



Thoughts from the

Entitlers

Background



Anita Williams
Planning Director
Lionakis
Sacramento

In land use, an *entitlement* is an approval granted by a local authority to develop property for a specific use in a specific way. Unlike a building permit—which is ministerial in nature, in that construction documents either meet code or they don’t—entitlement approval is a discretionary process involving public input that can influence the outcome.

Entitlements come into play anytime a project is not allowed by right—when it is subject to public review and approval. The two most common forms of entitlements are *variances* and *conditional use permits*.

A *variance* is a limited waiver of development standards for a permitted use. Typically, variances are considered when the physical characteristics of the property make it difficult to develop. For instance, in a situation where the rear half of a lot is steep slope, a variance might allow a house to be built closer to the street than usually allowed. Variance requests require a public hearing, and neighbors are given the opportunity to testify.

A *conditional use permit* is needed when land uses do not fit precisely into existing zones. These might include community facilities (such as hospitals or private schools), public buildings or grounds (such as fire stations or parks), temporary or hard-to-classify uses (such as Christmas tree sales or small engine repair shops), or land uses with potentially significant environmental impacts (hazardous chemical storage or a house in a floodplain). The local zoning ordinance

usually specifies those uses for which a conditional use permit may be requested, which zones they may be requested in, and the public hearing procedure.

Then there's environmental review, which is required by the California Environmental Quality Act (CEQA) for any development activity with the potential for a direct physical change or a reasonably foreseeable indirect physical change in the environment and just about any activity that requires a discretionary approval. The level of review, and if it's required at all, depends on many factors; that's a whole article in itself. [Editor's note: see "CEQA Best Practices for Architects," pp. 26-29.]

Expertise



Steven Afriat
The Afriat Consulting Group, Inc.
Burbank

First and foremost, architects need to understand that decision-makers, who include Planning Department staff, planning commissioners, and elected officials, care about the rules. Architects need to collaborate with land use planners and other experts who understand what it takes to get projects approved, so that they are able to match their desire for superior design with their clients' desire to streamline the approval process.



John M. Sanger
Real estate attorney with a specialty in land use
Sanger & Olson
San Francisco

In view of the fact that entitlements involve an inherently political process, be wary of assuming that you are in a position to carry the political weight of the project. It is the project sponsor who should take responsibility and, where appropriate, a political consultant brought on board to assist. Designers (and lawyers) do

better for their clients by focusing on their areas of expertise. A design responsive to the particular environment, interests of neighbors, etc. will have a political impact, but the actual politicking should be left to those who make it a profession. Don't hold yourself out as the one who can get the entitlements because of your connections.

Second, be wary of reliance on advice from the regulating bureaucracy on what is or is not required and what are or are not the rules. All too many designers and engineers try to answer a question simply by calling someone in the bureaucracy and asking; they don't bother to verify what is actually found in written rules and regulations. Most competent architects would not approach the Building Code in that fashion, and they should not approach other rules and regulations that way, either.

Third, don't hog the show. Most designers assume that land use lawyers don't know much about building codes or zoning requirements in their technical detail. If that is the case, you have the wrong land use lawyer and, if you did not recommend the person, you can so inform the client. Competent land use counsel know a lot about those requirements, and there should be cooperation and exchange of interpretations and information in determining the potential for development, so that the entire team serves the client's interests.



Jeremy Paul
Quickdraw Permit Consulting
San Francisco

Architecture is sex; entitlement procurement is obstetrics. You may be the best lover in the world, but that's no indication that you'll have any skill delivering the results of your lovemaking.

My perspective may be skewed by my experience as a permit consultant—a fixer. I'm often called in by architects who have bungled a delivery, leaving the metaphorical baby breached, with the umbilicus wrapped around its neck.

Many smart architects assume that they understand the design, they understand the code, *ergo*: the bureaucrats must hand them their permits. This is pure hubris. I have witnessed firsthand far too many brilliant architects driven mad with frustration by their inability to navigate permit processes. Sometimes they realize their limitations early enough in their careers to save them from the sirens of psychopharmacology—though not often enough. Architectural skill and experience provide no sound basis to assume that you can succeed in the entitlement process. There is a whole separate skill set at work. Getting buildings built should be about architecture, but it's not. It's about persuasion. Get over it.

