keep some extra lots in an application to have "something to give away?"
 - How much discussion should you have with the Town in advance?
 - How much should you be speaking to involved agencies?