



Buyers and sellers need professional, experienced alligator slayers. The better armed transaction participators are with knowledge and commitment, the better chance of success they have to “turn their dreams to realty”. Proper Preparedness Prior to the Accepted Offer to Purchase ☺ is the key to a successful and happy transaction.

Note: Space does not allow a full discussion of each of the items I will cover. The goal here is to give you basic information and give you a better ability to ask informed questions.

Suburban and Rural Issues in the World of Real Estate

Overview of Some of the RURAL/SUBURBAN ISSUES

Buyers and sellers need professional, experienced alligator slayers. The better armed transaction participators are with knowledge and commitment, the better chance of success they have to “turn their dreams to realty”. Proper Preparedness Prior to the Accepted Offer to Purchase ☺ is the key to a successful and happy transaction.

Note: Space does not allow a full discussion of each of the items I will cover. The goal here is to give you basic information and give you a better ability to ask informed questions.

PRIVATE WELLS.

Drilled well: The drilled well is the most common type of well in our community. It is identified by a well-casing of about 4-6 inches across. It has a cap at the top. It usually has either a dull-silver colored cap on it that is held down by two bolts. It may also have a cap that resembles a green turtle shell. The “turtle shell” cap indicates you likely have an earwig proof well. (What’s an earwig? It’s a funny little insect that resembles a box elder bug. With a standard cap they may find themselves a way into the well casing. Enough of them will contaminate the well and make often expensive repairs necessary.) Standard well-casings are 6 inches and may be required to be 12 inches to 18 inches above the ground. If necessary, an extension can be welded to the casing to bring it into compliance. You can expect to see a submersible water pump within the casing. Drilled wells are typically from about 60 ft deep to 150+ ft. deep. They can be less and they have been known to be a lot deeper. The deepest one I was ever aware of was about 900 ft deep.

Point well: Point wells are rather common in lake/river communities. They are found in areas where the ground water level is shallow enough for the well, sometimes called a “shallow well.” You can identify the (usually) by a driven point that shows as about 1.5 inch wide galvanized piping. The point has been driven into the ground to access the water. It is drawn from the ground by a jet pump, often observed as a red-in-color external pump that is inside the structure in the basement. Point wells do not conform to current state and local codes. Property can be sold with these wells. If the water doesn’t test safe, it is likely a new well will need to be drilled. If you want to do extensive work on the home and require a building permit, it is likely you may have to replace the well at that time.

Hand Dug Wells. To the best of my knowledge, they are not legal. The property can be sold with one. It will likely be necessary to plan to pay with cash if you want to buy a property with one.

Abandoned Wells. Abandoned wells can pose a threat to ground water quality and safety and must therefore be properly closed. According to the DNR, when a well is removed from service it must be removed/closed. The abandonment procedures are set forth in Wis. Admin. Code Chapter NR 814. Although the DNR does not mandate abandonment before sale, local ordinances may contain this requirement. The broker may refer the parties to the local municipality to determine if the wells must be abandoned before the sale of the property. More information about well abandonment may be viewed at <http://dnr.wi.gov/org/water/dwg/Forms/wellabandonment.pdf> and <http://www.dnr.state.wi.us/org/water/dwg/wellaba.htm>.

SANITARY DISPOSAL SYSTEMS.

Septics: The septic is the most well known sanitary disposal system in this region. It is typically known as a conventional septic. It is constructed by digging a large hole, putting in a concrete “liner” that collects the waste. Solids go to the bottom and the liquids are expected to “strain” through a seepage field that is constructed by the septic installer. Exact specifications may vary depending on the “perkability” of the soils. If water pools over the septic field the septic system is likely to be considered failed. In that case repair or replacement is the cure. A professional decides the best solution for any issue that may arise. If a septic has failed, and the soils are not compatible with the installation of a new septic under the current rules and regulations, a mound system may be installed to replace the conventional septic.

