

# Law & Accounting

## Before the build: Legal strategies for entitlement success

Entitlements are the invisible foundation of every successful project, but, in Colorado, the entitlement process is anything but routine. Securing entitlements is often the most complex and politically charged phase of development, and missteps can cost months or even years. With home rule municipalities wielding broad authority, water rights layered into land-use decisions and environmental considerations shaping development, every project faces a unique set of hurdles. Add to those challenges the state's rapid growth and evolving housing policies, and the margin for error shrinks dramatically.

Engaging legal counsel early is essential to navigate these issues. A seasoned Colorado land-use attorney can anticipate jurisdictional quirks, navigate local politics and structure applications to avoid costly delays.

**■ What are entitlements and why do they matter?** Entitlements are the legal approvals that allow a property to be developed for a specific use. They include zoning changes, subdivisions, conditional use permits and site plan approvals. In short, entitlements transform a piece of land from "what it is" to "what it can become."

Consider a developer who purchased land for a mixed-use proj-



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ect. Based on a quick review of the land-use code, the rezoning process seemed simple. However, after the purchase, the developer discovered that its chosen zone district was disfavored by staff, the town's draft comprehensive plan designated the property heavy industrial, the rezoning process would take twice as long as estimated and newly adopted impact fees threatened to make the project infeasible. A highly organized and well-funded opposition group also emerged. These roadblocks stalled the project for 18 months, costing millions. When counsel was finally engaged, they restructured the application, mitigated the opposition and secured approval, but at a cost to the schedule and budget. Had lawyers been involved from day one, they could have flagged these issues early and the developer could have avoided considerable delay and expense.

Without proper entitlements, financing stalls, investors lose confidence and construction may never happen. The entitlement process determines a project's size, density, design and often its profitability. It's also where local politics, community interests and regulatory frameworks collide. Navigating this terrain requires more than ambition; it requires strategy, which often hinges on legal expertise. Entitlements are a negotiation between law, politics and community interests. This is where an experienced land use lawyer becomes indispensable.

**■ Turning complexity into certainty.** Entitling a project is a legal undertaking and a political exercise. Local governments control land use, and their decisions are influenced by public opinion, environmental concerns and competing interests. A skilled lawyer acts as the strategist, advocate and risk manager, aligning legal compliance with political realities.

**• Political navigation:** Lawyers understand the local power dynamics who influences decisions, what issues matter and how to build coalitions. They craft messaging that resonates with stakeholders and mitigates opposition.

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**• Legal precision:** Entitlements are a patchwork of statutes, ordinances and precedent. Misinterpreting a requirement can lead to costly delays or litigation. Lawyers ensure compliance and anticipate legal challenges before they arise.

**• Risk management:** Every entitlement carries risk, whether it's a lawsuit from neighbors, a denial or a missed deadline. Lawyers identify these risks early and develop strategies to minimize them.

Successful strategies are critical to prevent deal-killing delays.

**■ Five legal strategies to avoid entitlement pitfalls.** Engaging a lawyer early can help a developer avoid challenges that delay or derail a project. Specifically, a lawyer can add value by implementing the following strategies:

**1. Due diligence.** Before land is purchased, counsel should review zoning and development restrictions. Surprises discovered later can derail a project. Lawyers can flag issues that aren't immediately apparent in the land use code and propose creative solutions.

**2. Preapplication outreach.** Lawyers can facilitate engagement with city staff, elected officials and community leaders before submission to create support and uncover potential objections.

**3. Management of obligations.** Lawyers can track the process

to ensure that applications meet code requirements and deadlines are met, which can avoid major delays. Lawyers can also track other dates, such as the date a new impact fee will become effective, which can help developers decide when to file applications.

**4. Negotiated conditions.** Many approvals include conditions. Lawyers can negotiate terms that protect flexibility, avoid costly obligations and protect entitlements once they have been granted.

**5. Defensible record.** If a project faces appeal or litigation, the administrative record is the shield. Lawyers ensure every finding, notice and hearing is documented to withstand scrutiny.

In short, lawyers are more than just legal advisors. They protect the timeline, the budget and the vision.

**■ Engage counsel early.** Entitlements are where projects succeed or fail. The cost of delay dwarfs the cost of legal strategy. Counsel should be engaged before land is purchased or an application is filed and before opposition mobilizes. A proactive legal approach is an investment in certainty. ▲

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