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An Overview of the Project Development Process

by David Kay and **Djahane Salehabadi,** Cornell University

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Introduction

This document outlines the general economic development and siting process for generic project development in New York State. From financing to zoning to public relations, the following pages offer the reader an overview of the path a developer needs to follow to successfully complete a proposed project.

The authors hope this overview will provide a useful resource for all who wish to gain a basic understanding of the development process in New York communities. In order to clarify some of the least well documented aspects of project development, we present the process mostly from a developer's perspective. Given this filter, our goal is to highlight all major elements of the project development process. We are aware that the developer's perspective is by definition limited. We believe, however, that this perspective should be of interest to readers usually more attuned to the viewpoints of communities and neighborhoods, governments, investors, landowners, or others involved in or affected by development[1].

Of course, developers who are not themselves keenly aware of the nuances of other perspectives are likely to run into multiple difficulties. More generally, arriving at a project that will be welcomed (or at least accepted) by communities and that passes a financial profitability threshold for the developer is more likely if there is an understanding by each party of the other's needs, constraints, and overall situation. In reality, a high level of understanding is frequently lacking by one or more of the central private and or public sector actors. Thus, some degree of misinformation, strategic responses based on misunderstanding, and lack of full awareness of what is at stake should be anticipated as part of the development process. It is well beyond the ambition of this paper to address all areas in which such miscues are common, but we do strive to reduce the scope of miscommunication by providing a broad understanding of the processes and framework in which miscues are likely.

Our motivation for creating this guide arose from a recent research project looking into the proposed development of a new energy facility in Upstate New York[2], and some of our examples incidentally reflect this interest. More importantly, in trying to gain a comprehensive overview to place the particulars we were observing in context, we found no existing document that outlines the development process in New York State. While basic development processes are well described in textbooks, they are not placed in the context of New York institutions. Despite the substantial hands-on knowledge of individuals working in this field, it appears that no public agency can easily provide a general written overview of the processes a developer needs to navigate to bring a proposed project to fruition. In fact, we found that information about the development process remains fragmented between numerous agencies, each focusing on their specific segments of the process.

The guide makes at least some effort to keep the forest in view so as to not get lost in the trees; those interested in more detail should consider this piece as a starting place only. We would like to emphasize some related points. The task of mapping out "the development process" is challenging for a number of reasons. First, the process is complex. It is difficult to describe all the steps involved in even a single project without overwhelming the reader with details. Second, the development process necessarily differs from project to project and from community to community depending on the nature and resources of the developers, public agencies, and other players involved. Finally, economic development projects themselves vary greatly in concept, location, sector, scale, cost and economic significance. What goes into developing a new Main Street business is very different from what goes into siting a corn ethanol plant. Nonetheless, with these cautions in mind we hope that our document will still prove useful to those interested in economic development projects in New York State.

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[1]For an online overview of economic development processes and stretegies from a public sector perspective, see the American Planning Association's Planning and Economic Development Toolkit at http://www.planning.org/eda/toolkit/#11 (accessed 6/22/09).

[2]Djahane Salehabadi and Max J. Pfeffer, Articulating Local Politics and Market Forces for Economic Development: A Case Study of Ethanol Development in Upstate New York, Community and Rural Development Institute, Development Sociology Department, Cornell University, January 2009 . See http://devsoc.cals.cornell.edu/cals/devsoc/outreach/cardi/publications/upload/03-2009-Reports.pdf (accessed 6/22/09).

Overview of this document

We have divided the project development process into three basic conceptual phases[3]:

- **Feasibility/Assessment Phase**
- **Permitting/Financing Phase**
- **Implementation Phase**

A description of the major steps and considerations involved in each phase is given under each section. The paper concludes with a number of general observations about the development process in New York State.

While we have separated the process unto distinct and conceptually sequential phases, a developer will find that she or he takes at least some of the steps outlined in each phase concurrently or iteratively. For example, a developer typically returns to financing issues throughout the development process. Also, the timelines we indicate for each phase, while reasonable for many projects, can be highly variable in practice. This is illustrated in Figure 1 which juxtaposes the general phases just introduced with an example of sequencing and timing of selected particular tasks taken from a report on just one class of large and relatively unusual development projects (wind farms). Note that this example involves a project development timeline that can typically be expected to vary by a factor of three. Though many kinds of development are more straightforward, the normal variation in timing would be even greater if many classes of development were considered simultaneously.

Before continuing, it is important to draw attention initially to the role of the developer. Individual entrepreneurs who work only in a single community and multifaceted corporate entities with global reach may each act as developers. A standard definition of a developer is a, "Person or a firm that improves raw land with labor and capital, and arranges for utilities and essential services, in order to sell subdivided parcels of land or to build structures for rent and/or sale."[4] For our purposes, it is important to clarify that the definition employed henceforth includes (re)developers who transform previously developed sites, not only those developers who start with empty lots, "greenfields" and other forms of "raw land". Redevelopment, which can range from work with historic structures to reclamation of "brownfield" sites burdened with environmental contamination, is especially important in New York's older and more urbanized communities.

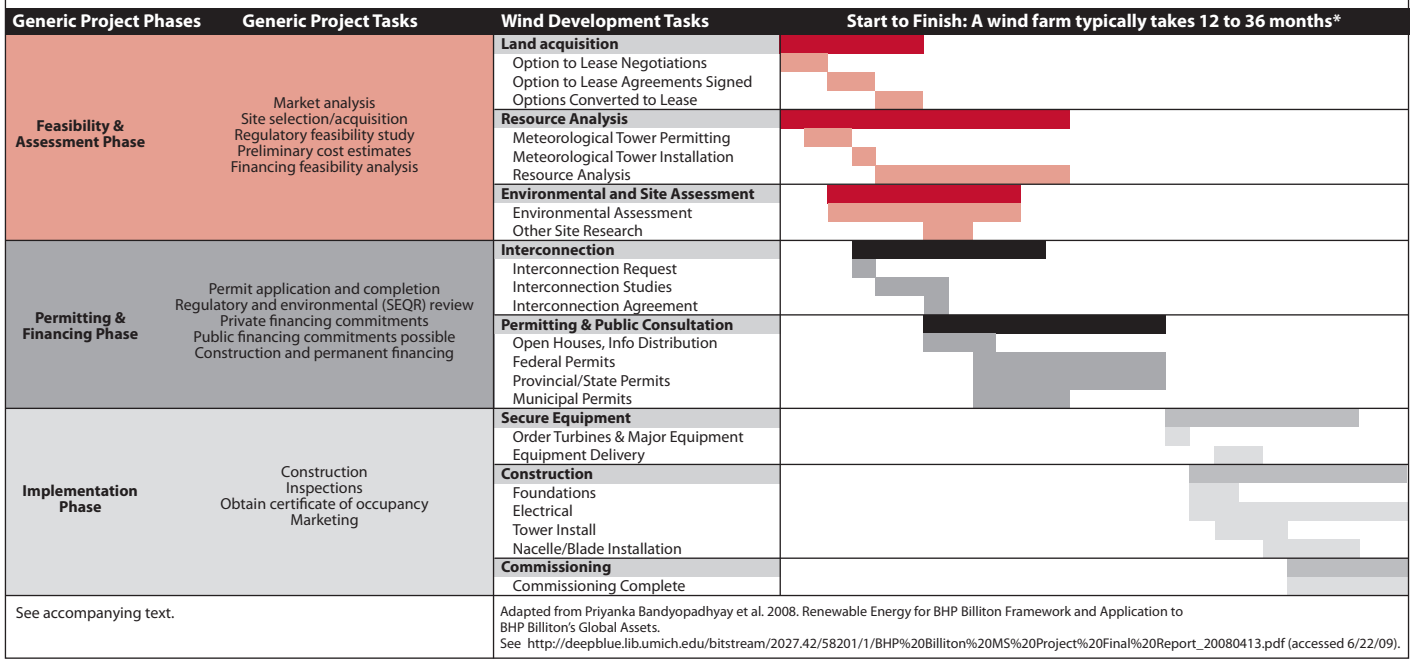
One factor the standard definition highlights is that the developer's role often ends at the point the property is sold. The three phases of development discussed in this document are consistent with this view of "the development process". However, in many cases the same entity responsible for development also moves into a leasing and property management role. Whether the developer is involved, and whether considered part of the "development process" or not, it is clear that a Management/Operations Phase will certainly follow the three development phases discussed in this overview document.

A related point is that the ultimate tenant and/or property owner can play different roles through the development process. The roles range from acting in a full capacity as developer themselves to one that includes no development functions at all, as when a business signs a lease with the property manager after development is complete. Anchor businesses that will purchase or lease real estate development products frequently do work closely with the developer throughout the development process. However, that developer's ultimate ability to consummate the transaction as expected will depend on the developer's ability to meet that business's conditions and specifications (for example, timely delivery of a permitted site). The role played by different companies may evolve over time, too. To focus on a well-known example in retailing, as Wal-Mart's Supercenters began to supplant their own nearby and previously built smaller stores, the company moved from routinely leasing buildings from specialized development companies to a preference for development involving Wal-Mart's corporate ownership of land and buildings.