Mound System: A mound system is generally easily identified. There will be a mound of dirt rising above the lawn’s surface. Typically about half of the system is below the surface and half is above the surface. Grass is planted on the mound. It is recommended that trees, shrubs and trees should probably not be planted on the mound. A plumber/mound installer will have more answers regarding to-plant-or-not-to-plant. The disposal of the sanitary product is divided between the soils and the sunlight. It is an acceptable and effective system. It is the system of choice when the soils won’t perk for a conventional system, but will be acceptable for this system. They often cost about twice as much as a conventional septic.

Holding Tank: The name explains the function. A tank, often 1,000 gallons, holds the waste that is flushed down the toilet. When the tank is full, the “honey wagon” arrives and pumps it. A family of four can expect that to be about once a month with a cost of about \$100 (the last time I checked) per pumping. A contract with the pumping service offers the chance to save some money.

Alternative Systems. There are systems that can be designed by professionals, within stated guidelines, that can be created specifically for unique situations. Alternative systems can be used to make previously unbuildable land to be made buildable. An alternative system may be able to be designed to make a holding tank unnecessary. Consultation with sanitary system professionals is necessary.

MUNICIPAL, COUNTY, AND STATE REGULATIONS.

Shoreland Regulations. These regulations apply to property in a close proximity to a navigable waterway. Shoreland regulations differ from community to community. In the area which I have worked within – Racine County – for 33 years, the rules cover properties that are within 1000 feet of navigable waters – generally deemed to be a lake, pond, or flowage; and land within 300 feet of a stream or river.

Simply described, you need a special zoning permit to remove trees in that corridor, to turn dirt in the corridor; just about ANYTHING you want to do in that zone should be preceded by a check with local and county authorities regarding their rules. Some of the rules can be quite restrictive. I have often repeated this when asked if someone needs a Shoreland Permit: “If your project will take place within 1,000 feet of navigable waters, you need a permit to blow your nose. If your property has water frontage, you need a permit to buy the Kleenex. And, “navigable water” can be loosely defined as a body of water that can float a leaf.” There is a fee to obtain the permit. New construction sites will need to install silt fence around the construction site. Removal of trees requires a permit. Some amount of brush removal may be exempt if it is minimal. ANY WORK that you want to do to shoreline will likely require a permit, with the possible exception of picking rocks out of the water that have fallen from your rip-rap over the winter.

NOTE: In December of 2009, the Wisconsin Department of Natural Resources (DNR) adopted new changes to the state’s shoreland zoning regulations (NR 115). Counties have until Jan 1, 2012 to update their local shoreland zoning ordinances to bring them into compliance with these new standards. These new changes attempt to better protect water quality, wildlife and natural scenic beauty around our water resources by placing stricter standards on new development and construction near our water ways. Because these new changes could impact an owner’s ability to improve or expand waterfront property, it is wise to be familiar with the changes.

The following is a list of ten changes that will likely have an impact on property owners. The list is only a one-sentence description of the change – not the full information that needs to be understood. This list is meant only to alert you to areas of change and to lead you to more investigation:

1. New impervious surface standards will limit the size of new homes and remodeling projects within 300 feet of water.
2. Unlimited maintenance and repair of ALL nonconforming structures is allowed. (The 50% is eliminated.)
3. Homes located between 35 and 75 feet from the water can be expanded. (The guidelines are very specific.)
4. Homes located closer than 35 feet from the water cannot be expanded.
5. New mitigation requirements are triggered when setback and impervious surface standards are not met.
6. Mitigation plans must be recorded with the local register of deeds and disclosed

7. New vegetation and removal requirements will create smaller views to water for some larger lots.
8. Most existing substandard lots are grandfathered.
9. A nonconforming structure may be completely replaced or relocated under some circumstances.
10. Setbacks may be reduced under certain circumstances.

For more information on the new shoreland regulations, visit the DNR's website at <http://dnr.wi.gov/org/water/wm/dsfm/shore/news.htm>.

Piers almost always need a permit to be constructed or expanded. Existing piers may already be registered. When buying a waterfront property, check to find out if the pier is registered. Just because a pier exists does not mean that it is registered and/or legal. Pier rules change at the direction and desire of the Department of Natural Resources.

