

ZONING DUE DILIGENCE AND MUNICIPAL ZONING COMPLIANCE

Information required by the 2011 ALTA/ACSM Minimum Standard Detail Requirements (2011 ALTA Survey), as relating to zoning matters, will generally fall below the needs and expectations of prospective buyers and lenders. Table A Items No. 6(a) and 6(b) of the Optional Survey Responsibilities and Specifications requires that the surveyor be supplied with the proper zoning information by the client. This will allow the surveyor to identify, and show if possible, setback, height and bulk restrictions of record or disclosed by applicable zoning or building codes. The Planning & Resource Corporation (PZR), an Oklahoma City-based consulting firm, has expanded its scope of services. We now offer a Title Insurer's Package designed to fulfill the needs of the client to comply with this obligation. Once obtained from the client or PZR, the information can be noted on the survey and the setback lines shown on the drawing.

To aid the reviewer in determining zoning compliance, Table A Item 4, indicating the land area, can be used along with Item 7 (b)(1), showing the square footage of the footprint of any buildings, to determine the bulk or density ratio. Item 7(c), measured height of all buildings, will verify height compliance. The ALTA Survey requirement to show distances from all buildings to the nearest property line, along with required building setback lines, will highlight any potential setback issues. Item 9 of Table A requires the number and type of parking spaces located on the site.

This information is the most that can be expected from the local surveyors under normal application of the 2011 ALTA Survey Requirements. The surveyor is able to show the raw data pertinent to the site, but as stated in the preamble to Table A of the Requirements, the surveyor cannot make a certification based upon an interpretation of local zoning codes (i.e. compliance).

While the survey may be fully in compliance with the 2011 ALTA Survey Requirements, this information falls short in providing a comfort level as to zoning issues. Therefore, Counsel for the Lender or Purchaser, in conducting its due diligence review of zoning compliance, must go further than the survey provides. A list of necessary due diligence items to be reviewed by Counsel would include:

- 1 . The specific zoning designation of the site, as established by the current municipal code, as well as any prior designations.

2. The uses allowed under the zoning designation established by the zoning ordinance and whether the present use of the subject site is legally permitted.
3. The minimum yard or setback requirements, and a review of the survey for compliance.
4. The building height requirement, whether by number of stories or actual height above ground level, and a review of the survey for compliance.
5. Floor Space Area Restrictions of the property. The relationship of the square footage of the land area versus the square footage of existing buildings would be checked for proper ratio. Specific density per acre requirements based upon number of units, and floor area ratios based upon the total square footage of multistory buildings, would also be considered.
6. The formula for determining the minimum parking requirement and the "mix" of existing units on the site. When calculated, a comparison of the required parking count to the actual site count, as shown on the survey. Handicap and compact spaces would also be addressed.
7. Special circumstances to be considered would include legal non-compliance of any of the above factors, the issuance of zoning compliance letters from the municipalities, the existence of variances, council minutes, certificates of occupancy, building inspections, the effect of site plan approvals, airport zoning districts, and businesses serving alcohol, just to name a few.

If your staff has tried to gather this missing information two days before a closing, you know how frustrating it can be. Delays from municipal officials with varied sense of urgency can monopolize crucial hours before the closing of a major transaction.

In recognition of this time-consuming process, the Planning and Zoning Recourse Corporation created The PZR Report® this report is a unique solution to the frustration. This report service is performed by our staff of municipal zoning and survey experts, familiar with the diverse aspects of zoning research and survey review.

PZR has developed a format with which to supply your staff with independent, reliable information to create a comfort level as to zoning compliance. This information will be provided to your staff early in the process and will be supported by documentation directly from the municipality of the site. Specific sites with zoning problems will be discovered early in the due diligence process, allowing action to be taken to resolve most issues. Our staff will be available to assist in resolving these issues arising from the review process.

The PZR Report® and Executive Summary Report can be modified to meet your specific requirements, and copies of zoning ordinances, maps, planned unit development reports, names and telephone numbers of local zoning boards, occupancy permits and letters of compliance, if available, and other relevant documentation will be provided. PZR will coordinate with local municipalities, surveyors and your staff to gather and interpret available data necessary to make the most informed judgments concerning the zoning issues on your sites. This will benefit your staff in making crucial decisions about site zoning history, current conditions, and potential future risk of properties involved in pending transactions.

Our growing clientele has found this service to be invaluable, particularly where ALTA 3.0 or 3.1 title endorsements are cost prohibitive or are simply unavailable. If this is a service that might benefit you or your colleagues, please write or give me a call and we can discuss the concept in greater detail.

We are available to answer any questions or comments you may have about The Planning & Zoning Resource Corporation. Feel free to contact David Anderson at 800-344-2944 or davida@pzs.com to find out how PZR can meet your needs, or visit them on the web at www.pzs.com.