[3] This threeway classification is a simplification of the four periods for land development (Initial Contact by Land Broker, Option Period, Development Period, Sales Period) and five for project development (Land Acquisition, Construction, Completion and Occupancy, Management, and Sale) suggested byWilliam B. Brueggeman and Jeffrey Fisher in Real Estate Finance & Investments (McGraw Hill, 2005). Other ways of delineating phases are useful to illustrate different aspects of development, but usually more particularized. For an example of phasing motivated by the project design process, with ways to sequence a large array of possible architectural and engineering tasks and services, see http://www.aibc.ca/ In a seven part schema, Predesign leads to Project Feasibility, Schematic Design to Conceptual Approval, Design Development to Development Permit, Construction Documents to Building Permit, Bidding or Negotiation to Award of Construction Contract, Construction Contract Administration to Substantial Performance Occupancy Permit, and Post Construction to Warranty and Maintenance. A revised five part version of the process is shown in detail at http://www.aibc.ca/member_resources/practice/pdf/AIBC_Schedule_of_Consultant-Client_Services_FINAL0207.pdf (accessed 6/22/09).

[4] See http://www.businessdictionary.com/definition/developer.html (accessed 6/22/09).

Figure 1: Major phases of generic project development contrasted to illustrative timeline of wind farm project development



* length of shaded bars indicate estimated relative proportion of time necessary to complete each specified task. For example, land acquisition is estimated to take about 20–25% of the total development time in our example of a wind farm development project.

Feasibility/Assessment Phase[5] (6-12 Months)

Any development, of course, begins with an idea that is conceived in view of a perceived or hoped for opportunity. Readiness must combine with perceived opportunity for the process to actually launch. Many developers with experience in certain development specializations will search routinely for specific opportunities or conditions - availability of a desirable site, complementary public infrastructure or zoning commitments, advantageous interest rates or financing programs, etc. – that entice them to begin to engage their resources and expertise.

Feasibility Studies

The development process begins in earnest with feasibility/assessment work. During this phase, a developer conducts a series of feasibility studies. The studies are undertaken to give the developer a sense as to whether the intended project is viable. Specifically, the developer conducts:

- a market analysis (market feasibility)
- a site selection and acquisition analysis

Also critical are the initial evaluations of:

- the regulatory context (regulatory feasibility
- preliminary cost estimates
- financing feasibility.

The studies vary in formality depending on the developer's needs/style, the extent of the unknowns, the importance of documenting results for investors and regulators, and the scale and nature of the project. They are sometimes integrated components of a single study but may also be conducted separately and/or sequentially.

Because the development process involves working on multiple tracks with interdependent timelines, the relationships between key development deadlines will also be mapped out in at least a rough overall project timeline. The need to track and coordinate preliminary activities is driven by factors such as site acquisition contingencies involving specified deadlines on option or purchase agreements, agency and regulatory review time frames, and public and private financing program application deadlines (for both interim and permanent financing).

In general, the more effort the developer puts into planning involving these feasibility studies, the more likely the project is to succeed. In fact, because the feasibility studies are so critical to the success of a project, many developers contract all or part of these studies out to specialized third party consulting firms. The feasibility study stage usually takes anywhere from a few months to

[5] As noted above, we mention broad community characteristics and other topics that frame business location decisions using a project development rather than a community and economic development perspective. In either case, the location related *general business environment* will be an important consideration during this phase, as will evaluations of *regional labor force characteristics and community quality of life amenities*. These are, however, factors influencing the desirability of the general area in which a business may choose to locate. Other factors dominate the choice of a specific site.

a year, but timing can vary greatly with circumstances. The developer normally assumes costs associated with this phase

Market Analysis

For any normal business without a contractually guaranteed or legally mandated buyer, a market analysis will be a key early step in the development process. As part of such a study, the developer assesses the stability and strength of the market for the product s/he intends to produce. For example, a real estate developer's market study would assess the potential market for the proposed mix of real estate products at various price points. If the developer and the ultimate business on the site are one and the same, the market analysis will focus on the market for the business's service or product line. Many lenders require professional market studies to be included in preliminary applications for financing for significant development projects. Where markets are particularly volatile, as in renewable energy markets, a sound and regularly updated market analysis is particularly crucial to the success of a project.

If the property developer is focused on developing property for a specific major buyer, tenant or class of tenants, some kind of market analysis of the location characteristics important to those tenants will also occur. However, the buyer or tenant is likely to conduct their own market study for their product line. The focus of these market analyses will be on the factors influencing the revenue and marketing prospects for the proposed good or service. Elements of a standard business plan will be included such as those that evaluate the sociodemographic characteristics of the targeted customer base, their sources of income, their known consumption habits in regards to this or similar products, their potential to be repeat customers, their geographic distribution, etc. Other factors to be considered include possible changes in the regulatory environment for the product; the availability and cost of relevant transportation, marketing and distribution systems needed to contact and deliver a product to customers; and product price stability based on global or regional market trends. The trends addressed would include competitive forces such as projected changes in competition or market participants.

In addition to evaluation of the real estate and product markets, some attention will generally also be given to input markets. Various considerations such as location-related quality, availability, and price volatility in labor, fuel and material input markets will be addressed, as will credit availability. A related element that has been increasingly emphasized in economic development is business clusters, or the number, quality, proximity, and collaborative/competitive relationships with both similar businesses and business support services. Analyses will likely include input demand estimation and financial risk management components.

The tax, regulatory, and general policy environment at the local, state, federal, and sometimes even international (e.g. regarding export/import trade barriers) levels is often important for a project's success. Evaluating the extent and nature of necessary permit approvals is an important preliminary step. Because New York's structure of government is more decentralized than in many other states, decision making authority is as well. The state's roughly 1,500 cities, towns and villages are the key decision makers about most land use development permits. Local permits usually are required to ensure conformance to building and life safety codes, local environmental laws, and land use regulations such as zoning.

New York's local goverments operate within a common land use and regulatory system. However, the actual laws and procedures for development can vary in important ways from municipality to municipality or even over time within the same municipality. Developers must also typically work with multiple local laws, boards, and agencies within a single municipality. In some contexts local reviews are routine and perfunctory, while in others they are very demanding. Some developers, and especially those who work in multiple communities, point to local reviews as one of a small number of project development elements that introduce uncertainty, both in process and regarding final approvals, at a level that can critically determine the project's fate. Beyond the local level, significant regulatory issues are likely to be raised and additional permits required depending on the nature and scale of the production activity and/or site location. The NYS Governor's Office of Regulatory Reform (GORR) provides guidance on New York's regulatory environment, classifying topics and permits under the categories of environmental (air, water, solid waste, etc.), health and land use (public water supply, wastewater treatment, agricultural district, historic preservation, etc.), transportation (highway curb-cuts, Thruway/Canal Corporation lands, etc.), and miscellaneous other (registered corporations, Empire Zones, labor and unemployment, etc.).[6]

[6] See http://www.gorr.state.ny.us/Agencyinfo/Business%20permit%20assistance.htm (accessed 6/22/09).

Depending again on the nature of the proposed project, the possibility of obtaining multiple types of technical and financial assistance from economic development agencies may also be considered at this stage. Early contact with these agencies can be very important. In addition to being a source of advice and funding, economic development agencies (both public and private not-for-profit) may choose to play a critical, and sometimes leading, role in shepherding a project through multiple permitting processes.

Market studies do not necessarily lead to strict thumbs up/thumbs down decisions; they may instead inform various modifications to a proposed project in order to better fit projected market conditions. At least a rough calculation of the likely stream of revenues and costs over time under various contingencies will be involved. More complex projects can manage market based risk in part by incorporating flexibility into the product or input portfolio (e.g. the mix of different kinds of commercial and residential units in a real estate project; the acceptable fuel stock mix in an electricity generation project; the ability to contract out or include on staff non-technical service support in a high tech start-up, etc.).

Factors to be considered in a Market Analysis:

Evaluation of real estate and product markets

- Sociodemographic characteristics of targeted customer base
- Sources of income of customer base
- Known consumption habits of customer base
- Potential for repeat customers
- Geographic distribution of customer base
- Possible changes in tax/regulatory environment for the product
- Availability and cost of relevant transportation
- Marketing/distribution systems needed
- Product price stability

Evaluation of input markets

- Location related quality and availability
- Price volatility in labor, fuel and material input markets
- Credit availability, cost and quality
- Financial risk management
- Business clusters
- Scale and timing of input demand

Site Selection and Acquisition Analysis

If the initial market study indicates that a project is likely to be profitable, the developer or his/her agents must find a suitable site and obtain control over it. In *site selection and acquisition analysis*, the developer considers many factors that influence the choice of a specific site for development. A central factor is the price and availability of appropriate buildings and/or land parcels. A major task of the developer is to assemble, often out of multiple parcels in different ownership, and gain control over a contiguous acreage that is large enough to support the desired development. For many kinds of development, and for infill and urban redevelopment especially, assembling enough land to meet parking needs and/or requirements can be particularly challenging. The presence of additional land is also a consideration for projects that might want to expand over time. Developers work primarily through the private sector but, as noted above, may also involve public sector economic development professionals. These agencies may be particularly useful for out-of-area developers seeking appropriate sites. Sometimes, the state, county or municipality's choice to actively work with a developer in a public/private partnership depends on their interest in fostering development or redevelopment in particular locations, given that job creation goals are typically paramount. This would be true for waterfront revitalization or redevelopment of blighted areas, for example.