Waterfront property owners with larger piers must register their piers with the DNR by April 1, 2011, to ensure their piers will be "grandfathered" from new size limits adopted by the State of Wisconsin in 2004. Generally, a pier will need to be registered if it (a) is wider than 6 ft, but less than 8 ft. in width, (b) has a platform at the end of the pier that has a surface area of less than 300ft (w/a max. width of 10 ft) and/or (c) more than 2 boat slips for the first 50 ft of shoreline frontage and 1 boat slip for each additional 50 ft of shoreline frontage. In 2007, Governor Doyle signed into law the Pier Protection Act, legislation that grandfathered 99% of all existing piers from future regulations. While the law itself doesn't name the different regulatory schemes, it is easier to understand the regulations if existing piers are classified in the following manner with respect to their size – regular, big, and too big.

REGULAR PIERS: If a pier meets the following standards, the property owner does not need to obtain a permit or register the pier. Go to: http://www.dnr.wi.gov/org/water/data_viewer.html

BIG PIERS: If an existing pier exceeds the "regular pier" standards above, the pier may qualify for grandfathering if the specific placement, size, and registration requirements are met. Go to http://dnr.wi.gov/waterways/permit_apps/Pier_Registration_Form.pdf

PIERS THAT ARE TOO BIG: An owner of an existing pier that exceeds the "regular pier" and "big pier" standards have options. Go to <http://dnr.wi.gov/org/water/fhp/waterway/piers.html#step3>

To register a pier, a waterfront owner must complete and mail a registration form to the DNR. To obtain a copy of the registration form and to find out more information about which piers need to be registered, visit the DNR's website at: "Waterway & Wetland Permits: Piers, docks, and Wharves."

Primary Environmental Corridor. Ask the local and county government entities about this designation. Simply put, the designation can be placed on property that is deemed to have an environmental impact on the community. When designated thus, controls are put on the size of

lots that can be created, the number of structures allowed, the number of trees that may be able to be removed, and the uses allowed on the property. This designation can severely limit the property. It is prudent to investigate thoroughly.

Wetlands. FIRST – there is a difference between wetlands and designated wetlands. I don't plan to explain the differences here because they differ and they change. Knowledge that a wetland may be an issue is enough to make it a matter of importance to check out a property when you are contemplating a sale or purchase. Historically, it used to be said that if you see cattails it is wetland. That isn't always true. I recall reading about a lot in a city located between two commercial buildings was a designated wetland. Why? Because someone wanted to fill in a wetland in the neighborhood. To do that they would have to find another parcel of a similar size to substitute. The lot in question was designated as that substitute. The person who bought the lot to build on was not happy. It's always a good idea to fully investigate before you buy or sell anything. Consider carefully if you want to build. If there is a low area that may hold water in the spring...you build your home a couple hundred feet from the road. If your driveway has to cut across an area that is considered wetland, you may have to build a bridge! Designated wetlands are on file with the township/county offices. Activities conducted within wetland areas are closely regulated and permits are required for activities which could harm or destroy wetlands. Persons affected by wetland rules should also become familiar with the Wetland Mitigation Law, 1999 Wisconsin Act 147, effective May 25, 2000.

Flood Plain. A floodplain is defined as land where there is a 1% chance of flooding in any year. This is also known as the 100-year flood plain. If this condition exists on the property, full disclosure is required. Property does not have to be "on the water" to be considered in the flood plain. Normally it is, but not always. In my small town we have a ditch next to a community walk path. There are areas in the village that are considered in the flood plain because of that ditch. It has, in the past, flooded during a very wet spring. The spring of 2008 we had what was considered a 500 year flood. That changed some of the 100 yr flood zones. If you have an old map, it may be incorrect. Flood plain is established with a survey with elevations. Established flood plains have a specific set of rules if you want to build and/or fill. Easier to work with, but still significant is the flood fringe overlay districts. They are easier to work with if you're building, but require special permits, too.

