

## **What in the world does a land consultant do?**

By Curtis Seltzer

Creative Real Estate Magazine, May 23, 2008.

BLUE GRASS, Va.—I'm often asked -- usually by my wife of 25 years -- "Just what is it that you do all day?"

She's a lawyer. She has an office building, a sign, a secretary and an old-fashioned barrister's desk the size of an aircraft carrier's flight deck.

My usual response is: "Today, I was visited by that slinky woman from Paris, Fifi L'Amour, who whispered French things into my ear as we drank champagne."

Melissa rolls her eyes. The closest Blue Grass, Virginia, an unincorporated village of maybe 25, has ever gotten to a Parisienne, slinky or otherwise, is a wonderful Dutch war bride who came here some 60 years ago and a couple of Mexican guys who are working for a local contractor.

On the assumption that a reasonable question deserves a reasonable response, I thought I would finally level with Melissa and curious CRE readers.

There is no Fifi. Her real name is Odille and....

I can't speak for others, but here's what I do.

I work for land buyers on a consulting basis. This can mean various jobs, including one or more of the ones that follow.

**First, I help buyers think through a particular property.** The property can be one that I have found or one that the buyer has located independently.

Buyers often find that they can analyze a real-estate purchase by talking it through with a knowledgeable person who's not emotionally invested in the outcome. Our conversations focus on questions like these:

What are the property's individual assets worth immediately, and how confident are we of those valuations?

Which of these assets can we sell immediately without diminishing the core property we want to keep?

Are we better off keeping a severable asset or selling it?

How do we measure "better off"?

What are the property's liabilities, and how confident are we of their various costs—cost of doing nothing, cost of partial remediation, cost of full remedy?

Are there any minimal-cost remedies available? Is there any way to turn a liability into an asset, say by donating a conservation easement to protect wetlands or habitat from development in return for local, state, federal and estate tax benefits?

What liabilities can't be feasibly or economically fixed? Can we live with that liability or not? ("Not" is a deal-breaker.)

What liabilities must be fixed immediately and at what anticipated cost?

What is the seller's position in the property? How much did he pay? What do we estimate his adjusted basis to be?

How much debt does he need to repay upon the sale?

Can the seller finance some or all of the purchase?

What are his after-tax nets under various offering scenarios?

Is there anything the buyer can do to minimize the seller's tax hit?

Why is the seller selling now? How intense is his motivation?

What is the buyer's position in relation to this property?

Does the buyer have -- or can he develop -- alternatives to purchasing this property?

What is the "buyer's price"—that is, what the property is worth to the buyer in light of the buyer's resources, the property's assets and the buyer's plans for the property. The buyer's price has

nothing to do with the original purchase price, adjusted basis, asking price or appraisal value. The buyer should generally confine any offer to his price or less, except when other terms are especially favorable.

How much cash -- or how little -- does a buyer need to use to make the deal work?

How much does he need to finance?

Can the seller finance it?

Can the buyer comfortably meet the terms of the note?

To what extent can the property pay for itself through the sale of non-core assets?

Is there cash flow? Can cash flow be upped and at what cost?

What are the tax implications of the deal for the buyer?

Are there time pressures working for or against the buyer and/or seller?

What is the rank order of buyer' objectives in the property?

What is the intensity with which each objective is held?

Are these objectives feasible, given the buyer's patience and resources?

What is the likelihood of these goals changing over time?

Are there conflicts between goals?

Are they resolvable?

Why does the buyer really want to buy this property?

What are bad outcomes that can happen to the buyer following purchase?

What would be the consequences of the worst outcome happening?

What can be done to reduce the impact of each bad outcome?

What information does the buyer not know about the property that needs to be known before an offer can be properly priced and submitted?

What needed information about the property cannot be known prior to submitting an offer?

How important is that information?

No offer should be submitted if the absent information is a deal-killer.

These are simple questions that every property buyer should work through. This approach is not guru voodoo. My experience is that most buyers have half answers to most of these questions at the time they make an offer.

**Every one of these questions should be answered as fully as possible before submitting any offer. The research required to answer these questions strips risk out of a purchase and almost always saves the buyer money.**

So the first thing I, as a land consultant, do is to get a sense of where the buyer is in terms of evaluating the property, the seller, himself and his plans for the property. I work through the relevant questions systematically, more or less. I get to know the property and the players.

**The second step is to identify what information the buyer needs before submitting an offer.**

I may be the right person to dig out that information or a specialist -- such as a consulting forester, minerals economist, agricultural expert or site planner -- may be needed. I'm pretty good at finding good people to help clients.