The authorization of entitlements is in the hands of other human beings, some competent, some intelligent; others, not so much. Either way, the challenge is the same. There is a person on the other side of the counter who has something you need, who will not give it to you unless he wants to. If you cannot communicate with the person with the "Approved" stamp in his hand, if you cannot empathize with his motivations and struggles, if you cannot for a moment actually care, then you are delivering a baby with a limited chance for survival.

Be patient. Be humble. And, for God's sake, if your talent is lovemaking, not delivering babies, find yourself a competent obstetrician.

Process



Brad McCrea
Bay Design Analyst
San Francisco Bay Conservation and Development Commission

One of the most important things for developers to understand is the *mission* of the permitting authority. For example, BCDC is charged with minimizing unnecessary fill and maximizing public access to the Bay. The public's use and enjoyment of the shoreline are

paramount to us. People who understand and attend to these goals up front may find the regulatory process more streamlined. What we want to know is, “What is the public benefit?”

Public benefit can take various forms, because the way in which people enjoy the shoreline is subjective—it might be through beautiful architecture, generous open space, or a dense, lively mix of uses. We review proposals holistically, following the State’s mandate that every development provide “maximum feasible public access, consistent with the project.”



William Anderson, FAICP
Director of City Planning & Community Investment
City of San Diego

In those jurisdictions that have structured policies, work with those policies. In San Diego, policy for particular properties is set at the Community Plan level, and we have forty-two of them. It is important to understand those different areas. So, read the General Plan *and* the Community Plan. Show how the proposed project tries to implement the policies articulated in the plan regarding land use, historic resources, conservation, transportation, urban design, public utilities, and so on.

Talk to us and to a lot of people before putting pen to paper, to avoid having to revisit the design. Work closely with communities. Even if an application is successful, and we approve the project, neighbors can still bring lawsuits. San Diego has a structure for talking to community groups, which are officially sanctioned by the City Council. Once a proposal has been reviewed by the planning staff, it formally goes to the appropriate Community Planning Group for recommendation. Of course, you are free to meet with the Community Planning Groups before that, and it is advisable to do so.



Robert Lee Chase, AIA
Chief Building Official
City of Sacramento/Development Services

The City of Sacramento stresses working in a partnership with applicants. We don’t want architects to come in anticipating conflict, because a good project is a win/win. We used to be the regulatory police; now we’re more proactive. We all need each other these days. We in the public sector need the revenue, so we need to be sure we’re helping architects and developers create good projects. If everyone looks at it that way, it’s advantageous.

Not all public agencies operate this way, but given the current economic challenges—this is the first time in history that Sacramento’s Development Services Department has laid off people—we should work with applicants to make sure good things are happening. So it’s not a matter of the architect suiting up, putting on your armor, to “do battle” with the planning and building departments.

What can architects do? Keep an open mind and be respectful of opinions from people on the public side. Digest them, incorporate those that you believe make sense, and if you don’t incorporate some of them, explain why. “We incorporated A, B & C, but not D & E, because...” There are codes to comply with, but we all know that you can question anything, if you do it in a respectful, intelligent way.



Stephanie Reich
Senior Urban Designer
City of Glendale

Style can be a challenge to architects and design review boards. Very often clients, particularly residential clients, desire a traditional exterior with a modern floor plan. The resulting project appears to be a collection of styles—pitched, red-tile roofs with large expanses of glass. We often recommend historic precedents for traditional styles and

encourage a consistent design treatment.

But a contemporary design may be more appropriate. In one case, a client wanted to remodel a relatively modern home built in the 1950s into a home that was double the size and “Mediterranean.” The neighborhood was primarily composed of low-slung, ranch style homes. The design review board opposed it, as did the neighbors. Working with the architect, we were able to convince the client that a contemporary design would be more appropriate.

In each city in which I’ve worked, architects and the public believed the design review board favored traditional design, when in fact the opposite was true. Because architects on the board practiced modern architecture, they could appear more critical of contemporary work, while not knowing exactly how to critique a traditional design.