Asbestos, Lead, Radon, Mold. Sellers and Buyers need to make themselves aware of the possible problems associated with these substances. Professional inspections will give the answers that may be needed. If a purchaser wishes to check these conditions, a special contingency needs to be included. The pre-printed offer usually includes a pre-printed contingency that satisfies the requirement that sellers must give written permission if tests involved the names conditions BEFORE any test may be placed/obtained.

Underground Storage Tanks. For detailed information, you should go to the Wisconsin web sites that address the specifics of each situation. An out-of service UST used for storing heating oil or an out-of-service UST of 110 gallons or less used for storing motor fuel for noncommercial purposes is required by Wisconsin law to be registered and closed (usually removed) by a certified tank professional. According to the Dept of Commerce, which administers the UST regulations, the best thing to do if an abandoned UST is discovered is to call a certified tank remover. If the UST is removed without complying with the UST regulations, licensee will generally be obligated to disclose this fact to all parties pursuant to Wis Adm Code RL 24.07 (2). Buyer financing may be jeopardized without expert confirmation that there was no leakage or contamination from the improperly removed UST. If a tank is removed by anyone who is not certified, the removed must complete the Removal Checklist (ERS-8951) and the owner must complete that tank inventory form (ERS-7437). Both forms must be submitted to the Dept of Commerce along with a letter explaining the circumstances. Upon review of all information submitted, DOC will determine if the removal and documentation are satisfactory. A site assessment may be ordered to satisfy the closure. If a property is sold or purchased with an undisclosed out-of-service UST and that tank is later discovered, the property owner of record at the time the noncompliance becomes a regulatory issue is responsible for compliance and environmental remediation. Legal action against the previous owner by the current owner may be an option to recover costs. Go to <http://commerce.wi.gov/ER/ER-BST-closure.html> and <http://commerce.wi.gov/ER/ER-BST-ResTk.html> for further information.

Zoning Issues. First – there is some confusion when people’s background is urban rather than suburban/rural. There are 3 different categories of municipalities: city, village, and township. When you see the phrase: town of Waterford – that means the township of Waterford; NOT the village of Waterford which is often called the town, i.e. I live in “town” and you live in the country. The community in which I have worked for 33+ years, the countryside can be called a village. Our area has the township of Waterford. It is its own taxing and municipal authority. Its boundaries wrap around the village of Waterford on three sides. The south boundary of the village of Waterford is common with the north boundary of the village of Rochester. Until 2010, there was a village of Rochester and a township of Rochester. The two merged last year. Now it is all VILLAGE. Therefore, a 100 acre farm is in the village of Rochester...even though it is located out in the countryside, 4 miles from the Business District of the village of Rochester. And, then there’s the city. In our area in the western part of the county only has one city. That is a separate discussion, so named because of their unique definition. And, the township of Norway has a business district on the busy intersection of Hwy 36 and Loomis Rd with strip mall and more.

Now, that’s as clear as mud. Right? The bottom line is – just because there are cows grazing along the fence line, doesn’t mean you are in the township and not the village. And, just because you live in the village, it isn’t really “a town.” ☺

Each of these entities – village, township or city – has their own rules, zoning laws, officers, and taxing guidelines. Call the municipality with your questions.

If you have something specific that you wish to do with your property, it's pretty important that you know what the rules are. It is not impossible to get a change in zoning or a conditional use permit that would circumvent the current use allowed for a specific purpose. That would require a series of meetings for you to present your case for the change and the planning board to decide if they want to make the change. If you are buying a property, include a contingency in your offer to purchase that gives you a specific period of time to petition and obtain permission for your intended use; it should include the phrase that you reserve the right to withdraw from the offer if you cannot obtain the variance or conditional use permit you seek. Again – REPEAT – talk to an attorney if you have questions as they pertain to your specific situation.

