

## Developer Solicitation for Publicly Owned Land

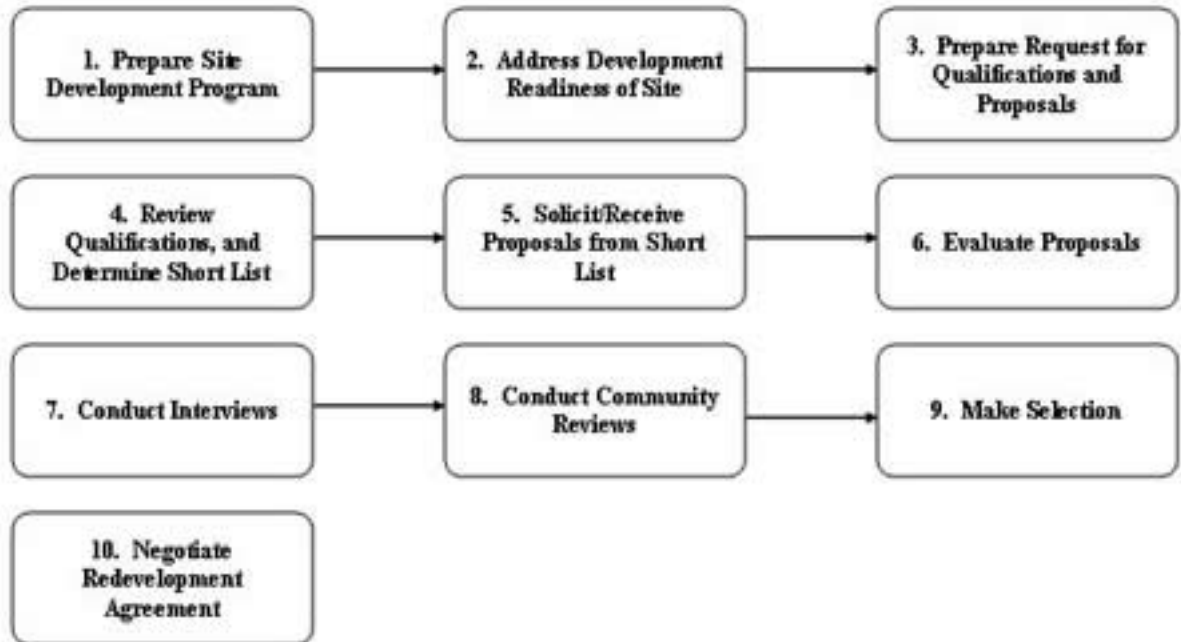
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by **Stephen Friedman**

Many communities are actively seeking to redevelop their downtown areas and other parts of the communities with mixed-use, commercial, or residential revitalization projects. Land acquisition is a critical issue for public sector involvement in such community development. If the public sector controls a site (ownership, contracts, or options), it has the opportunity to be more proactive in shaping development and working with developers. If the site is not assembled, a step that precedes those described in this article is to formulate a strategy for attaining control of the site through public action and/or cooperation with developers and property owners.

When the locality has control of the site, it then has the option of seeking a developer and of being proactive in bringing about a project that meets the community's goals as well as responding to market opportunities. The local government or other landowner must be an active participant and must lead the process summarized in Figure 1.

# Figure 1. Process of Soliciting Developers for Publicly Owned Land



Here are the key tasks in the process.

## 1. Prepare the Site Development Program

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Illustrative development plans and guidelines are prepared that reflect and address: economic parameters and feasibility; community goals and design criteria; and physical (site) capacity. All of these factors must be considered in depth before a project can truly succeed (see Figure 2).

**Figure 2. Mix of Crucial Factors For a Successful Development Project**



Depending on the extent of prior planning, there may need to be extensive public participation in the process, to address such critical issues as height, orientation, parking, traffic, general design/materials, and community character. In some communities, open workshops or charrettes are held early in the process.

This task might entail the services of a traffic planner, civil engineer, development adviser, or design firm. The end-result should be a "believable fiction," a project that is economically feasible and physically reasonable and that meets the goals of the community. From this result, development guidelines can be crafted that give prospective developers direction but that still allow the community to tap the creativity and resourcefulness of the private sector.

## **2. Address the Development Readiness of the Site**

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The local government needs to realistically assess problems that may impede development and may be difficult for a developer to address. These issues might

include ownership holdouts, demolition needs, environmental contamination, soil conditions, stormwater requirements, infrastructure status and responsibility, title exceptions, and other, similar problems.

Who is in the best position to address these issues? This question should be evaluated and action taken to resolve the problems. Decisions should be made as to the role a developer may have to play in their resolution. At the very least, the key issues should be disclosed.

### 3. Prepare a Request for Qualifications and Proposals

A two-step process usually is recommended, first seeking qualifications (RFQ), then requesting proposals (RFP) from only a short list of not more than five qualified firms or teams. The RFQ should provide full background information on the project and seek the experience, track record, financial capacity, and references of each team.

This two-step process is recommended because public bodies usually are required to advertise a sale of land or other development opportunity. This creates a "beauty contest" in the eyes of most qualified developers. A firm may hire an architect to prepare attractive exhibits, whether or not they represent a feasible plan and whether or not the firm has the financial and development capability to deliver.

