

UNDERSTANDING THE ENTITLEMENT PROCESS

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If you're a business owner thinking of building or renovating a building to house your business, it's really important that you understand what "entitlement" is and how it affects your project. In short, the entitlement process is what will enable your project to happen – or prevent it from happening. So it's vital to know what you're getting into so that you can be well-prepared.

Every "ground-up" construction project and every "change of use" project must go through the commercial real estate entitlement process – there's simply no getting around it. ("change of use" is when you want to use a building for a purpose other than its original purpose). So read on to learn more about what the entitlement process actually entails.

WHAT IS THE ENTITLEMENT PROCESS IN REAL ESTATE?

Here's how we defined "entitlement" in a previous [blog](#): it's the process of getting all the necessary government approvals for your project to move forward. (You may also see it referred to as "land entitlement.")

Regardless of whether your project is a ground up commercial building or a change of use, there are a few layers of approval that you'll have to get through in order to get to construction. These different approvals usually include, at a minimum, a planning commission or development board (we'll refer to them as a **planning commission** for simplicity, but different municipalities have different names for them), your local municipality, and the fire department.



It could also involve several different departments within your local municipality, like public utilities, parks/recreation, and roads & sewers. Most likely, there will also be architectural and landscape review boards that will need to approve the exterior design of your building and landscaping. The agencies that will be involved depend on the site where you're thinking of building.

Regardless of where you're building, the entitlement process will include various applications, hearings, meetings, and possibly revisions to your plans. It's important to be informed and flexible throughout the process.

IS ENTITLEMENT THE SAME AS PERMITTING?

You already know that you'll need a building permit to start construction – and you may be wondering, “is getting a building permit the same thing as “entitlement?”

It's not. Permitting is one part of the entitlement process, but it's not the only part. In fact, the process of getting building permits happens fairly late in the game – there are a lot of steps that will have to be done before you can get a permit.

So, what's the difference between a building permit and land entitlement?



What's the Difference?

Entitlement

- Early in the development process
- “Big picture” approval
- Goal is to get permission from the city to build a building for a specific purpose at a specific site

Permitting

- Happens later on in the development process
- “Nuts and bolts” details of the project
- Goal is to get permission from the city for the details of exactly how the building will be built

The entitlement process is more of a “big picture” approval. You're getting permission to build a building for a specific purpose at a specific site, but the “nuts and bolts” details of **how** the building will be built are not addressed in the entitlement process.

On the other hand, the process of getting a building permit **is** where the nuts and bolts are important. When you apply for a building permit, you submit the full set of plans that your architect has prepared (called “construction documents”) to your local municipality, and a plans examiner who works for the municipality will review them carefully.

The plans examiner checks to make sure that the project has been designed in compliance with all applicable building codes. This is to help ensure the safety of everyone who will use the building. If there's anything in the design that is not up to code, they will ask for it to be corrected. Once the plans examiner is satisfied that everything is correct, they'll issue the building permit and construction can begin.

The entitlements process starts long before any of this. Once you get to the point of applying for a building permit, you will have already successfully gotten through most of the entitlements process.

IS ENTITLEMENT THE SAME AS ZONING?

They are related, but not the same. Zoning is one element of the land entitlement process. How might it come into play?

Almost every municipality has zoning laws that regulate the land that falls within its jurisdiction. Zoning ordinances cover things like:

- The allowable uses of the land (for example, residential, industrial, agricultural, or commercial)
- Lot sizes
- The types and heights of structures that can be built on the land
- Allowable density
- Parking requirements

Let's say you buy a piece of land that's zoned for commercial use, and you plan to build a commercial building. Your entitlement process will be easier, because you won't have to get the land rezoned – it's already zoned for the use that you want.

But if you buy land that's zoned for residential use and you want to build a commercial building, you'll have to try to get the land rezoned for commercial use. That rezoning effort will become part of your land entitlement process – it's one of the approvals you'll need in order to proceed with your project.

Short of a full rezoning, there are other zoning-related issues that you may have to deal with in the entitlement process. One common one is parking. Let's say you find a perfect piece of land on which to build your building, and it's already zoned for commercial use, but it's not big enough for both the building and the required number of parking spaces.

What happens then? Part of your land entitlement process will be applying for a **variance**. A variance is basically an exception to the zoning requirements, and it's granted (or not) on a case-by-case basis. So, if the zoning regulation says that you have to have 20 parking spaces but you can only fit 15 on your site, you'd request a variance to that part of the zoning requirement.

Other common reasons for requesting zoning variances are building height (when someone wants to build taller than the maximum height allowed by zoning) or setbacks (how many feet the building must be set back from the property lines).

Depending on the site where you want to build, zoning can be a significant factor in your land entitlement process.

WHAT ARE THE STEPS IN THE ENTITLEMENT PROCESS?

The process varies significantly – and it depends on the municipality, the specific parcel of land where you want to build, or the existing building, if you're renovating/changing use),

and your intended use of the building.

But here's a simplified overview of some of the steps you'll need to take (note that the order may need to change depending on your municipality):

1. A logical starting point would be to engage a **commercial real estate developer** to help you find a site that is zoned appropriately for your business, or a site that is likely to be easier to rezone if needed. A developer/commercial broker can also help you find an existing building that would work for you, if you aren't planning on building new.
2. Next up would be to engage an **architect**, who can help you with some of the preliminary design work that you'll need in order to start applying for approvals.
3. Once you've identified the site and an architect, the next step would be to have a preliminary **site plan** developed. A site plan is a type of drawing that depicts the parcel of land, its existing conditions (such as utilities and any current structures), and the proposed building you want to build on it.

