CHIP: Vetting Housing Developers

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Housing projects often require municipalities and private developers to work together for months or years. Before investing significant time or committing public resources, a municipality may want to better understand whether a developer has the experience, team, financial resources, and financing plan needed to move the project forward.

This guide offers **optional steps** municipalities can take at different stages of that relationship. Not every step will be appropriate for every project, and some may be worth repeating as a project develops. Municipalities should choose the level of review that makes sense based on the project, their role, the public resources involved, and the potential consequences if the project does not move forward.

Understanding and Managing Risk

These steps are not pass-or-fail tests, and identifying a concern does not necessarily mean a project should stop. Housing development involves uncertainty, particularly during the early stages of a project. Instead, the information gathered can help a municipality understand the risks associated with the project and decide whether those risks are appropriate.

When a concern comes up, consider three questions:

1. **What is the risk?** What could happen if the issue is not resolved?
2. **Can the risk be reduced?** Could the municipality or developer take steps to make it more manageable?
3. **Is the remaining risk acceptable?** Is the municipality comfortable accepting the risk given the commitment it is being asked to make?

A municipality may accept more uncertainty early in a project, when little has been committed. As it commits more staff time, money, property, infrastructure, or other public resources, it may be appropriate to expect greater certainty that the project can move forward.

As municipal commitment increases, project risks should generally become better understood and more manageable.

What to Review - and When

The following are steps a municipality may consider as a project moves from early discussions toward construction.

Stage 1: When a Developer First Approaches the Municipality

Early in the relationship, the municipality may want to learn whether the developer and proposed project appear capable of moving forward before investing significant staff or volunteer time.

Ask for information about the developer and their experience

Ask the developer for basic information about the company, its owners and key staff, and its development experience early in the relationship. Ask for examples of similar projects completed during the past five to ten years.

Consider repeating? Yes, if key members of the development team change.

Check references

Ask for references from municipalities, lenders, investors, contractors, or other organizations that have worked with the developer. Consider asking whether the developer communicated well, met its commitments, experienced significant financial difficulties, and successfully completed the project.

Consider repeating? Usually not, unless the project changes significantly or the developer brings in new partners.

Review the developer's business history

Consider confirming that the developer's business is properly registered and in good standing. Depending on the project, the municipality may also consider reviewing bankruptcies, foreclosures, significant lawsuits, tax issues, or similar matters. A past problem does not necessarily mean a municipality should not work with a developer, but it may identify issues worth discussing.

Consider repeating? Consider checking again before making a major financial or contractual commitment.

Understand the development team

Ask who will be responsible for major parts of the project. Depending on the project, the team might include an architect, engineer, contractor, attorney, lender, investor, property manager, or housing consultant. Consider whether the people and firms involved have experience with similar projects.

Consider repeating? Yes, when important members of the development team change.

Stage 2: Before the Municipality Invests Significant Time or Resources

As municipal involvement grows - for example, through grant work, infrastructure planning, negotiations, or technical assistance - the municipality may want to look more closely at whether the developer has the resources needed for the next stage.

Ask how the developer will pay for early project costs

Ask how engineering, architecture, legal work, permitting, environmental review, deposits, and other pre-development expenses will be paid. The developer should be able to explain what resources are available for the current stage of the project.

Consider repeating? Yes, particularly if pre-development takes longer or costs more than expected.

Ask for evidence of available financial resources

Depending on the project and the municipality's role, consider requesting evidence that the developer has access to the money it says it will contribute. This might include financial statements, bank information, or letters from financial institutions.

Because this information can be sensitive, consider consulting the municipal attorney or financial adviser about what to request, how it should be reviewed, and how it should be handled.

Consider repeating? Yes, before major later commitments if significant time has passed or circumstances have changed.

Confirm that the developer controls the project site

Ask whether the developer owns the property or has another legal right to develop it, such as a purchase agreement, option, or ground lease. Also ask about deadlines or conditions that could cause the developer to lose control of the site.

Consider repeating? Yes, at important project milestones.

Stage 3: Before Applying for Major Grants or Committing Public Resources

Grant applications and infrastructure commitments can require substantial municipal work and may create expectations that a project will move forward. At this stage, the municipality may want a clearer understanding of how the project will be financed and what uncertainties remain.

