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Due Diligence When Purchasing Real Estate – Part 2

Editor's note: The following information was contributed by Norman Gutmacher, esq. partner of law firm Benesch, Friedlander, Coplan & Aronoff LLP.

You read about the first five of my Top 10 items for a *DQ*® operator to consider before completing the purchase of a property site for a new restaurant, after you have confirmed with American Dairy Queen Corporation (ADQ) that the location is acceptable, in the last issue of the *World of DQ*™ magazine. They were: purchase agreement contingencies, prior information, title diligence, survey diligence and environmental diligence. My last five items are following in this Part 2 article.

1. Soils Tests Diligence

Even if the property is environmentally “clean,” operators often need to have soil tests conducted to make certain that there will not be any issues constructing the building due to “fill,” hard rock or other adverse soils conditions that might increase construction costs.

2. Zoning

Verify that the necessary permits and other governmental approvals required for the building, drive-thru window and lane and parking requirements can be obtained. Also, confirm main access routes and curb cuts to and from the major access routes (e.g., are there “right in, right out only” access points; does current zoning permit additional curb cuts?). An architect or attorney should be able to assist with this.

3. Building and Site Inspection

If purchasing and remodeling an existing building, have the building and parking lot inspected by a licensed professional who regularly inspects such areas. The inspection should include, among other things, the structure, foundation, roof, HVAC system, parking lot useful life, access drives and other potentially big ticket items.

4. Speak with Local Governmental Officials

The local councilperson (or equivalent) will often have insight into the history of the site and neighborhood,



as well as any future plans, such as road widening, access changes, street beautification and road repairs in the vicinity, all of which could affect business prospects positively or negatively. The local police or sheriff's department can be helpful in identifying possible safety and security issues in the area.

5. Financing

Operators need to ensure they have secured an acceptable commitment for financing the purchase, construction and/or remodeling as well as know all of the lender requirements that must be satisfied as a precondition to the lender funding the loan. The lender requirements often will affect which consultants and service providers are permitted for the survey, environmental, soils and other inspections and tests, as the lender usually has its own requirements and list of approved consultants.

Note: The foregoing list is not intended to be all inclusive of all due diligence that should be conducted. Every transaction has its own unique aspects and requires a suitably crafted approach to due diligence.

Editor's note: The foregoing does not constitute legal advice. Consult an attorney with respect to a particular situation. Norman Gutmacher focuses his practice on commercial real estate and has advised several *DQ* franchisees on a variety of real estate matters. He does not represent American Dairy Queen Corporation (ADQ) or the *DQ* system. He can be reached at ngutmacher@beneschlaw.com or 216-363-4591. His law firm website is www.beneschlaw.com.