I've found that my experience as a reporter is invaluable in researching real estate.

Unlike other types of investments and business ventures, real estate can usually be figured out with a high degree of confidence. It's handy to have a reporter's persistence in asking questions along with the ability to judge and integrate sometimes contradictory information.

**The third step involves checking off the answers to specific issues, problems and questions that most land purchases raise.** I've listed just a few of the questions buyer and I routinely ask and answer prior to submitting an offer:

**Confirm acreage to be conveyed.** If no survey is available, run the deed's calls through a deed-mapper program, which will show deeded acreage and boundaries on a topographical map. Do not rely on acreage figures found on tax maps or in tax records.

**Determine whether the boundaries in the deed align with the boundaries on the ground.**

Have a surveyor walk the boundaries if necessary. If a neighbor is encroaching on your seller or the seller has fenced in part of the seller's land, the buyer will need to either figure out a resolution to the problem or live with it.

**What kind of deed will the seller use to convey the property to the buyer?** What kind of deed was used to convey the property to the seller? A general warranty deed provides the most protection for a buyer. Lesser deeds are sometimes appropriate.

**Is the property being conveyed in fee?** Are all the rights contained in the land – surface, minerals, timber, water, wind, etc. – part of the deal? Anything short of fee is likely to cause problems for the new property owner in the future.

If minerals have been sold or leased, determine the likelihood of development...and the implications of that for the surface owner. If the owner leased the minerals, is he selling his interest to the buyer or retaining the minerals in his own name? (As the surface owner, you will not benefit from the development of sold or leased rights held by others.)

**What kind of easements, if any, run with the land?** An easement is the right of one party to use the property of another. Deeded easements will be in the courthouse records. Some easements are not recorded. The owner of the property cannot abrogate a deeded easement, though it might be purchased back. The seller might have an easement to use a neighbor's property or vice versa. Easements usually involve roads and utilities.

Each state defines the conditions under which an easement can be legally established by another against a property owner's wishes. Such easements -- easement by necessity, easement by prescription -- have to be adjudicated. The opinion of a real-estate broker or lawyer does not establish an adverse easement.

**Conservation easements** have either sold or donated one or more rights in a property for environmental purposes. The most common is the donation of a partial or full right to develop a property for housing or commerce. Significant local, state and tax benefits are given to donors of these easements. I almost always advise my clients to not buy land burdened with a conservation easement; I may advise clients to donate a conservation easement on land they own.

**Determine the value of individual assets that might be sold, donated or leased without significantly reducing the value of the core property the buyer wants to keep.**

Merchantable-timber evaluation requires a consulting forester to do a walk-through or cruise. An appraisal might be needed for a house the buyer plans to sell. These valuations also establish and divide the new owner's tax basis among land, minerals, improvements, timber, conservation easement and so on.

**Fourth, clients will sometimes ask me to suggest contract terms for their local lawyer to consider in developing an offer.** I usually advise buyers, for example, to include language that asks sellers to disclose any material defect in their property and its improvements of which they are aware and disclose any boundary disputes. I also suggest that language be included that asks the seller and any agent involved to keep the terms of the buyer's offer confidential and not reveal them to other buyers.

**Fifth, I establish a consulting relationship with the buyer whereby I provide information, advice, evaluations and counsel that's not invested in any particular outcome.** I'm not a broker or agent, so I never have an agency relationship with a client whereby I represent the buyer. I don't offer brokerage services, negotiate on behalf of a client, hold money, list property and buy or sell on behalf of a client. I'm very careful not to practice real estate without a license; and I've chosen to work as a consultant, not as a broker. Accredited Land Consultants are licensed brokers and agents who specialize in land.

I was once asked what qualifies me to do what I do. It's a fair question. I'm good at solving problems and looking analytically at complicated issues. I've been an arbitrator for 24 years which has taught to me how to dig out facts in contentious circumstances and not become personally invested in a particular outcome. I often tell clients to forget about a property we've researched...because our research has shown us something to make us want to use the buyer's

money somewhere else. I'm also good at boiling down complex issues into simpler questions that a buyer can answer yes-or-no. I'm not sure what that skill is called on a resume. I'm good at research and writing, which is what I was doing until I moved to a farm in Virginia's Highland County, population 2,500.

One other qualification deserves mentioning. I was voted by my high school classmates as second funniest. Fifi and Odille have always been impressed with this honor.