A different kind of example would be business incubators and technology parks. Most often intended to foster smaller and start-up companies, these are typically situated in carefully selected locations with good transportation linkages, adequate room for expansion, and so on. A large contemporary technology park, for example, emphasizes "convenient dedicated interstate highway access … abundant water, reliable electrical and gas systems".[7] Equally important, however, is that they are structured to provide various financial and operational advantages to the companies and more general economic development benefits (e.g. jobs, tax base) to the community.[8]

Appropriateness of a specific site is determined by many factors, the importance of which varies yet again with the nature of the development (e.g. the site characteristics optimal for retail are very different from those for manufacturing). These include but are not limited to:

[7] See http://www.lutherforest.org/about.php accessed 5/15/09.

[8] See http://www.lutherforest.org/resources_financialincentives.php (accessed 5/15/09) and related web pages.

- regulatory (zoning) status
- proximity to and compatibility with neighboring parcels and land uses
- environmental and safety conditions (i.e. presence of endangered species, contaminated soils, regulated wetlands, hazardous materials, distance to bedrock and water table, etc.)
- proximity to consumers of the primary product and byproducts
- the price, availability and reliability of utility services such as natural gas, water, waste disposal and electricity
- specifics on the location, related availability, and cost of critical inputs such as construction materials
- local availability of appropriately skilled workforce and training programs
- access to business support services
- the quality of transportation and communication infrastructure
- the existence of, and conditions attached to, any local, state and federal incentives to develop in that particular location.

In addition, proximity to a research institution or college is often considered a bonus for many kinds of modern and especially technology-dependent businesses: institutions of higher education can be a source of technical support, but also typically attract and train a skilled labor force, offer stability and diversity to the local economy, and attract cultural, technological, and community amenities that are desirable to workers and employers alike.

Since no site will optimize all the criteria, the developer will in effect conduct a cost-benefit analysis, whether formal or informal, to evaluate whether any given site's less desirable factors are worth mitigating or whether it is better to keep searching for other sites.

Once a preferred site has been selected, site control is obtained either through option or sales contract. An option contract is an agreement between buyer and seller that gives the prospective developer the right, but not the obligation, to buy the land, typically at a specific price at a specified future date, if certain conditions are met. A deposit is generally negotiated; it might or might not be refundable if the developer elects not to exercise the option.

Developers tend to prefer option agreements. Options generally run for several months to a couple of years. An option contract requires a lower level of initial commitment when multiple project uncertainties are still high. This is because the option may be exercised with wide latitude depending on the results of other processes, ongoing analysis, other negotiations, and permit applications. Relevant factors are likely to include, for example:

- a full title search with consideration of any easements or separation of ownership rights
- boundary and topographic surveys
- preliminary environmental analysis
- planning and zoning approval
- physical and geotechnical feasibility analyses
- securing of financing
- residual value calculations
- various other site specific data

Sales or purchase contracts involve a higher level of developer commitment, including deposits, up front. In a written agreement, the developer agrees to buy the property by a date certain for a specific price. Only if contingencies explicitly identified in the contract cannot be met within specified timelines can the developer be released from the obligation to purchase. Typical contingencies involve specific financing conditions, physical inspection of any buildings or environmental assessment of the property, the granting of public permits, and assurance of the seller's clear ability to convey title to the property.

Permitting/Financing Phase

(including environmental review) (0.5-2 years)

Once site control is achieved, the developer is ready to begin presenting the project to permitting agencies. Preliminary discussions with potential outside investors and funders may sometimes commence or intensify as well, though formal negotiations are more likely to occur after permits have been obtained. These topics are discussed in turn. Over time during this phase, the project's land and building particulars will evolve through preliminary or conceptual plans and designs towards final, approvable design and site plan drawings.

The public relations skills of the developer and/or the developer's agents are likely to become central during this phase. Essentially all substantial development projects will undergo some sort of public review including formal public hearings during the permitting process. The ability of a developer to work responsively with a review board and proactively with project neighbors, or the interested public more generally, has frequently meant the difference between a project that succeeds and one that, whatever the final legal outcome, gets buried under hostile publicity, costly delays, and multiple legal challenges.

Moreover, because New York's decentralized structure of government empowers local decision makers throughout an exceptionally diverse state, it is understandable that out of area developers often bring to the table misguided assumptions about how their projects are likely to be received by local officials. It may be even harder for the developer to predict how those decision makers will respond to the various pressures they face from concerned citizens and other stakeholders in their communities.

For these reasons, it is in the developer's interest to undertake a thorough initial review of the regulatory process. The specifics of the review will vary with the nature and scale of the project, but it will in any event involve a series of informal contacts with relevant authorities to find out exactly what is required. Meetings with politicians, planning/building departments, and the like can help the developer to assess levels of likely support or opposition for the project. Though uncertainty will hardly be eliminated, early contacts also help the developer understand what codes and regulations are applicable, which permits, reviews and fees will be necessary, how they are likely to be sequenced, and the extent to which the different permitting authorities are likely to coordinate amongst themselves.

Regulatory review

The developer generally initiates a local review by applying for a municipal building permit. The building commissioner or equivalent municipal officer determines what permits and initial supporting documentation will be required (e.g. site plan, floor plan, plans for drainage, electrical, mechanicals, plumbing, elevations, etc.). After the basic documentation is submitted, appropriate municipal departments – planning, building, water, public works, engineering, fire, health, etc. -- are asked to review the plans and specifications, ideally in a coordinated and timely fashion. Most of these reviews are quick and straightforward, but some may be more involved. After application fees are paid, and after the plans are determined to meet local, state and federal building codes, and after they receive approval from all permitting authorities and departments, the building department will issue a building permit for construction.

At the local level, permitting bodies with significant discretion over granting development permits may include the elected governing body, the planning board, the zoning board of appeals and/or various other local offices or review boards. In New York, local governments regulate development consistent with city, town, village or general municipal law. However, even within a municipal category, places vary in the type of local land use ordinances they have adopted, the details of the authorities invoked in those ordinances, and the body that is assigned to administer the reviews and permits. It is incumbent upon the developer, with guidance from the municipality or economic development agency, to make sure he or she understands the jurisdictions and permits that apply locally to their project.

Should a project impact multiple municipalities, involve or touch upon any municipal boundary, county or state road, or be in proximity to any feature in the landscape that is controlled by other jurisdictions, then the project is also subject to review by the county planning board or its surrogates. It is the responsibility of the local board, but a concern for the developer, to make sure the county is notified. While the county does not issue any permits in this capacity, it can make formal or informal comments which the local permitting authority must take under consideration. If the county makes a formal recommendation in its comments, a local board can only override this recommendation through a super majority vote on the local board (i.e. a majority plus one).

Various state, regional, and federal agencies ranging from the U.S. Army Corps of Engineers to the NYS Department of Transportation may also be involved in a central role in project reviews depending on the scale of the project and the nature of the resources being impacted. In some areas of the state, regional agencies such as the Adirondack Park Agency or the interstate Susquehanna and Delaware River Basin Commissions have jurisdiction over aspects of select kinds of development projects. Each regulatory agency will require specific kinds of project documentation to be submitted.

Regulatory reviews of routine projects can be simple and straightforward. On the other hand, the regulatory complexities that can be involved in large projects are exemplified in one recently proposed large scale wind energy development proposal. The developer anticipated the need to acquire site plan, zoning, special use, building, and highway work plan permits (in some cases from more than one municipality) from local governments; highway permits as well as reviews and recommendations regarding some of the local permits from county government (under the provisions mentioned earlier that require county review of projects impacting nonlocal resources); permits from seven state agencies with jurisdiction over freshwater wetlands, stormwater discharge, water quality, coastal zone management, over-

weight vehicles, development in an agricultural district, electric utilities, renewable energy generation, and historic and cultural resources; and permits from four federal agencies responsible for aviation, federally regulated wetlands, waterways and coastal areas, protected species, and worker safety.[9]

In order to most effectively address the requirements of the local regulatory agencies in particular, the developer benefits when he or she is able to gain a sketch plan review prior to formal submission of a project. In this case, the developer produces a generalized site plan, rendering, or pre-application sketch of the proposed project. This plan outlines the project and proposed general layout of the project site. The developer presents the preliminary project plan to permit-granting agencies. In presenting a preliminary or sketch plan, the developer accomplishes two things. First, the permitting agencies are informally introduced to the project and their jurisdictions over the project clarified. Second, the developer expects to get a general if nonbinding sense of how authorities are likely to respond to the official proposal once it is submitted.

