

## Due Diligence for Development Projects: Getting a Jump on Historical and Archaeological Issues

By Richard Grubb

When a property is acquired for development or redevelopment the developer is knowledgeable about the types of development allowed, the density of that development, and generally the DEP permits required for the project to proceed. What is unknown to many developers are the agency requirements, particularly with regard to Freshwater Wetlands, Waterfront Development and Coastal Area Facility Review Act permits, to address whether a property contains significant architectural and archaeological resources. Compounding this lack of general awareness is the timing of the requirement for the applicant to address historical and archaeological issues. Even at a pre-application meeting with the DEP these issues are not always discussed. It is only when the State Historic Preservation Office (HPO), a department within the DEP, has reviewed an application that a determination is made whether to require the applicant to conduct a historical and/or archaeological survey. Suddenly timing becomes critically important because in cases such as this the DEP permit is often the last item needed before construction can proceed.

So what can be done to prevent the last minute panic attack? Well, there are actually quite a few options all of which do not require a significant effort. The first option - and a variation to that option - is when a development property is undergoing its Due Diligence period. At this point, a simple screening will identify whether any State or National Register of Historic Places

and archaeological sites have been recorded on the property. The variation would be to include an assessment of whether the property has the potential to contain previously unknown historical and/or archaeological resources. The positives of doing a screening are to get a handle early on about the real and potential historical and archaeological issues that may need to be addressed if the HPO requires a historical and archaeological survey.

A screening can also be very useful when planning the lay out of a proposed commercial or residential development. Development can be planned taking into consideration historic and archaeological sites and areas that may be sensitive for archeological sites. A screening can also identify any regulations that might come into play for a particular type of development project. An option to a screening would be the more formal Phase IA historical and archaeological survey. The Phase IA survey report can be used to initiate consultation with the HPO if it is suspected or known that a formal request for such a survey will be required. The Phase IA survey report can potentially be used to officially "clear" a property of any concerns for potential historical and archaeological issues or it can be used to formulate a streamlined approach moving forward that would serve as an alternative to a "boilerplate" request from the HPO at the worst possible time.

Finally, to begin the process of dealing with potential historical and/or archaeological issues early on goes

a long way to establishing a good relationship with the HPO should a formal survey be required or if resources are identified, which might require additional consultation with the HPO.

There are additional ways that a historical and archaeological survey can be required for a development or redevelopment project. For example, the Pinelands Commission have regulations that can require an applicant to conduct a survey; NJ Highlands Rules for historical and archaeological resources apply if a project falls in the Preservation Area; if a State listed historic resource is on a development property, conformance with the regulations of the New Jersey Register of Historic Places Act can apply if the project is sponsored by the state, county or municipality; and if the project is a Federal undertaking or if Federal funding is in place Section 106 of National Historic Preservation Act might apply whose regulations in many ways mirrors those of the HPO. In short, it is recommended that when feasible a developer should strongly consider identifying potential historical and archaeological issues that might arise in the planning stages of a project, preferably during the Due Diligence phase. Lastly, it should be emphasized that the various laws are in place to allow a development project to proceed. By identifying real or potential historical and archaeological issues, the delays that can be caused by waiting until a formal survey is required late in the process can be avoided.

**About the Author:** Richard Grubb and Associates (RGA) is a consulting firm that performs historical and archaeological studies to comply with Federal, State and local regulations. These services are often required by the NJDEP, Division of Land Use Regulation and other agencies for permits needed for public and private commercial and residential projects. RGA serves on the NJBA Environment Committee and represents the industry when proposed rule changes could affect the conduct of historical and archaeological studies. Rich can be reached at [rgrubb@rgaincorporated.com](mailto:rgrubb@rgaincorporated.com) and 609-915-8197.