Most communities are interested in quality design and materials; high quality window and storefront systems are of particular interest. A response to these concerns may allow an architect to include features or systems that have been discouraged by their client due to cost. On my best days as Urban Designer for the City of Glendale, I work with the architect to encourage the client to approve a superior design.



Steven L. Vettel
Farella Braun + Martel LLP
San Francisco

As public policy, environmental sustainability, and economic reality converge to focus development within existing urban and suburban communities, historic preservation issues will increasingly come to the fore.

Our cities and suburbs are filled with structures that may be replaced or altered to accommodate new infill development. At the same time, they are reaching an age when many of their structures are over fifty years old and need to be evaluated for historic significance before demolition or alteration. The

reuse of existing structures is in some cases more sustainable than demolition and new construction, given the embedded materials and energy in existing buildings and the energy and resources associated with new construction. How these competing policy objectives—the need for denser infill development against the value of historic preservation and rehabilitation—are reconciled will shape many future land use battles.

The California Environmental Quality Act (CEQA) is driving much of this debate. It includes within its broad definition of “historic resources” all structures listed or eligible for listing in the California Register of Historic Resources, all buildings listed in a local register or identified in historical resource surveys, and buildings that a local agency otherwise determines are historically significant. CEQA goes on to specify that the demolition of any such historic resource or its alteration in a manner inconsistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties is *always* deemed a significant impact on the environment, for which an environmental impact report (EIR) must be prepared, a process that typically takes up to two years.

Demolition or the inconsistent alteration of historic resources is not prohibited in California by the state or by most local jurisdictions (except in the case of some locally-designated landmarks, of which there are relatively few), but the public agency approving such an action must, in addition to certifying an EIR, make findings that preservation alternatives are infeasible and that the project has overriding public benefits. Local ordinances may specify other criteria that must also be met.

Accordingly, to avoid the delay inherent in preparation of an EIR and the risk of the approving agency not making defensible findings when a project involves a pre-1959 structure, a project sponsor typically must do one of three things: avoid demolition or inappropriate alterations altogether; establish that the structure is not an historic resource; or establish that the proposed alteration meets the Secretary’s standards. For older buildings

that are not already listed on the state or a local register, an analysis by an historic preservation expert will often be required. For projects that alter historic resources, an historic architect will often be needed to design alterations consistent with the Secretary’s standards and to convince policy makers of their consistency.

Jeremy Paul

Always seek out the lowest level bureaucrat with the approval authority that you need.



Michael Westlake
Program Manager,
Development Services Department
City of San Diego

Understand the political realities and trends. Understand the decision-makers’ special interests, hot points, or pet peeves. Prior to presenting your project for a final decision, observe several Community Planning Group, Planning Commission, and City Council hearings on projects similar to yours, to better understand what you are up against. Make an effort to understand the City’s organization vis-à-vis the entitlement process.

Know and understand the regulations, and be aware of any upcoming changes to those regulations that could impact your project mid-stream.

Understand the time and money requirements inherent in the process. The entitlement process is complex and subject to politics, which inevitably adds time and money.

Have all technical consultants available and prepared at all important meetings and particularly at all decision-making public hearings.

Have the courage to challenge staff or community recommendations not based on adopted codes, land use policies, or good planning principles; challenge recommendations that are nexus-less and arbitrary.

Treat all stakeholders with dignity and respect at all times.

John M. Sanger

Make sure you are doing what your client wants (after having privately argued with your client about any fundamental issues on which you disagree, but which have not caused you to terminate your contract). Clients do not appreciate designers going off on their own mission to save the world or serve the community irrespective of their interests and budget. If you cannot really serve that client, it is not the client for whom you should be working.



Joe Nootbaar
Principal, Nootbaar Real Estate, LLC
San Francisco

In the entitlement process, successful architects speak to their audience about what is important to that audience, not what is important to the architect. Usually, the successful presentation or stakeholder discussion is not about how great the architecture is as an object, but how it addresses its context. The goal should always be approval, not the reinforcement of the architect’s talent. A talented architect knows how and when to emphasize each.

The graphics, drawings, and renderings are perhaps the most important part of the successful presentation. They should reinforce the message of how the project adds to or complements the existing context, not reinforce the egocentric vision of the architect’s work.