Should the developer leave the informal meetings with the sense that the proposal has a chance of being supported, he or she has company staff or consultants turn to more detailed and site specific engineering drawings and site plans, as well as to a full review of all local, state and federal regulations that apply to the project. If not already commenced, the developer may also at this stage start to apply to sources of local, state and federal funding for the project. The precise nature of the next steps will depend on the type of permits needed, for example subdivision approval, zoning change or variance, site plan approval, etc., at the local level. Again, developers often contract out this work to specialized planning and engineering consulting firms. If the second round of preparatory work indicates that all is well, the developer formally submits the project for the required permits. A closer look at the permitting process follows.

Zoning and Related Land Use Regulations

Several types of land use regulations may be used to shape development in New York municipalities. All of these regulations are supposed to be consistent with an up-to-date municipal comprehensive plan, though the extent to which this is true varies in practice. However, if a recently revised or adopted plan exists, it should provide the best single written overview of the municipality's intentions regarding the location, scale, and type of development it welcomes and accepts. The regulations are the essential tool the municipality has at its disposal to try to implement those intentions. Of course, neither land use regulations nor a comprehensive plan are permanently written in stone. Though these frameworks guiding development are taken rather seriously in most municipalities, in some instances variances for specific projects are granted, or even land use laws changed, rather liberally. Where this is not the case, a developer might still choose to attempt a more challenging effort to lead legislators and the community itself towards a new vision of growth and change. The developer's ultimate goal would again be revisions to the local land use planning framework and laws that would more easily accommodate some version of the proposed development.

Local Land Use Controls – Major Tools Used in NYS

- **Comprehensive plan:** A document officially adopted by a municipality that articulates goals for its protection, enhancement, growth and development. Zoning is required to be in accordance with the comprehensive plan.
- **Zoning:** governs the use of land and the extent to which the development may fill out the buildable envelope, or the developable space on and above the ground.
- **Subdivision laws:** control the way existing land parcels can be legally divided or aggregated into developable or saleable parcels.
- **Site plan review:** provide municipalities with some say over the character of proposed development on a single site.

Most common among specific local land use regulations are *zoning, subdivision, and site plan laws*. *Zoning* traditionally governs the use of land and the extent to which the development may fill out the buildable envelope, or the developable space on and above the ground. Zoning is discussed in more detail later.

Subdivision law controls the way existing land parcels can be legally divided or aggregated into developable or saleable parcels. The act of subdivision (or consolidation, its inverse) usually anticipates development but is

[9] See http://www.stlawrencewind.com/pdf/tablepermits2.pdf (accessed 6/22/09).

not necessarily invoked as part of a specific development proposal. Subdivision has important implications for the buildable envelope under zoning. For example, since zoning, in order to protect neighboring parcels, often requires that buildings be set back a certain distance from parcel boundaries, and since subdividing a parcel creates new parcel boundaries, subdivision creates new set-back areas that buildings cannot encroach upon.

Laws governing site planning provide municipalities with locally specified controls over the character of proposed development on a single site or parcel. Both subdivision and site plan regulations typically regulate the type and location of water, sewer, electrical, sewage, drainage, transportation, landscaping, building and other site features. Subdivision review often occurs before development plans are fully conceptualized. Site plan regulations usually require review at a level of detail that is appropriate when a specific development project including fully designed buildings is proposed.[10] Making it through each of these review processes typically requires access to at least engineering and landscape design, and often architectural, legal, and other kinds of expertise.

These regulatory reviews involve, in practical terms, a form of information exchange and negotiation rather than a simple check-off of invariant project elements that must be included for approval. As such, they usually lead to changes in the developer's initial proposal in order to respond to the public's interest as manifested through the requirements of the reviewing authority. Developers will need to anticipate the time and costs associated with both the review process and any required changes. Of course, the specifics will depend on the details of any required modifications in the proposed site layouts, number and location of units, project amenities, landscaping and screening, building elevations, and the like.

The reviews are fundamentally regulatory in character and are likely to be perceived negatively as a hurdle by the developer. However, they can also provide a developer with access to technical assistance and the advice of both professional and citizen reviewers. Project reviews not infrequently lead to at least some changes that are perceived as improvements even by the developer.

Traditional zoning's regulation of land use, allowing single family residential but not commercial development, for example, makes it the most powerful of the local land use laws. As already noted, the developer should ascertain early on that the site has appropriate zoning for the proposed project. A prospective developer will commonly encounter three different scenarios in regards to existing zoning. In the first scenario, zoning exists and permits the development uses and scale of development proposed. The project can then move forward without further consideration of zoning issues, though other kinds of local review may well still be necessary.

In the second scenario, zoning exists but is violated by the proposed development project. In this case, the developer who does not wish to modify the project to conform to zoning still has a choice. On the one hand, the developer, or the landowner if the developer does not own the land, might request that the municipality change zoning for the property. To ask the municipality to change zoning is to ask the elected body (e.g. the town board) to change its zoning law. This amounts to a request for a decision through the political process and is not tied directly to the relatively clear legal parameters that frame a permit application.[11] The request to change zoning presumes that the fundamental logic of the existing zoning needs revisiting in relation to the area in question. The case is strongest if it can be argued that the existing zoning is inconsistent with an up-to-date local comprehensive plan.

Alternatively, if upon application for a permit the building commissioner or similar authority determines that the proposal does not conform to existing zoning, the developer may petition the Zoning Board of Appeals to grant a variance for a parcel-specific exception to the zoning law. This appeal can be successful if the legally specified criteria for a variance are met. Variances may be granted in relation to either the area or use requirements of the local zoning law. Where a use variance is granted the Zoning Board agrees to allow a type of use of the property not otherwise authorized in the zone (e.g. industrial uses in an exclusive commercial zone). The requirements for a use variance are demanding, at least in theory if not always in practice. The applicant must demonstrate that current zoning prevents the owner from realizing a reasonable return, creates a hardship that is unique to the proposed development parcel, and has not been self-created. The Zoning Board must determine further that granting a variance will not alter the essential character of the neighborhood. Similar but less stringent criteria must be met for the Zoning Board to grant an area variance. Where granted, area variances typically

[10] See http://www.pace.edu/lawschool/files/landuse/LandUsePrimer.pdf (accessed 6/22/09).

[11] Any zoning change would, however, be subject to the state's laws governing environmental review (SEQR, discussed below) as well as the state's requirement that the zoning be in accordance with a municipal comprehensive plan.

allow a larger portion of the property or the building envelope to be filled out or developed.

Requests for rezoning or variance appeals are often time consuming, costly and involve considerable uncertainty. Most developers prefer to propose projects that do not conflict with existing zoning. However, many projects cannot go forward without a zoning change or variance. Moreover, too many municipalities find, to their and the developer's chagrin, that their comprehensive plans and zoning regulations are not current or well-enough designed to respond to unanticipated or somewhat unusual project proposals.

A third scenario is not uncommon in New York State, namely where a developer comes across or even seeks out a rural area that does not have zoning. Though zoning exists in all New York cities, it has been adopted in only about 70% of the state's towns and 90% of its villages. (In some places with no zoning, less powerful forms of land use controls like site plan or subdivision review have nevertheless been adopted.) On the one hand, the absence of zoning might work in the developer's favor because, in general, there are fewer legal impediments to obtaining project approval. In addition, zoning is most often absent in municipalities where government controls on private land tend to be viewed with suspicion. On the other hand and perhaps surprisingly, developers often tend to prefer areas that are already zoned. The presence of zoning, especially when supported by an up-to-date comprehensive plan, can signal that the community has already gone through the process of determining the kind of development it would like to see at the proposed location. Moreover, the developer is less likely to have to worry about incompatible future development in the vicinity. Whether or not zoning exists, an unanticipated proposal can create an unpredictable response as an unprepared community grapples with something it hadn't previously imagined. Building moratoria, panicked planning, poor judgments, political upheaval, lawsuits and delay are all the more likely.

It is important to emphasize again that each individual town in New York adopts its own zoning regulations. This has two important implications. First, contrary to some other U.S. states, zoning categories do not have standardized meanings. A zoning category such as 'light industrial' might mean one thing in one town and another thing in another town. That is, the category of 'light industrial' might allow for an energy project like an ethanol plant in one area. However, in another town, a similarly named zoning category might not permit the exact same project. Second, since zoning is determined by each city, town, or village, it is likely that large development projects such as a solar power plant or wind farm, which often deal with large and multiple parcels of land, will fall in different jurisdictions with different zoning ordinances. This will almost certainly increase the complications involved in project approval.