You don't need to get very specific about the building design at this stage, but it'll be important to show the size of the building and where it's going to be placed on the site, along with other requirements like parking.

4. In many jurisdictions, the first "official" step is to submit a **land use pre-application** to the planning commission, along with your preliminary site plan. Many jurisdictions also give you the opportunity to meet with them before you submit the land use pre-application – and some even require this meeting.

This is a great opportunity to get early feedback from the planning commission on what they're looking for, so even if a meeting isn't required, we strongly recommend it.

5. Either before or soon after the pre-application meeting, you will likely be required to submit **environmental information** too. An [environmental site assessment](#) will look at the history of the parcel of land to evaluate whether it may be contaminated with hazardous materials. And if your site is near a wetland or other environmentally sensitive area, there may be other requirements too.
6. Once you get feedback on your pre-application, you'll submit a **formal application or proposal** for approval. This will require much more information on the design of your building and landscaping.
7. Before your formal application gets approved, you'll likely need to attend various **meetings and hearings**, including **with interested community members**, to give information and answer questions. It'll be important for you to take the community's feedback seriously, because if the community is opposed to your project, the municipality is less likely to approve it.

Many municipalities have architectural review boards that will need to sign off on the design before you can get your final approvals. And if you're bringing new roads and utilities to your site, that will be another set of meetings and questions that you and your team will need to be prepared for.

8. (Hopefully) Your proposed development gets approved to move forward!
9. Once you have approval for your proposed development, the design of your building can be completed, and you can apply for a building permit.
10. With the building permit in hand, the really exciting part begins – you'll get to see your building start to come up from the ground, or start the process of being renovated!

WHAT ELSE IS IMPORTANT TO KNOW?

THE ENTITLEMENT PROCESS CAN TAKE A WHILE

And by "a while," we mean several weeks or months – so you need to factor that into your business plan.

At any of the steps we outlined above, you may get feedback or even outright rejection of certain elements of your proposed project. In that case, you'll need to make changes to comply with the requirements, or you may need to appeal certain decisions.

All of this takes time. Many planning commissions only meet monthly – so when you have to go back to them with changes, you usually have to wait another month. Same goes for city councils. And if you need to change the building design, the architect needs time to make those changes too.

THE ENTITLEMENT PROCESS CAN BE RISKY

Some municipalities are more pro development than others, to be sure – but regardless of where your municipality falls, approvals are never guaranteed.

There are a lot of things that can go wrong and sink your project. If you're applying for rezoning or a variance, it could be denied. There could be environmental problems with your site. There could be existing code violations on the site.

Or the community could be against your project – and since they elect the city council members who will ultimately make the decision, the council members may be more likely to side with the majority of the community than with you.

Even if your project is eventually approved, these issues can also cause significant delays.

WHAT CAN I DO TO MAKE THE ENTITLEMENT PROCESS EASIER AND LESS RISKY?

CHOOSE A SITE THAT WON'T REQUIRE REZONING

Of course, there are a lot of factors that go into choosing where to locate your business, and zoning is only one of them. But choosing a site or an existing building that's already zoned appropriately gives you a head start because you won't have to try to get it rezoned – and you won't risk being turned down.

In some instances rezoning isn't all that risky, because municipalities recognize that their zoning laws are dated and they are open to making changes. But in other places, rezoning is unlikely to be approved. And if that's the case, it makes sense for you to look elsewhere for a site rather than wasting money and time.

START TALKING WITH THE MUNICIPALITY AS EARLY AS POSSIBLE

When you're clear on what the planning commission wants and expects in your proposed development and in your application, you're in a much better position to meet their expectations.

Developing a good relationship and rapport with the planning commission is a great first step, because they're the ones who will make the recommendation to the city council or city manager on whether or not to approve your project.

It's an excellent idea to have an informal meeting with the municipality before you design anything and before you apply for any approvals. That way, if there are things that they want to see or don't want to see, you'll know about it upfront and you won't have to spend time making changes later.

LEARN AS MUCH AS YOU CAN ABOUT PAST PROJECTS THAT HAVE BEEN APPROVED.

Check to see if your municipality's planning commission has meeting minutes and agendas online, and if so, read through some of those.

If you know of a recent, nearby ground up project, you can also search for news articles about it and see if there were specific concerns that were raised by the neighborhood.



Do some research! Learning about similar past projects will help you gauge how likely it is for your project to get approved.

And before you apply for approval, attend hearings to familiarize yourself with some of the concerns that may get raised and questions that may get asked, like traffic, parking, and design aesthetics. See how other development teams address these issues.

DON'T GO IT ALONE

This is the most important one. We can't stress this enough – **surround yourself with a good team**. Consult with experts like attorneys, real estate developers, and architects who have gotten projects approved in the area. You want professionals on your side who have good relationships with the municipality and the community, and who have experience with your building type.



Surround yourself with a good team!

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The entitlement process may seem intimidating, but being educated, informed, and prepared for it will help you successfully navigate the process and get your building project under way. And always remember to rely on experts to help get you through entitlement. It's way too complex – and way too important – to try to take it on yourself, especially when you have a business to run.