Private Planning by Restrictive Covenants and Easements. Restrictive covenants and easements are principal legal tools for the accomplishment of private land-use goals. The municipal entities nearly always have their own land-use rules; the ones that are in place at the current moment and nearly all have a Land-Use Plan designed for the future. Whenever you are buying property, especially if it is in any proximity to a village or a city governmental area, it is important that you look into the future land use plans, the current land use plan, and also how what happens on the common boundaries between municipalities may overlap. For instance, in our township of Norway, better known as the Wind Lake area, there is a region of the north part of the township of Norway that must conform with the city of Muskego's plan and the city of Muskego has land on their south boundary that must conform with Norway's plan. This is a common occurrence between municipal regions. Check to see how your plans for property fit into the plans in place by the governmental entities.

Subdivisions also have restrictive covenants and easements. They vary considerably from one neighborhood to another. Just as the municipality may have rules more stringent than the county; but not less, the subdivision may have rules more specific than the municipality and the county, but not less. Example: It is unlikely that county will have a rule that you can't hang laundry on clothes lines in the back yard. In this example, it is also unlikely that the municipality will have that rule either. But, it may be a rule that the subdivision has put in place. Fences are an example of a common subdivision restriction. If you have two puppies that you will want to fence in, it would be prudent to find out if that is allowed in the area you wish to live. If you are buying into a subdivision, be certain to obtain a copy of the recorded by-laws and restrictive covenant.

Investigate to see if there are any guidelines regarding "the building envelope" on the property if you plan to construct a structure. What's a building envelope? It's the area outlined by the guidelines in place within which your structure must be located. Your initial requirements are the set back requirements from the side lot lines, the distance your structure must be from the road right-of-way, and the distance you must be from the back lot line. These requirements

differ, according to the municipal, county, and individual subdivision rules. Beyond these requirements, you will find additional requirements if your property is on the water or if it is part of an area designated as an environmental corridor. Do your homework!

Personal Story: I built a home in a waterfront area. First – I had to conform to the rules for set back from the street. My lot was considered substandard so I had a different set of rules, in addition to those that others construction must follow. The rules said I needed to have corner closest to the road 35 feet from the right-of-way. To do that I would have had the longest driveway on the street – except for a couple down the road a ways. I was required to obtain the distance that the homes of my neighbors on the right and left side were from the R-O-W – draw a line...and that was my guide. Then I had to get signatures from both neighbors in order to obtain the variance required by the township. SECOND: I was on the waterfront. Standard rules are that you must be 75' from the “Ordinary High Water Mark” which had to be marked by a representative of the DNR/Department of Natural Resources. (Leave plenty of time to wait for the DNR rep to find time to come out. In my case, it took about a month.) Because I had a substandard-sized lot, I was allowed to build beyond the 50 foot line. My house went up. I had a small “rug-porch” as a step out from my living room. From the water’s side of my home, this porch was on the second level of my home. The porch was constructed. The inspector came. My porch/balcony was 1 inch too close to the water. We had to fix it or apply for a variance. We fixed it.

Highway Accesses, Right-of-Ways and Long Range Planning. The Wisconsin Department of Transportation can restrict or forbid access from private land onto busy state highways. There are also special regulations the DOT may have. In the past, these provisions pertained to only subdivisions, but their application has recently been expanded to include certified surveys, condominium plats, and all other types of land divisions. TRANS 233 contained provisions relating to mandatory review fees, setback restrictions, drainage, noise, vision corner requirements, and other regulatory items that will likely be of interest to affected landowners. [taken from #20.10 of Wisconsin State Law, 2001, page 562]. On December 11, 2008, the Dane County Circuit Court invalidated Trans 233 (Trans 233). The ruling was based on the fact that the Wis DOT failed to follow proper rulemaking procedures when adopting changes to the rule in 1999 and 2001. Specifically, it was determined that WisDOT did not perform a housing impact statement prior to submitting the rule to the Legislature for review, as required by state statute. For more information, go to the website for the Wisconsin Department of Transportation.

VACANT LAND ISSUES.

Whether you are buying, selling, or brokering vacant land, you need to know the basics. Once again, the information here is not the only information you may need. But, it's a start.