In brief, because each municipality in New York State determines its own zoning, the developer must obtain a copy of the local zoning codes. Each developer is also well advised to make sure that she/he understands the language of each town's zoning ordinance, including local zoning laws as well as the meaning of local zoning categories. This can best be done by taking the time to meet with local officials in each town that is affected by the proposed project or by hiring or partnering with local firms familiar with local law. Of course, elected and appointed local officials often turn over. Moreover, though there are numerous sources of technical assistance for communities to turn to, professional planning staff are not available in many small towns, and even if experienced staff or officials are on hand, only a few will have routine experience applying their own laws to, or otherwise dealing with, large complex proposals.

Land use laws including zoning can be thought of as providing positive guidance to, as well as restrictions on, development. As already noted, it is the comprehensive plan, in place in more than two-thirds of the state's municipalities, which is most likely to provide guidance as to the general type and location of development that is actively welcomed in a municipality. However, a small but increasing number of towns have included language in their zoning ordinances that attempts to actively attract particular development sectors, for example the renewable energy sector. While zoning language that is inviting and accommodating of renewable development or other kinds of projects is not a guarantee that the community will automatically accept a proposed project, regional and nonlocal developers looking to minimize the controversies that often accompany development are likely to be alert for such local zoning provisions.

Environmental Review - Introduction

Development permit reviews involve environmental review. The act of applying for essentially any kind of discretionary public approval (an "action") a developer is likely to pursue beyond a simple building permit will

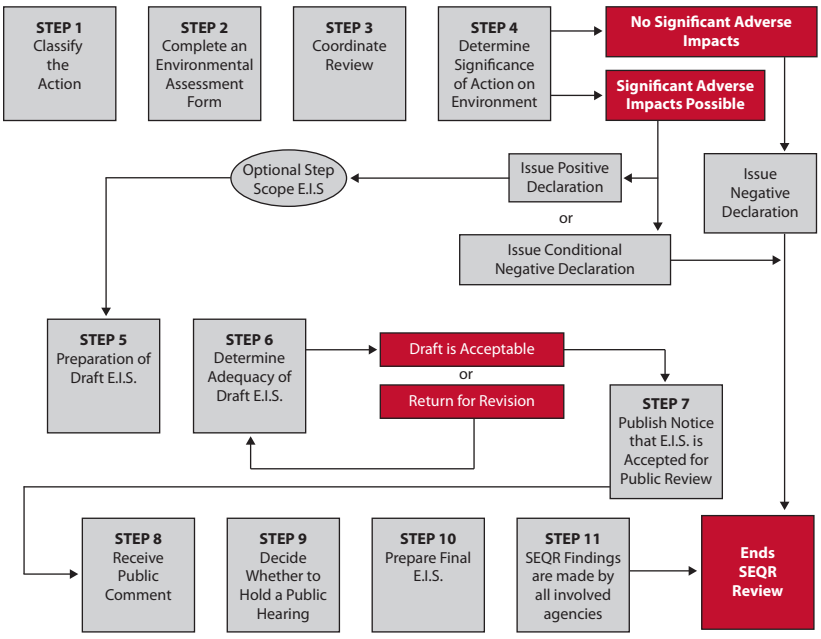
almost certainly trigger an environmental review under the State's Environmental Quality Review (SEQR) Act.[12] The fundamental purpose of the environmental review is to ensure that public actions are not taken without giving due consideration to, or taking a "hard look" at, the environmental consequences --and ways to mitigate any negative consequences-- of the action.

Environmental review is always triggered by one or more permit applications submitted under a specific authority (subdivision or site plan review authority, for example). It is never invoked entirely on its own. Environmental review is therefore to some degree simultaneous with, and may substantively overlap with, reviews required for a permit (or other required approvals) with specific approval criteria. Thus, while environmental impacts and mitigations must be taken into account under SEQR, it will be the criteria for approval specified by the underlying permitting authority that will frame the ultimate decision about the project permit. In practice, various aspects of environmental and other reviews are to some extent coordinated in an effort to minimize duplicative effort. Subsequently, the SEQR decision and the other necessary approvals are normally based in part on the same information and procedures.

Though there are statutory timelines set in motion during various phases of these processes, project review timelines can vary from one to many months. The environmental review for large, complex projects is often lengthy – months and even years sometimes pass before final resolution. A significant investment of resources in environmental review of the project is therefore likely on the part of both the developer and the community, especially if the project is large and/or controversial. For the relatively small number of projects that require a full-fledged environmental impact statement, a significant investment of time and expense is guaranteed.

There are numerous variants of the complex SEQR review process depending on the nature of the proposed project. However, the basic steps are well documented and standardized, and are summarized next. Because SEQR provisions can be simultaneously arcane, universally applicable, and critically important for successful developers to navigate well, we deal with them at some length. Figure 2 displays the basic sequence of steps that is followed in a SEQR review.

Figure 2: Basic Steps of SEQR Review



Source: For a version of this figure with more detail on each step, see http://www.dec.ny.gov/permits/32521.html (accessed 6/22/09).

Environmental Review – Determining if an Environmental Impact Statement is Required?

All applicants must first determine how the State Environmental Quality Review Act (SEQR), or in a small number of places, a locally adopted version of SEQR, applies to the project. SEQR has broad scope; it applies to most "decisions to fund, approve or directly undertake projects or physical activities that may affect the environment by changing the use, appearance or condition of

[12] See http://www.dec.ny.gov/public/357.html (accessed 6/22/09). The term discretionary approval refers to any approval that is given at the discretion of a governmental or regulatory authority based on the facts presented. In particular, an agency must, after review of the proposal, exercise judgment about how well the proposal meets a set of standards that the agency is authorized by law to apply to the project. In contrast, nondiscretionary or ministerial approvals are issued after certain predetermined and relatively specific and straightforward criteria have been met. For instance, a request for a governing board to change a zoning law, or for the zoning board to issue a variance, or for a planning board to issue a site plan permit all involve discretionary approval. The issuance of a building permit is nondiscretionary because it must be issued if the applicant complies with the building code.

any natural resource or structure", and further includes the "adoption of local laws, ordinances, and resolutions that may affect the environment". Though many permits may trigger SEQR review in complex projects, a developer typically initiates an applicability determination by submitting a building permit application to the appropriate building commissioner, planning board or other agency. At this point, it is determined if SEQR-triggering permits are also required.

SEQR Classifications

1. **Unlisted:** neither Type I nor Type II. Do not meet Type I thresholds and are not as likely to require an Environmental Impact Statement.
2. **Type I:** have a relatively high probability of having significant environmental impacts and may require a full Environmental Impact Statement.
3. **Type II:** these actions are exempt from any further SEQR review.

If SEQR review is required, the permitting agency will classify the proposal into one of three SEQR categories, where the classification determines the nature of the review, if any, to follow. Projects may be determined to be unlisted, Type I or Type II. All specified Type II actions are, by definition, exempt from any further SEQR review. Building permits, for example, are exempt because they don't require any real exercise of discretion on the part of the local authority – building permits must be granted if basic compliance with the building code is documented.[13] For all projects other than Type II, information about the project must be presented that enables the reviewing agency to determine whether or not there are likely to be significant impacts on the environment.

At the other end of the spectrum from exempted Type II actions are the Type I actions. These surpass legally specified state and/or local criteria or minimum thresholds (e.g. acreage affected) and are deemed to have a relatively high probability of having significant environmental impacts. They are deemed likely --but not certainly-- to require a full Environmental Impact Statement (EIS). All actions classified as neither Type I nor Type II are "unlisted".

Large projects often involve multiple permits from multiple agencies. Each must come to its own conclusions about environmental impacts based on the environmental review, provide related rationales for the decision(s) over which it has jurisdiction, and certify that SEQR requirements have been met. However, the environmental review of all Type I actions requiring multi-agency permits must be coordinated by a designated lead agency. The lead agency assumes the role of coordinating the SEQR process. Any agency that issues a permit required for the development to proceed (an "involved" agency) may take on the role of lead agency. Involved agencies have a limited time to claim lead agency status, with decision authority assigned to the Commissioner of the DEC if the lead is contested.

For both unlisted and Type I actions, the lead agency must determine whether or not the action is likely to have a significant impact on the environment, and if significant impacts are identified, to require that reasonable and practicable mitigations be included in the project. For unlisted actions, this determination can be made based on information provided by the developer on a Short Environmental Assessment Form (EAF). The information required on the state's "short form"[14] is easy for most developers to provide in consultation with the permitting agency. Aside from very basic project information, the most probing question asks whether the action could "result in any adverse effects" on various environmental and community features. Of course, while the developer provides information, it is the agency that decides if "potentially large or significant adverse impacts ... MAY occur." Filling out a Long Environmental Assessment Form (LEAF) is the normal next step if the agency determines that adverse impacts may, indeed, occur.

