

Communities Can Benefit From a Plan to Manage Municipal Real Estate



In many communities, the municipality is the largest single owner of land and holder of other real estate interests. While municipalities carefully plan for the capital needs of buildings and land, the same care is not always taken to track the legal aspects of a community's real estate holdings. Stewardship of municipal real estate is typically decentralized among various departments and boards. Knowledge of each real estate interest's origin and history may be buried somewhere in municipal archives or the memories of long-time municipal employees. Often, recorded instruments, land use permits, and related restrictions and regulations are not readily accessible in a central database or filing system.

The details of these legal documents may be an afterthought when a municipality decides to build on, expand, dispose of or otherwise modify the use of municipal land. All too often, issues such as use restrictions or the need for legislative approval under Article 97 are not identified until a municipality is well along the process. With the increasing focus on municipal succession planning, the priority list for such planning should include a centralized database that catalogs all of the real estate interests owned or held by the municipality and the legal constraints that affect its use or disposition.

Best practices for municipal real estate management include:

- Compiling a centralized real estate inventory
- Preparing a comprehensive real estate checklist for future transactions
- Consulting with real estate counsel at the front end of the process (rather than after issues or litigation arise)

Building an Inventory

The first step in identifying municipally owned parcels is a search of the assessor's records. Depending on the date of acquisition, the assessor's records will often show the recording information for the applicable deed or taking instrument. If not, a search of the registry of deeds will locate vesting documents.

Real estate interests, however, often go beyond parcels described in a deed or taking and require digging deeper at the registry of deeds and in municipal records. These additional interests may

include easements and restrictions benefiting or burdening municipal land and the layouts and takings for public ways. In the most historic communities in Massachusetts, determining whether rights of way are held by easement or in fee is more elusive than a trip to the department of public works or the registry of deeds; this information is relevant when a public way is abandoned to determine if the underlying fee remains in the municipality or reverts to the adjoining landowners. On occasion, it may be necessary to consult the proprietor's records or other colonial-era documents.

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A basic inventory of instruments creating fee interests and easements is the first step, but those documents alone may not fully disclose the possible limitations on the use or disposition of municipal real estate. The listing for each parcel should also include its zoning classification, historic district or inventory status, existing local, state and federal permits, statutes and regulations affecting the land (such as Article 97 of the Massachusetts Constitution and the Article 97 Land Disposition Policy set forth by the Executive Office of Environmental Affairs), and any restrictions tied to public financing (such as the Community Preservation Act, Public Access Board or the Land and Water Conservation Fund).

Most communities have developed user-friendly websites where ordinances, bylaws, and forms are organized by relevant municipal department and readily accessible to municipal officials and the public. This can be used as a model for a similar website feature intended to track municipal real estate. Basic information would include the address and assessor's map and parcel information for each owned parcel. As information is assembled, each identified parcel or interest would include links to relevant deeds,

Susan C. Murphy is counsel with Brennan, Dain, Le Ray, Wiest, Torpy & Garner, PC, a real estate law firm that provides special counsel services to cities and towns. She is also a member of the Hingham Planning Board.



easements, restrictions, permits, town meeting, or council votes, and applicable federal, state, or local regulations affecting the parcel. For example, the listings under the school department may include the deed or taking instruments for each school parcel, land use permits obtained when the school was constructed, and a link to Chapter 71, Section 68, of the Massachusetts General Laws, which sets forth the authority of the school committee over school facilities. A waterfront park parcel may include not only the deed, but any relevant conservation commission, Chapter 91, and Army Corps of Engineer permits, as well as links to Article 97 and the Executive Office of Environmental Affairs' Parkland Disposition Policy.

The next proactive step that can be taken is the creation of a comprehensive checklist that provides the path for evaluating the various types of real estate transactions in which a municipality might engage. The annual municipal budget process typically follows a set protocol that allows budget review to occur in an organized, predictable manner. Real estate issues may not arise every year, but many municipalities lack a roadmap for review of these matters. Thus, with each new real estate issue, the public officials reviewing its merits are often reinventing the wheel. With the assistance of real estate counsel, local officials would be well-served by creating a formalized checklist that outlines the information to be gathered and evaluated for each real estate-related matter, whether it be an acquisition, sale, easement, reuse, roadway discontinuance or other interest affecting real estate. Doing so will ensure a thorough and administratively efficient process.

Being Proactive Pays Off

The benefits of the centralized real estate database and comprehensive checklist are most evident when a decision is made to consider the reuse or disposition of municipal assets. Information that was gathered for a particular project or transaction can easily be lost or forgotten by the time the next project arises—unless the information has been centrally catalogued.

In most communities, where available land is scarce and the cost of purchasing new parcels is prohibitive, the task of identifying available municipal land for needs such as new schools, public works facilities, or sports fields is greatly simplified when the history of the municipal land is readily accessible. For example, a parcel that seems ideally located or suited for an identified need may have been gifted to the town with still-binding deed restrictions on its use, or zoning may restrict or

A Real Estate Checklist

A comprehensive checklist provides a path for evaluating the various real estate transactions in which a municipality might engage, so local officials don't have to reinvent the wheel each time they review the merits of a real estate issue (e.g., acquisition, sale, easement, reuse, roadway discontinuance).

Here are several issues the checklist should cover:

- Ownership structure
- Title and survey
- Property due diligence (available utilities, environmental condition)
- Land-use status (zoning, wetlands, existing permits)
- Applicable state or federal laws or restrictions

prohibit the proposed new use.

Chapter 8 of the inspector general's procurement manual states that "[M.G.L.] Chapter 30B applies to the purchase, sale, lease, or rental of real property" and "to the acquisition or disposition of other interests in real property such as mortgages, preservation restrictions, easements and profits à prendre (such as the right to remove gravel from land)." Therefore, with some limited exceptions, municipal real estate-related transactions trigger the state-mandated bid process.

The attorney general's manual contains detailed guidelines on the Chapter 30B process for the disposition (and acquisition) of real property interests, but effective implementation of this process should include the more thorough analysis that is made possible when the municipality has evaluated its land prior to the issuance of a request for proposals. If such due diligence is left to the bidders, and significant restrictions on use (such as zoning and recorded or statutory restrictions) are found, the bids may be disappointing.

Prior to undertaking a municipal project or disposition, it is worthwhile to consider proactive steps such as rezoning, preliminary environmental review, and land swaps when seeking to change the use of conservation or parkland; taking these steps can significantly improve the feasibility of reuse and maximum

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Legal Directory

ANDERSON & KREIGER LLP

One Canal Park, Suite 200 • Cambridge, MA 02141 • (617) 621-6500
munilaw@andersonkreiger.com



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DERENSIS & HOLLAND, P.C.

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ATT: PAUL R. DERENSIS



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disposition value for the municipality. Just as in the private market, sellers who understand the potential of their property are better positioned to realize greater returns in a shorter time.

The legal issues surrounding real estate ownership, interests and transactions are often underestimated. If all relevant information is not considered and the right questions are not asked and answered up front, the potential for delay and significant cost (or loss of revenue) is significant. Proactive municipal real estate management practices guard against missteps in real estate matters. A

centralized database provides the necessary information for informed decisions; a comprehensive checklist ensures that proper due diligence occurs; and, when a change in municipal real estate interests is contemplated, planning to best position the project increases the likelihood of success. Combining these practices with the involvement of real estate counsel when first considering a municipal project or before an RFP goes out—rather than after issues are raised by residents or bidders—is the most cost-efficient manner in which to manage these valuable municipal assets. ❁

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