Land-Use Value. If dealing with agricultural land, all parties to the transaction should be aware of a possible tax penalty under Wisconsin's use-value assessment program. Under the use-value assessment program, all "agricultural land" is assessed, for tax purposes, on the basis of its use for agricultural purposes rather than its fair market value. The objective of the use-value law is to allow farmers to continue farming their land without being forced to sell it due to increased taxes. Because communities, in theory, will have to increase property taxes on nonagricultural land to make up for the loss in revenue that would have been generated by taxing farmland at its fair market value, the use-value assessment system represents a tax subsidy to owners of agricultural land or a tax shift to owners of nonagricultural land.

To make sure that the tax subsidy will be used to keep the land in agricultural production, a penalty was created as a means to discourage land speculation and recoup some of the subsidy paid by owners of nonagricultural property. Under the penalty, any person who changes the use of the land to a nonagricultural use will be assessed a penalty equal to the difference between the property taxes that would have been levied on the land if the land had been assessed at fair market value and the property taxes levied on the land for the last two years that the land had been valued under the use-value system. The penalty is calculated using the following equation:

$$\text{Penalty} = (\text{fair market value-assessed value under the use-value system}) \times \text{mil rate} \times 2.$$

Because this penalty can be substantial and have an impact on the buyer's decision to purchase the land or the price they are willing to pay for it, sellers are required to disclose to prospective buyers that the land is assessed under the use-value system. Sellers and licensees are encouraged to note this on the farm real estate condition report.

This excerpt is taken from the Wisconsin Real Estate Law handbook, 2001 Edition by Scott Minter and Rick Staff.

NOTE: A change in zoning may not immediately result in a use-value conversion charge. A change in zoning does not necessarily mean that the property is no longer farmed. A piece of land may be zoned as commercial or residential, but still used for active farm production. The trigger that causes a use-value conversion charge is a change in the actual use of the land. Use-value assessments apply to "pure" agricultural land, such as pasture or cropland, but not to land under buildings even if the buildings are devoted primarily to farm use. Go to:

www.revenue.wi.gov/slf/useval/08uvpen.pdf. A conversion charge worksheet is available at www.revenue.wi.gov/slf/useval/uvinst.pdf

Does the Land You Want to Build Upon Pass the Perc Test? There is a more detailed description of what it “perc” means under the heading, “Sanitary Disposal Systems in this report. Briefly – any rural property that is not serviced by municipal sewer needs some kind of private sanitary system, i.e. a drilled well, a mound, or an alternative system. A percolation test is done by a private sanitary disposal professional. The results of the percolation test will determine if the land is buildable or not. If it is determined that it will perc for ones of the systems accepted by governing bodies who have jurisdiction over the subject parcel, the next step is to determine which kind. The professional you are working with will be able to answer that question. Once the pro does his work, the governing bodies involved will need to certify the test and give you a written approval to install the system deemed appropriate for the land in question. If the land does not perc for a sanitary system, a holding tank may be an alternative. There are communities who will not issue building permits for land that require a holding tank. Some communities will allow a holding tank only if the present system that has served the existing buildings has failed. The best advice I can give you is to do your homework before you close. If you are writing an Offer to Purchase you should consider writing a contingency that gives you a way to cancel the offer if it doesn’t perc.

Buildability of Vacant Land.

Just because you want to build something on the land you want to build doesn’t make it a given that you will be able to do so. And, just because the seller isn’t aware that there is something that would adversely affect the buildability doesn’t make it buildable. Beyond the sanitary disposal system, there are other factors that may affect your building project. Are the soils suitable for the structure you wish to construct? Has the property even been used as a land fill? Were hazardous materials ever put in that land fill? I remember the picture that was on the front page of our county paper one morning. I also remember my reaction. “Praise the Lord that isn’t me!” A dejected looking gentleman was sitting on an enormous pile of tires. It seems when he broke ground for his home the digger found about a thousand tires. It had been a tire dump site a long time ago. I’m guessing the buyer’s next phone call was to his attorney. Remember – ignorance is no defense when you are in a situation like this. Is the seller liable if they didn’t know? The sentence is, “I am not an attorney and I am not able to give you legal advice.”