Type I actions require a higher level of review than unlisted actions, namely at least a Full, or Long, Environmental Assessment Form (FEAF or LEAF). When a FEAF is required, the project sponsor or applicant submits part I of the FEAF form (as well as all other applications required on the form) to the involved agency. Part I requires data and information about the project and its site at a somewhat higher level of detail, including a narrative, than asked for on the short form, but once again most if not all of the questions can be answered responsibly without placing significant new information burdens on the developer. Part II of the FEAF requires yes/no style judgments to be made about what, if any, identified adverse impacts would be "small to moderate"

[13] See http://www.dec.ny.gov/regs/4490.html#18105 (accessed 6/22/09) for a list of Type II actions.

[14] See http://www.dec.ny.gov/docs/permits_ej_operations_pdf/shorteaf.pdf (accessed 6/22/09).

or "potentially large". Part II also asks whether adverse impacts can be mitigated by changes to the project. Part III asks for more discussion of potentially large impacts, their mitigability, and their importance. The lead agency is responsible for completion of part II and, if needed, part III of the FEAF. Where it is clear from the beginning that this kind of evaluation will lead to a full-blown Environmental Impact Statement (EIS), the developer may submit a draft EIS in lieu of a FEAF.

A "negative declaration" of environmental significance based on either the short form or the LEAF indicates that the agency has determined the action will have no significant adverse impact on the environment. A "positive declaration" is the lead agency's determination that the proposed action may result in significant adverse impacts. This determination is the most significant procedural decision the lead agency makes, as a positive declaration calls for a full Environmental Impact Statement (EIS). An EIS requires significant and costly additional environmental analysis to be completed. In addition to its other ramifications, the decision allows the lead agency, within prescribed limits, to charge a fee to the applicant/developer in order to recover its actual costs of either preparing or reviewing the draft and/or final DEIS/FEIS. It should be emphasized again that only a small fraction of the state's environmental reviews (somewhat over 100 a year was common a few years ago) require an EIS.

Environmental Review – When an Environmental Impact Statement is Required

In commencing preparation of a DEIS, either the lead agency or the applicant may elect to utilize the scoping option. Scoping establishes up front and publicly the topics to be investigated in the EIS. Scoping has some very important intended functions touching on both content and process. Though the enumerated objectives are rarely fully achieved, scoping can enable the DEIS to substantively:

- focus on potentially significant adverse environmental impacts while eliminating non-significant and non-relevant issues
- identify the extent and quality of information needed
- identify the range of reasonable alternatives to be discussed
- provide an initial identification of mitigation measures

Of at least equal importance, scoping affords the public with an opportunity to participate in the identification of impacts before a heavy investment in impact analysis is undertaken. While scoping is not mandatory, the Department of Environmental Conservation recommends that all applicants take advantage of the scoping option. Regardless of the character of the public, involved agency, or developer input, the lead agency is responsible for establishing the scope.

During the next phase of review, the applicant, a consultant, or in rare cases the lead agency, prepares the DEIS. Typically, consultants hired by the developer prepare the DEIS and consultants hired by the municipality review it and help the municipality prepare the FEIS. Whoever prepares it, the DEIS requires significant effort by experts who specialize in environmental analysis. Once the DEIS has been submitted, the lead agency normally has 45 days to determine if the DEIS has addressed the scope well enough to be acceptable for public review. Once the lead agency files a formal Notice of Completion of DEIS, all concerned normally have 30 days to send their comments to the lead agency.

During the public review period, involved agencies and all members of the public are invited to provide substantive comments on the DEIS. The lead agency may, but is not required to, hold a public hearing.[15] In practice, nearly all projects that are required to produce an EIS do, and probably should, include a public hearing. In addition, the local or state law that triggered the SEQR review often requires its own public hearing. In this case, a SEQR hearing would efficiently be coordinated with the required public hearing. Notice of the hearing must appear in key local newspapers. Hearing comments are part of the formal legal record. As part of the FEIS, the lead agency is required to respond in writing to comments it deems to be substantive and, as relevant, within the DEIS scope.

After the public and involved agency input is responded to, the lead agency is responsible for the completion and accuracy of a Final EIS (FEIS). The FEIS incorporates the draft EIS, including any necessary revisions and supplements; copies or a summary of the substantive

[15] In determining whether or not to hold a hearing under SEQR, the lead agency is directed to consider: "the degree of interest in the action shown by the public or involved agencies; whether substantive or significant adverse environmental impacts have been identified; the adequacy of the mitigation measures and alternatives proposed; and the extent to which a public hearing can aid the agency decision-making processes by providing a forum for, or an efficient mechanism for the collection of, public comment."

comments received and their sources; and the lead agency's response to the comments. If the evidence presented in the DEIS convinces the lead agency that the project in fact will have no significant environmental impacts, the lead agency may issue a negative declaration of environmental significance instead of an FEIS.

The FEIS provides the substantive evidence on which are based the (SEQR-related) decisions of the lead and involved agencies. The conclusions based on this evidence are prepared individually by the lead and each involved agency as a statement of findings. A positive findings statement states that the project or action is approvable. Moreover, it "demonstrates that the action chosen is the one that avoids or minimizes adverse environmental impacts presented in the EIS and weighs and balances them with the social, economic and other essential considerations." A negative findings statement is bad news for the developer. It denies approval and documents the reasons for this judgment.

Financing

The ability to manage a dynamic relationship between finances and the evolution of other elements of the project is at the heart of a developer's skill sets. Though a developer's information is never complete, he or she probably comes closest of all participants in the process to having a comprehensive overview of important aspects of the project and how they relate to financial viability. A full account of developers' various approaches to this balancing act is beyond the scope of this paper. However, before presenting some elementary thoughts we emphasize its importance through the words of one developer summarizing his experiences: "The failure of granting a height variance [for example] impacts the developer's bottom line and it also impacts the potential community benefit of the project… It is the complexities not only of what makes a project work for its investors but an understanding of 'risk' and 'reward' for the community that is often lacking when community leaders, committee heads, and developers butt heads in making a project a 'go'. This is really the core of what makes a successful developer and development project".

Financing as well as permitting issues come to the fore after the preliminary feasibility/assessment analyses signal a "go" on moving ahead with the project. During this initial phase, regulatory reviews and other new circumstances or information often lead to substantive changes in the project. Even while evolving towards a final plan during this phase, a project development budget must be completed, inclusive of normal contingencies, to account for all costs required to complete the project. In a move parallel to specifying a budget, pinning down financing becomes increasingly critical for progress even though the developer has presumably been concerned with financing and the financial viability of the proposed project from day one. Putting together sufficient financing in a coherent package is a major, essential, and complex task for the developer. Structuring successful deals requires a sophisticated understanding of debt and equity options as well as all the related tax implications.

As suggested earlier, the developer must normally cover out of his or her own resources the feasibility/assessment work as well as most if not all of the permitting costs. Sources for these initial funds are varied, including the developer's own savings and investments, loans based on other assets, marketing to investors willing to invest in a relatively high risk opportunity through a limited liability partnership, and so forth. Only when the developer can demonstrate that the project is likely to move ahead unencumbered can he or she begin to tie down more standard debt or equity financing as well as public sources of funding. More specifically, accessing external funding will be difficult for projects that are not able to demonstrate site control, land use/zoning approvals, favorable environmental reviews and/or remediation ability (assisted by public programs, as appropriate), an independent and trustworthy study of market feasibility, a credible financial/cash flow analysis, well developed architectural/site plan/engineering documents, and a business plan that illustrates developer capacity and strategies to keep investors informed. Getting to this stage often takes 1-2 years and can easily cost hundreds of thousands of dollars or more for major projects.

As these important preliminaries are drawing to a close, at least two additional financing needs will take priority in the final phases of development, namely for the construction or implementation phase and the long term capital needs of a project.

By the time the Implementation Phase is reached, several classes of uncertainty about the basic viability of the project will have been substantially reduced or eliminated. At this point institutional investors like banks are willing to provide construction or "mini-perm" financing, possibly involving private investor equity/preferred equity financing, for projects by developers who can produce the reports and records that demonstrate their financial and credit strengths and otherwise pass the lenders' risk tolerance thresholds. In periods of easy money, banks

have been willing to finance this phase entirely on the basis of appraisals and anticipated property appreciation. As financial markets tighten, developers are more likely to have to raise some fraction of the capital themselves, for example by liquidating another "bricks and mortar" element of their holdings. Specific bank loan parameters will of course vary depending on technical factors such as the project's loan-to-value ratio and its projected ability to cover payments out of project cash flow ("debt service coverage ratio"), and more generally on the developer's equity position in the project, overall track record, and credit profile. These loans are by nature relatively short term and are generally paid off in several years.

The permanent capital funding scenario may involve a long term loan, for example a mortgage on a commercial real estate project. Most loans are conventional (i.e. without any insurance or loan guarantee elements or other public subsidy) and are amortized over 10-30 years. Various forms of equity financing are also common where the lender takes a partial ownership position with a claim on some portion of the project cash flow or return on investment. Financing for smaller or riskier projects -- renewable energy projects are an example – may be particularly difficult and take months to obtain. Similar criteria to those discussed above will determine the specific terms of a developer's loan and equity deals.