Participation

Brad McCrea

Design professionals can participate in a variety of ways; voluntary service on boards, such as our Design Review Board, is one. But I have found that building relationships with a variety of design professionals is a helpful way to regularly share information about public access and development. Such collegial relationships between bureaucrats and practitioners are healthy, because they allow everyone to better understand the constraints and opportunities.

Robert Lee Chase, AIA

I am the first architect in 150 years to be Chief Building Official in Sacramento. An engineer has typically filled that role. It took me months to get to the point to make that shift, and I'm glad I did. I had been a partner in the third largest firm in Sacramento and was involved hands-on in four or five significant projects each year. I've traded off the hands-on involvement for involvement in all projects citywide in a city of 500,000 people. If you enjoy the detail, it might not be so satisfying, but if you enjoy the vision, it is very challenging, very satisfying.

I had long been civically involved, on the Design Review Commission and the Capitol Area Development Authority board. My involvement, working closely with the mayor, planning commissioners, and staff from the city manager on down, made the move easier. Once you get involved, you become known, and council members and staff will seek input from an architect if one is available. So, do whatever you can, get involved in some small way.

We will come out of this economic downturn, as we always have. I encourage architects to consider shifting gears and taking positions in the public sector. They will be valued. I have found an outpouring of support not only from AIA colleagues but also from the entire development community. What we're trained to do as architects—coordination, consensus building, guidance—helps move projects forward.

Any jurisdiction can benefit by having an architect in any role in the city, but especially that of building official. We bring a broader vision. We're looking not just at structural beam sizes, but at how the city as a whole, the culture of the city, can benefit.

Prospect



Simon Pastucha
Urban Designer
Department of City Planning
City of Los Angeles

Architecture is created around an idea, and

cities are created around a series of values. Entitlement processes and codes are not about creating the built environment we value but about controlling what we do not want. They leave what we want unanswered or tangled in the net of codes aimed at capturing what we do not want or what we fear. They capture what we don't want to catch.

We need to figure out what we want in the built environment and make sure it is maintained. There should be an emphasis on fast, simple processes for what we value. The goal is to move from reactive, fear-based codes and processes toward proactive thinking that creates codes that get out of the way of what we want and that are easy, efficient, and flexible.



Michael Stepner, FAIA, FAICP
Former City Architect and Acting
Planning Director
City of San Diego

Entitlements are the stuff that dreams are made of. For all parties, they represent the achievement of a goal. For the developer, it is permission to build a project and reap a financial reward. For the architect, it means his design can be built. For the government official, it means that the project will meet health, safety, and welfare standards and long-range goals. And, for the community, it means that new development will preserve and enhance the neighborhood's desired quality of life.

That is the ideal; but does it work that way? The community often uses the entitlement process to slow down or stop a project in its neighborhood. The developer sees the process as something to be overcome in order to achieve a desired return on investment. The architect sees it as the intrusion of non-designers dictating the design. Residents very often believe that the project ruins their quality of life.

We have built a system that, more and more, is erected on a lack of trust. Things get built; people react; and a new code provision

is added to make sure what got built last time never happens again. Every word in every code has a constituency.

The financial system plays a role in this failure, as well. The need for a quick return on investment often results in formulaic development in which design, construction quality, and community fit are not primary concerns. Couple that with our unwillingness or inability to pay for the facilities and services we need as a community, and you have a lack of public trust across the board.

But it does not have to be this way. The process is changing. Architects are becoming involved at the front end, working with the community, helping to prepare codes and regulations, and participating in planning groups. Architects are trained to conceive and articulate a vision and to build consensus for it; and all this is being done with the "real" client, the community. Long after the architect and the builder are gone, the community lives with the results of the architect's and the builder's work.

In 1993, Thomas Fisher, dean of the University of Minnesota College of Architecture and Landscape Architecture, wrote, "The profession of architecture was founded to guard the public. Not just the public's health and safety through building and zoning codes, but the public realm and the public interest broadly defined."

The entitlement process can no longer be about an individual building. It must be about how that building fits in the community. It is about an expanded public process that uses participatory tools like visual preference surveys and charrettes and new regulatory tools like form-based codes that describe what we do want rather than the opposite. It is always about building trust, and that is everyone's job, a job that is labor intensive. It requires a continuous effort. ©