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Be sensitive to local practice in order to avoid unnecessary delay in obtaining development approvals

Obtaining government approvals to develop a particular project can be a time consuming and expensive endeavor under the best of circumstances. An applicant must navigate a myriad of local, state and sometimes even federal laws and regulations in order to secure the right to develop a project.

In addition to the express laws and regulations that may come into play on any given application, an applicant would be well advised to make inquiry of the approving authority to confirm that the application process described in the law is in fact consistent with the manner in which the particular approving authority acts in practice. All too often, there is a disconnect between the procedure described by law and the actual practice employed by local approving authorities. The time to identify this disconnect in practice is during the pre-filing stage.

No applicant would be pleased to learn that even though the application complies with the letter of the law, the applicant has overlooked some aspect of local practice which the approving authority views as a condition precedent to hearing the application. Even worse, the applicant may first learn of this local practice at the initial appearance before the approving authority, ready to present



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the application with expert witnesses present, only to find out that the failure to comply with the approving authority's local practice will result in an adjournment of the matter until such time that those requirements have been met.

One fairly common "local" practice is the requirement that the applicant obtain, prior to making application to or appearing before a planning or zoning board, a certificate from the local zoning officer or other administrative official or board certifying that the proposed project is not permitted in the particular zone district, or identifying required variances even if the use is permitted. This requirement typically will not be found in any statute or administrative regulation. In fact, it may be directly contrary to the applicable regulations,



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which typically provide an express right to appear before a planning or zoning board to obtain approvals without having to first make an application to an administrative official. The requirement would also appear to be unnecessary in many instances, particularly where an applicant seeks a use variance and is therefore fully aware that the proposed project is not permitted within the zone. However, many municipalities do in fact require this certificate and will not deem the application complete and hear the application without it.

Despite the lack of authorization for such local requirements, an applicant should try to discern them in the pre-filing stage in order to avoid unnecessary delay. In many instances, the required certificate may be obtained with a limited sub-

mission of information so that an applicant does not have to wait until a formal site plan is prepared. Also, the applicant should contact the zoning officer directly and explain the proposed project. In many instances, an applicant may be able to obtain the certificate quickly by speaking directly with the zoning officer and not just filing a paper application with the hopes that the certificate will be forthcoming by return mail.

In some jurisdictions, the position of zoning officer is a part-time position with very limited office hours. In other instances, the zoning officer of a particular municipality may also serve as zoning officer for multiple municipalities and may therefore only have office hours a few hours each week in any given municipality.

Being aware of these types of local application procedures and heading them off at the pass can save considerable time in the development process.

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