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Zoning lawyers are true detectives of official jargon

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Zoning attorneys approach zoning due diligence as if they were uncovering the mysteries behind the Dead Sea Scrolls. It is an exacting process that requires analysis, interpretation, translation and explanation.

We want to know what the meaning of “is” is.

Large development companies in Manhattan will typically hire a host of architects, attorneys and consultants to do handle zoning due diligence. The effort ranges from architects to do zoning calculations and prepare massing studies, to code consultants or expeditors to advise on potential building code and permitting issues, to attorneys to prepare zoning analysis memos.

Smaller developers often rely solely on an architect or a code consultant, eschewing the use of a zoning attorney, partly because of cost.

Developers sometimes operate under the misconception that because architects, code consultants and zoning attorneys all work from the same source

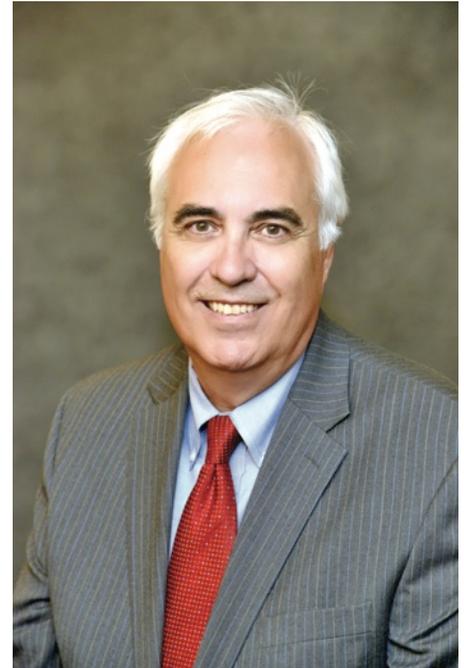
material — the New York City Zoning Resolution — the results they come away with are also the same.

Working from the same source material, professionals from various disciplines can come to very different results depending on how they approach it.

Architects and code consultants read the Zoning Resolution, while zoning attorneys interpret it. Attorneys like myself will not be satisfied until we uncover the real meaning behind some of the words used in the Zoning Resolution.

For example, under a section of the NYC Zoning Resolution known as the “sliver law,” a building on a narrow street — a street less than 75 feet wide — with a front street wall less than 45 feet wide, is restricted to a height equal to the width of the street. There is an exception to this regulation.

From the Zoning Resolution: “Where such street walls [that are less than 45 feet wide] abut an existing building with street walls that exceed [the width of the street], such new street walls may



reach the height of the lowest of such abutting building walls ... provided such new street walls are fully contiguous at every level with such abutting street walls.”

What does the wording of this section actually mean?

I recently worked with a client that wanted to take advantage of this exception to develop a building wider than the street but the property only had an abutting building on one side.

The project architect and code consultant advised the client,



based on the section's use of the words "lowest" and "walls," that without an abutting property on both sides, the client's project would be limited to the street width. I interpreted the text differently.

To me, the key phrase of this paragraph was at the very beginning: "Where such street walls abut an existing building ...". The use of the singular "building" clearly indicated to me there would need to be just one abutting building.

If the exception was meant to apply only where there are abutting buildings on both sides, the text would have been written differently. For example, it might have said: "Where such street walls are abutted on both sides by existing buildings ..."

My interpretation, therefore, was that the word "lowest" was only applicable if there were two abutting buildings, both taller than the width of the street.

We took the question to the Department of Buildings' chief zoning specialist, who confirmed that only one abutting building on one side is required to qualify for the exception. This meant the client's building could reach a height of 71 feet rather than the street width of 60 feet — a difference of another floor and an approximately 17 percent increase in floor area.

With fewer obvious or easy development sites in prime areas of Manhattan, developers are increasingly scrutinizing sites they might once have passed over.

Thorough zoning due diligence is essential to identifying and addressing potentially difficult zoning issues, including other special rules that apply to irregular lots, "split lots," special zoning districts, and since late last year following Hurricane Sandy, flood hazard areas.

These sites often require not only an expertly knowledgeable reading but also a creative interpretation of the Zoning Resolution.

Developers of all sizes and experience would be well-advised to take a team approach to their zoning due diligence and avail themselves of the particular expertise offered not only by architects and code consultants but also — and, especially — by zoning attorneys.