Public sources of financing are another option for projects that can meet various public benefit criteria. They can be obtained at the local, state and federal level and may be comprised of grants or other kinds of development incentives. Public subsidies that directly affect the bottom line generally come in the form of grants, loans and tax exemptions. In theory at least, all are offered in exchange for some public benefit that has been established by law and/or the administering public authority. The promise of job creation is probably the most common public benefit requested, but conditions on public assistance to economic development projects vary widely across agencies and programs as well as across historical and community contexts. Success in accessing public economic development programs can be influenced by timing. If a developer waits too long to assess the local development climate and make early contact with local economic development professionals, the likelihood increases that the public will perceive that incentives are not required.

Most developers expect that public sources of financing will come with various strings attached. This financing may receive high levels of sometimes politicized public scrutiny, can come with significant administrative and reporting burdens, and is often on uncertain timelines. These sources can also involve significant added out-of-pocket costs as well as benefits. Examples of such costs include a required commitment to pay prevailing wage rates, or transaction fees levied by the economic development organization administering the program – typically levied per application and/or as a proportion of the benefit or even total project cost. Public sources are therefore often not a first choice for financing, and careful developers will in any event weigh the benefits against the costs. Nevertheless, especially as part of an overall financing package, public sources may provide projects with otherwise unavailable or targeted grants (e.g. for environmental cleanup). They may also offer access to below market rate loans that enhance profitability generally or move an otherwise marginal project across a threshold of viability. Developers interested in these programs will often need assistance finding and navigating through these complex options, and most work closely with the public and private sector economic development professionals who specialize in keeping track of the diverse and changing array of public sector programs available. Some examples of types of financial assistance available through the public sector follow.

An Industrial Development Agency (IDA) generally administers various kinds of economic development incentives including tax exempt financing; at least one IDA exists in each of the state's counties. In a number of counties, a hybrid economic development organization will manage the IDA, the NYS Empire Zone program, revolving loan funds and will serve as an active advocate to other local, regional, State and federal programs.

Payments in Lieu of Taxes (PILOT) are one common kind of tax relief incentive that can be offered locally. PILOT agreements exempt a developer from having to pay some or all real property taxes over a set time period. PILOT payments are typically raised in increments over time and by a target date to the unsubsidized or full rate.[16] A sales tax exemption is another potential incentive available at the local level. Under such an exemption, a developer does not need to pay sales tax on building materials or equipment for an approved new facility. A developer may also negotiate a mortgage tax recording exemption with the local IDA.

At the state level, Empire State Development is New York's frontline economic development agency and it

[16] For IDA authorities, see Article 18-A of the NYC General Municipal Law.

administers a number of state economic development programs. ESD offers various kinds of marketing, export, permit compliance, environmental, energy savings, business location and other kinds of technical assistance, as well as financial assistance including grants to business. It also manages the Empire Zone Program which is administered locally by IDAs and local government.[17] Access to the Empire Zone program is through a local Zone Administrator who, in turn, is usually embedded in a community's lead economic development agency. The Empire Zone Program seeks to attract development to economically vulnerable communities in the State through bundled incentives. Though their effectiveness in achieving public goals has received critical scrutiny on occasion, incentives have so far survived in the form of various packages of tax credits, tax exemptions, and tax abatements. ESD may bring to the table further benefits for businesses including loan discounts, grants, and opportunities for energy savings including technical services and capital financing.[18] Other state agencies offer other targeted or specialized kinds of assistance. For example, tax credits can be earned for remediation and redevelopment of contaminated sites through the State's Brownfield Cleanup Program, while road and rail improvement grants associated with development can be obtained from the New York State Department of Transportation.[19]

One of the overall largest and longest-lived sources of public funding for local community and economic development initiatives has been the federal Community Development Block Grant (CDBG) program.[20] One CDBG program provides annual grants on a formula basis to the class of larger "entitled" cities and counties. The goal of the program is to help develop viable urban communities. For non-entitlement communities, the CDBG offers a federally funded grants program that is currently administered in New York by the NYS Office of Community Renewal. It provides financial assistance to eligible cities, towns, and villages with populations smaller than 50,000 and counties with an area population under 200,000. In addition to the grants programs, the Section 108 loan guarantee program enables borrowers to obtain long-term, fixed-rate financing for approved community and economic development projects. Economic development projects must first be included by local or county governments or economic development agencies, after a public hearing, in applications that are made to the appropriate CDBG authority. CDBG programs are required to "principally benefit persons of low and moderate income".

At the federal level, the government is in fact broadly involved in economic development. One recent review counted 180 federal "economic development" programs in a large variety of agencies related to one or more of the following areas:[21]

- planning and developing economic development strategies;
- constructing or renovating nonresidential buildings;
- establishing business incubators;
- constructing industrial parks;
- constructing and repairing roads and streets;
- constructing water and sewer systems;
- workforce training;
- technical assistance and technology transfer;
- business development.

While some agencies like the Small Business Administration directly assist businesses or with loans, management, technical and training issues, and so forth, more federal programs are intended to support business friendly infrastructure or otherwise create favorable conditions for economic development. The Economic Development Administration, for example, has the mandate to stimulate economic development but is not authorized to provide grants directly to individuals or to for-profit entities seeking to start or expand a private business. Despite the manifold programs, it is not always easy to find the right match for a specific situation. A good local economic development professional can help identify the programs that fit a particular project and, more importantly, steer the developer away from those that do not.

Implementation Phase

Construction & Marketing (1 - 2 years)

Approaches to construction can be organized in numerous ways. Developers may or may not have construction divisions within their firms. If so, the firm's in-house

[17] See www.empire.state.ny.us/default.asp (accessed 6/22/09).

[18] See www.nylovesbiz.com/Tax_and_Financial_Incentives/Empire_Zones/default.asp (accessed 6/22/09).

[19] See www.empire.state.ny.us/Brownfield_Redevelopment/Default.asp and www.nysdot.gov/portal/page/portal/main/business-center/grants-and-funding (accessed 6/22/09).

[20] See http://www.hud.gov/offices/cpd/communitydevelopment/programs/ and http://www.nysocr.org/default.asp (accessed 6/22/09).

[21] See http://www.kansascityfed.org/RegionalAffairs/Regionalstudies/FederalReview_RegDev_605.pdf (accessed 6/22/09).

specialists and project managers (engineers, architects, draftsmen, supervisors, etc.) will work with outside contractors to bring the development to completion. Otherwise, the developer will hire a general contractor or construction manager to oversee construction of the project according to plans and specifications completed by the consulting architectural and engineering firms. Construction cannot begin until fees are paid and a building permit is issued and on display at the worksite for the duration of the project. Construction is also obligated to follow the procedures specified in a previously approved Stormwater Pollution Prevention Plan (SWPPP), a plan designed to control runoff and pollutants from a site during and after construction. Depending on the nature of the deal and the future business occupant, the building may be built to meet the standards and specifications of particular known or desired owners or tenants, or to more generic standards that enhance marketing opportunities to as yet unidentified businesses. The developer's primary goal during this phase is to see the project completed on time and within budget.

After a series of inspections by the relevant authority (usually the municipal building department), the completed building will be issued a Certificate of Occupancy that certifies compliance with state and local codes. The inspections can cover numerous building elements such as foundations, framing, plumbing, HVAC (heating, ventilation, air-conditioning) systems, exits, sprinklering and fire alarms, electrical systems, fire pump pressure, conformance to approved architectural drawings, energy code compliance, and more. Temporary Certificates of Occupancy commonly allow occupation of the building prior to final completion and inspection of the building, at which time a final "C of O" will be issued. Lenders may require a copy of the Certificate before finalizing a loan. The duration of this stage will depend completely on the nature and complexity of the project, but can last for several years on large construction projects.

Appropriate marketing of the property is perhaps an obvious final ingredient of successful development. The strategy for marketing should have been begun to be developed from the point of the initial market research discussed under feasibility analysis. However, project development takes time and market conditions may well change over the years it can take to take a project from conception to market. Moreover, the developer needs more than a general idea of market conditions and sales potential to actually move a property.

Of course, some kind of developments have more and others less need for aggressive marketing activities depending on the nature of both the real estate development and of the products or services that will be produced by the future owners and/or tenants of the property. The developer of property to be occupied by a food manufacturing facility, an alternatively fueled power producer, and a shopping mall will have vastly different marketing considerations. Nevertheless, certain general considerations should be given some attention by all. Not least of these is whether the developer has the in-house capacity to conduct the marketing campaign or whether specialized marketing firms need to be engaged.