Review a project budget and financing plan

Ask for a current project budget and a list showing where the money to build the project is expected to come from and how it will be spent. This is sometimes called a sources and uses statement. Identify which funding sources are secured, which are still being pursued, and whether there is a funding gap.

Consider repeating? Yes, as project costs and funding sources change.

Ask for evidence of lender or investor interest

If the project depends on a construction loan, investors, tax credits, or other outside financing, ask about discussions with potential financing partners. Depending on the project's stage, the developer may be able to provide letters of interest, term sheets, conditional commitments, or other evidence that financing partners have reviewed the project. Early-stage letters do not guarantee financing, but they can help show how far financing discussions have progressed.

Consider repeating? Yes. Look for stronger evidence of financing as the project gets closer to construction.

Ask about funding gaps and backup plans

Ask what will happen if costs increase, interest rates change, a grant is not awarded, or another expected funding source becomes unavailable. Who would be responsible for filling a funding gap? Does the developer have additional resources? Could the project be changed if necessary?

Consider repeating? Yes, when the budget or financing plan changes significantly.

Review the project schedule

Ask for a schedule covering major steps such as site control, design, permits, financing, grant awards, construction, and occupancy. Consider which parts of the project depend on funding or approvals that have not yet been secured.

Consider repeating? Yes, throughout project development.

Stage 4: Before Making a Binding or Significant Municipal Commitment

Before committing funds, constructing infrastructure, transferring property, entering into agreements, or taking other significant actions, the municipality may want to confirm that earlier assumptions remain valid and that remaining risks are appropriate for the commitment being considered.

Establish project milestones

Consider making certain municipal actions dependent on the developer reaching agreed-upon milestones. For example, the municipality might wait for evidence of site control, developer equity, permits, or a financing commitment before taking its next action. Appropriate milestones will depend on the project. Consider consulting legal and financial advisers when developing them.

Consider repeating? Monitor milestones throughout the project.

Consider a written pre-development agreement

If the municipality and developer will each have significant responsibilities, consider putting them in writing. An agreement might address project milestones, deadlines, financial information, municipal and developer responsibilities, and what happens if the project cannot obtain financing or move forward.

Consider repeating? Review the agreement when major project assumptions or responsibilities change.

Update the financial review

Before making a major financial, property, or contractual commitment, consider whether the developer's financial position or the project's financing has changed. Construction costs, interest rates, financing conditions, and the developer's circumstances can change over time.

Consider repeating? Yes. Financial capacity is an important area to revisit as a project develops.

Stage 5: Before Construction

Before construction begins, consider confirming that key pieces remain in place, including site control, financing, permits and approvals, the development team, project budget, and schedule.

If substantial municipal funding or infrastructure is involved, this may also be an appropriate time for the municipal attorney, financial adviser, accountant, engineer, housing consultant, or another qualified professional to review the project's readiness.

What Can a Municipality Do When It Identifies a Risk?

Finding a concern does not necessarily mean the project should stop. Depending on the concern, a municipality might:

- **Learn more.** Request additional information or professional review.

- **Reduce the risk.** Ask the developer to address the issue or change the project approach.
- **Wait.** Delay a municipal commitment until the developer reaches an agreed-upon milestone.
- **Limit the municipality's exposure.** Reduce, phase, or place conditions on the municipality's commitment.
- **Accept the risk.** Decide that moving forward is appropriate despite the uncertainty.
- **Step away.** Decide that the remaining risk is greater than the municipality is willing or able to accept.

The appropriate response will depend on the project, the municipality's level of involvement, and the potential consequences if the project does not move forward.

Keep Reviewing as the Project Develops

Developer and project review is not a one-time event. Costs, financing, permitting, grant decisions, the development team, and other circumstances can change.

At important decision points, the municipality can return to one question:

Given what we know today, is the level of risk appropriate for the commitment the municipality is being asked to make?

The purpose is not to eliminate all risk or guarantee that a project will succeed. It is to identify important risks early, consider whether they can be managed, and make informed decisions about when and how to commit public resources.

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