As a result, firms will avoid a request for full proposals that is open to all and for which they cannot reasonably assess the odds of their success. For these firms, the cost of a full proposal is too great to incur unless there is a reasonable chance of success.

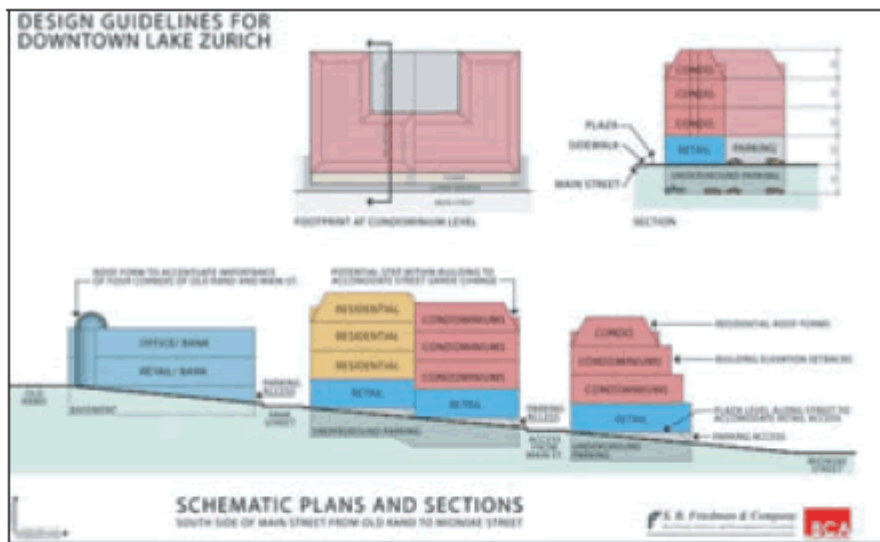


Figure 4. Height study, Lake Zurich, Illinois.

### 4. Review Qualifications, and Determine a Short List

Qualifications must be reviewed by the management staff before recommending a short list to the governing body. The review of qualifications should include assessing the relevance and depth of the background of each team, a confidential review of financial capacity, and interviews of references. Sometimes, qualification-level interviews are held by a locality; other communities have reached decisions on a short list through consultant and/or staff review.

## **5. Solicit/ Receive Proposals from the Short List**

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Meetings are held so that short-listed teams can supply additional background information and answer any questions that may arise. Other discussions also may occur during this period to help the developers fully understand the locality's goals.

The full proposal should include site and building plans (conceptual), a financial analysis, requests for local participation, and proposed payments to the seller (local government or other public body). Each developer will approach a project differently, as reflected in three of the plans submitted by finalists in a competition for a project in Park Ridge, Illinois (see Figures 3, 6, and 7).

## **6. Evaluate the Proposals**

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Proposals are assessed in terms of overall quality, financial proposal, responsiveness, level of commitment from financing sources, tenants, and so forth. This is sometimes a summary and comparison, or it may be a more evaluative process. In either case, it provides information for use in interviews of the teams.

## **7. Conduct Interviews**

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In the interviews, the developers will have the opportunity to present their proposals to the governing body. Other local commissions and committees also may be involved.

## **8. Conduct a Community Review**

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Each community has different requirements for community involvement and review. In some, the community has a chance to review and comment on proposals in both informal settings and public hearings. Sometimes the various boards and commissions formally review the proposals (zoning, economic development, planning and appearance commissions). The community review process should be tailored to the decision-making style of the local government.

## **9. Make the Selection**

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Results of the interviews and public comment, if any, then will be considered along with the evaluation of the proposal from the standpoints of quality, character, track record, ease of working relationship, price offered, and additional factors.



**Figure 5. Deck demolition, Des Plaines, Illinois.**



**Figure 6. New England Builders' site plan for Park Ridge, Illinois, project.**

## **10. Negotiate a Redevelopment Agreement**

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Following selection, the business terms of the redevelopment agreement for the project will be negotiated. These will include both financial terms and the responsibilities of parties. Both general local government and special legal counsel may be involved.

A redevelopment agreement is the basis for the public/private partnership that occurs. It should be far more than a land sale contract, in that it should contain a number of key provisions to ensure that the seller (public body) gets what it wants, including:

- Approval of development (often, through attaching planned development documents).
- Time of performance.

- Protection of undeveloped land (for example, phased takedowns).
- Acceptable tenants.
- Payments to the locality.
- Sharing of excess profits.
- Financing terms/public financial role, if any.
- Requirements for closing, such as full funding, in balance.
- Review and monitoring provisions.



**Figure 7. PRC by James/MidAmerica for Park Ridge project.**

This is the time to put in requirements that reflect the local government's desire to steward the land and achieve key public goals. Some requirements and goals may affect the economics of the project and the value of the land. But if these effects are affordable and acceptable, the redevelopment agreement and the covenants that run with the land are the mechanisms with which to protect the land and public goals, and this must be done before transfer.

## Summary

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When a public body owns land that it would like to see developed for revitalization projects, it has the opportunity to proactively market it and to ensure that public goals are met (in concert with the market and the physical realities of the site). A multistep process is necessary to establish realistic goals, attract the right developers, and negotiate a redevelopment agreement that protects both parties. The public body has the chance to provide for appropriate stewardship of the land

and to bring about the kind of development that it wants, to enhance the long-term value of the community.

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