## Law & Accounting

# Considerations for developing a master-planned community

Developing a master-planned community is a complex undertaking and involves many different layers and obstacles. A successful master-planned community requires a unique understanding of all facets of real estate, land use and development. While there are many areas to consider, here are four key areas that should be considered early on when planning a successful master-planned community in Colorado:

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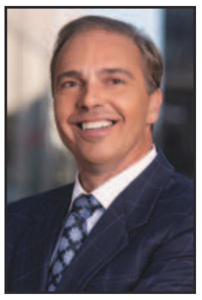
■ **Mineral rights.** The minerals beneath the surface of the land are often "severed" and owned separately from the surface, creating a "split estate," which can impede development. The owner of the mineral estate generally has statutory and implied easements to use as much of the surface as reasonably necessary for the development of its mineral interest, while the owner of the surface estate has the right to develop the surface in a manner consistent with the mineral owner's easements. A mineral owner's surface use can be modified by agreement, but because mineral owners have little incentive to relinquish their surface rights, obtaining a surface use agreement from a mineral owner can be a slow and expensive process. Although a title commitment will indicate whether the minerals have been severed, it will not trace minerals ownership after the initial severance, and therefore, a developer should obtain a minerals title report to fully understand the ownership of the minerals. Further, a developer should understand state and local development restrictions and setbacks as they relate to mineral ownership.



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■ **Water rights.** Similar to mineral rights, water may be severed from the land and used based upon the prior appropriation system. Water rights are not tracked, nor insured by a title commitment, which requires a developer to complete their own due diligence to determine water availability. Obtaining a sufficient and economical water supply for development typically costs more and takes much longer than most developers anticipate. If a new development is in an existing municipality or special district with adequate water supply, then a developer may be able to purchase water and sewer taps. If not, a developer may be required to purchase water rights on the open market to dedicate to the municipality or possibly pay a cash-in-lieu fee. Installing both a potable system and nonpotable system and requiring xeric landscaping may reduce the developer's water costs.

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■ **Entitlements.** Developers should determine the current zoning of the property, review the applicable code and review other related entitlement documents, such as development agreements or vested rights agreements. "Straight" zoning is often insufficient for a mixed-use community where the developer envisions the integration of a variety of housing types and commercial uses. In that case, a planned unit development or the equivalent may be a better tool because it allows a community to approve customized zoning. The time frame to update entitlements can vary significantly depending on the local governmental authorities, but it is not unusual for the design and entitlement process to take several years for a new, large master-planned community. Developers should consult with local planning staff to create estimated time frames. Further, it is critical for a developer to obtain statutory vested property rights given the long buildout time frames of master-planned communities. Vested property rights refer to a landowner's legally protected right to develop according to the rules that exist at the time the entitlements were initially approved.

■ **Public-private funding.** Master-planned community development requires the design, construction and maintenance of public improvements, often to a greater extent than in other types of development. Some examples of these public improvements include roadways, utilities, parks, and water and wastewater facilities. These projects would generally not be financially viable if a developer were required to fund these activities by itself. There are multiple public financing tools available to spread these costs out and make such developments "pencil." A metropolitan district may be formed under statute and with local government approval to develop and/or operate public infrastructure improvements. Local governments may impose various requirements on metropolitan districts, including limitations on mill levy rates. For master-planned communities with commercial uses, a developer may also implement a public improvement fee, which is a private fee based on sales transactions that can be used for funding infrastructure improvements. Metro districts and PIFs are not the only public finance tools available for master-planned communities, but they are two of the most frequently used.

Developing a master-planned community is a multifaceted process that demands careful planning, legal insight and financial strategy. Understanding and addressing key issues such as mineral and water rights, entitlements and infrastructure funding early in the process can help developers avoid costly delays and ensure long-term project success. With the right team and a clear road map, even the most complex developments can become thriving, sustainable communities. ▲

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