- **Updated Market Research** – The developer (not to mention the prospective property buyer/tenant regarding their products) should have up-to-date reviews of their customer trends, available media outlets, and the availability, pricing, and marketing strategies of competitive products.
- **Development of a Strategic Marketing Plan** – Specifics of a plan must be appropriate to the development. This plan would account for any phasing, target sales goals for each phase, target audiences, particular marketing approaches and media to be used, and a marketing budget.
- **Prioritized Marketing Techniques** – Options are many. Preferences depend on the nature and scope of the development, the available budget, the prime audiences for the message, and the assets and creativity of the marketing staff or firm. Common techniques used to promote new developments include direct mail, signs and billboards, outreach to relevant media markets (radio, TV and newspaper channels). The use of the internet/web is also increasingly central to many kinds of marketing, with strategies to generate leads involving approaches ranging from the use of email lists (whether rented or developed internally over time) to strategic refinement of website key words (search engine optimization) or pay-per-click marketing,[22] or on to the creative use of newer tools like blogs and podcasts.
- **Budgeting and Ongoing Fine Tuning** – The planned budget may need to be altered depending on the success of different strategies and their relative costs. In order to adapt effectively to results, some thought needs to be given to monitoring and evaluating the number and quality of responses by strategy.

[22] When a search is performed, the order of search engine listings depends on the rank of the bid for that keyword. Higher ranking generally brings more traffic.

Conclusions

Economic development is a complicated process with no guaranteed outcome. Uncertainty is the rule. Market forces, legal processes, financial contexts, political factors both overt and hidden, and personalities all come into play in an always dynamic ebb and flow of events, opportunities to be seized, and hurdles to be overcome. We have tried to focus in this guide on the regularities and commonalities of the development process. However, it should be clear that each development project unwinds along its own trajectory. In this context, it might be said in paraphrase of former House Speaker Tip O'Neill's famous statement about politics that all development is local. This idea resonates especially strongly in New York because this State delegates a great deal political authority on development decisions down to the level of government that is closest to the people – cities, towns, and villages.

As presented above, the phasing of the various components of development projects - design, finance, permitting, construction, marketing – has some built-in flexibility; the duration and even order of some phases can be elastic. However, many contingencies exist and for a project to succeed, all project threads must ultimately weave together in a coherent pattern across a timeline. Within that timeline the project will fail if, at critical junctures, different project elements are poorly synchronized or if gaps open that are logistically, financially, or even temperamentally unbridgeable for the developer. Developers tend, by nature, to be optimists. But delay is much more likely to be an ally of project opponents than of the developer, and almost everyone involved understands this. Timing is, in sum, a crucial element of development. These comments hold for projects both large and small.

Nearly everyone also understands that developments, and especially large development projects, are important. The benefits and risks involved in large economic development projects can be substantial for developers and investors but also for the communities that host them. In practice, these projects rarely happen quietly, and progress and setbacks are frequently charted on the front pages of local papers. Some community-based skepticism is common. The developer by definition acts as an entrepreneur and an agent of change in a community. Though economic development is avidly sought in many parts of New York State, not all kinds of development bring change welcome to all communities. In any event, it is a rare community anywhere that has residents universally in favor of any specific change.

Developers that are most successful engage art and vision as well as method and science. To successfully navigate the three phases of development outlined above, any developer will have to draw on a multiplicity of skills and resources. Land that is developed is often technically labeled as "improved" land. A developer who executes a project that is widely perceived as beneficial to the community in which it is located, and is at the same time profitable to his or her company, can look with satisfaction at a tangible result of his or her efforts, and one that is an " improvement" in much more than the narrow sense of that word.

Glossary of Selected Terms[23]

Amortize: To pay off a debt in increments over time, eg. by installment payments.

Anchor business: Major tenant and customer destination in a shopping center or district.

Brownfield: Previously developed and contaminated land that has the potential to be cleaned up and developed for a new use. See Greenfield

Building elevations: Drawings that show the front, back, and sides of a building, and are used to depict the materials, colors, windows, fixtures, etc. that will be visible.

Business incubator: Program designed to provide an eclectic mix of business support services to businesses and enterpreneurs, with a focus on start-up rather than mature companies.

Certificate of Occupancy: Document issued by local government to certify a structure's full compliance with state and local codes and suitability for occupancy.

Comprehensive plan: A generalized policy statement of the governing body of a local government that guides the future growth and development of the municipality and serves as the foundation with which land use regulations must be consistent.

Developer: Person, firm or organization orchestrating the preparation and or conversion of land and/or buildings from an existing condition to a new one for sale or rent, typically through the acquisition of property and the design, permitting, and construction or reconstruction of buildings on the site.

Environmental Assessment Form (EAF): As part of SEQR review, sort and long EAFs are filled out to help the reviewing authority initially determine whether or not the project is likely to have a significant impact on the environment.

[23] See also various online dictionaires includingbut not limited to http://www.businessdictionary.com/ and http://www.allbusiness.com/3470944-1.html and http://www.mahadeonirman.com/glossary.asp (accessed 6/22/09).

Environmental Impact Statement (EIS): A draft (DEIS) or final (FEIS) document that analyzes the adverse environmental impacts, and possible mitigations thereof, associated with a proposed development. An EIS is required when an agency determines as part of its environmental review under SEQR that the project may result in a significant adverse environmental impact.

Equity: Ownership interest in a corporation in the form of common or preferred stock.

Greenfield: Land that has not been previously developed or built upon. See brownfield, raw land.

HVAC systems: Heating, ventilation, and air-conditioning systems.

Improved land: Common term for land that has had some economic value added to it through development.

Industrial Develompent Agency (IDA): A type of agency that promotes economic development and has the power to grant various kinds of economic development subsidies.

Interim financing: Short term loan, generally up to several years for construction in real estate development.

Involved agency: Under SEQR, any agency that issues a permit required for the development to proceed.

Lead agency: Under SEQR, the reviewing authority that assumes the role of coordinating the SEQR process. Any agency that issues a permit required for the development to proceed may, if unchallenged by another permitting agency, take on the role of lead agency.

Market analysis: A key early step in the development process in which the developer assesses the stability and strength of the market for the real estate or other products s/he intends to develop.

Option contract: An agreement between buyer and seller that gives the prospective developer the right, but not the obligation, to buy the land, typically at a specific price at a specified future date, if certain conditions are met.

Payment in Lieu of Taxes (PILOT) agreement: PILOT agreements for developers typically exempt the development from having to pay some or all real property taxes on a schedule over a set time period. .

Permanent financing: Financing obtained after construction is complete, usually to repay construction loans and serve as long term loan to developer.

Planning board: Locally created and appointed body generally responsible for advising the governing body on land use planning issues and, where delegated this authority, administering various land use laws.

Prevailing wage rate: Arate of pay determined by the government for a given region, class of labor, and type of project, generally intended to prevent organized labor from being underbid in competing for government contracts.

Project development process: The complete process of development from inception to completion that involves a Feasibility/Assessment Phase, a Permitting/Financing Phase, and an Implementation Phase.

Raw land: Undeveloped land without infrastructure or improvements; similar to greenfield.

Site plan review law: Controls specified aspects of the character, design, and arrangement of proposed development on a single site or parcel.

Site selection and acquisition analysis: A step in the development process in which the developer considers many factors that influence the choice of a specific site for development, especially the price and availability of appropriate buildings and/or land parcels.

Sketch plan review: The preliminary, informal review of a generalized site plan, rendering, or sketch of a proposed project by a permitting authority, prior to formal submission of a project application.

State Environmental Quality Review (SEQR): A New York State environmental protection law which requires that government agencies investigate any environmental impact an action may have before its approval.

Stormwater Pollution Prevention Plan (SWPPP): Plan designed to control runoff and pollutants from a site during and after construction in compliance with the NYS Department of Environmental Conservation's Stormwater Permit for construction activities.

Subdivision law: Controls the way existing land parcels can be legally divided or aggregated into developable or saleable parcels.

Technology park: A large landscaped development with amenities designed to encourage the co-location of a number of high-tech businesses.

Type I Action: Projects that are legally exempted from SEQR review.

Type II Action: Projects that meet thresholds under SEQR review indicating they are more likely to have a significant impact on the environment and for which an environmental impact statement (EIS) is more likely, but not necessarily, required.

Unlisted Action: Projects under SEQR review neither meet the Type II Action thresholds nor are exempted as Type I actions from environmental review.

Variance: An exemption from the use or area stipulations of a zoning ordinance or regulation to permit a structure or use that would not otherwise be allowed. Variances may be granted by a Zoning Board of Appeals that must justify its decision in relation to several specific legal criteria.

Zoning: Form of land use regulation, typically adopted by local governments, that regulate the uses of land (ie. the type of development permitted) and the physical scale of development including location on the lot.

Zoning Board of Appeals: Locally appointed board responsible for hearing initial appeal of administrative decisions (e.g. by a building commissioner) about how zoning laws apply to a property. The board exercises authority over interpretations of existing zoning law as well as the granting of variances to the land use and area restrictions the law.