I highly suggest that the parties use a contingency that the first company I worked for decades ago wanted included in all vacant land transactions:

“Neither seller nor broker warrant or represent that buyer can build on this subject property. It is specifically understood that within the period hereinafter specified, Buyer will determine if he can build the structure that he desires. If he cannot, Buyer will advise Seller in writing not later than 21 days after acceptance of this offer and in such event this offer shall be null and void and all earnest money shall be returned to Buyer. Failure of Buyer to so notify Seller with the time specified, or the earlier closing of this transaction shall constitute a waiver

of any rights, claims, or action that Buyer might otherwise have regarding being able to build on the subject premises.

{ } (Check if sewer is not available to property.) Furthermore, Buyer understands and accepts that Seller makes no warranties or representations as to the suitability of this lot for on-site sewage disposal systems of for the construction of buildings.”

This contingency protects both the buyer AND the seller.

FIRST – it protects the buyer. Whether the buyer is anxious to get an offer on the table and tempted to take the land as is; or whether there are conditions not known to either party...giving the buyer 3 weeks to go to the township, the county, the state – whatever and wherever an investigation may lead – the buyer is given ample time to investigate. If the buyer investigates prior to an accepted offer he/she would have no recourse if they discover they can't use the property as they planned. And they aren't out investigating the property while another buyer is putting an offer on the table. The buyer is protected in the timely offer and protected by the time given him/her before the transaction proceeds to closing. Thorough investigation at the get-go can eliminate problems at the end-game.

SECOND – it protects the seller. In the event there are conditions that the seller doesn't know and/or requirements by governing bodies that the seller doesn't know exists, issues may come out in time to avert unseen problems. AND, the Seller is protected from having liability regarding the buildability and use of the property after the closing. Rights, claims, or actions by the buyer against the seller are waived.

The clause gives everyone ample time to be satisfied before the transaction is completed.

A Story: I sold a lot in the township near my office. It was in the vicinity of a local lake; probably about 1,000 feet from the water's edge. I was called to list a home and the adjacent lot. One buyer bought both properties. The buyer thought the vacant land contingency would be moot because they had no intention of ever building on it. The bought it so no one could ever build on it while they were in the house next door. We were able to include the contingency in the offer.

Now it was later – about seven years later, as I recall. A divorce was occurring in the house. And the lot next door was becoming a building site. The lot had tall oak trees on it. (I remember being told that “oak trees don't grow if they have wet feet.” We had flood plain maps that indicated the floodplain was a long way off. There were no designated wetlands on the property. The ground was solid. The oak trees towered over the landscape and shaded the property. None of the homes on the short street were in the flood plain, the flood fringe overlay...nothing was on public record that indicated any problem. The Vacant Land contingency was in the accepted offer.

When the buyer's attorney called, the request was for the seller to give him his money back because the land wasn't buildable. It seems that the powers that be had a green paintbrush

(so to speak) and they had decided to paint green over the land east of the lake as designated wetlands. The designation was not yet official but it was on the planning map at the town hall...and the town hall said it was going to be official and the land was no longer able to be built upon. The seller's attorney felt that the seller should return the money. I insisted the seller didn't have to because of the contingency. Seller won. The buyer had the opportunity to investigate and didn't. The seller kept his money.

Environmental and Zoning Regulation. Briefly, go back and read the Environmental Issues and the Zoning sections of this report. See also – Building Envelope discussion. Above all – Do your homework!

The last word in the realm of Suburban and Rural Issues is worthy of repetition: Do Your Homework. If you are unfamiliar with rural-countryside issues, give your homework even more importance. Ask about past, present and possible future uses of the property that interests you. If you buy a piece of land surrounded my pristine fields of corn and alfalfa, don't assume it will always be that way. It is an extreme disappointment for people who build their dream home in a quiet country area, only to find out that the people who just bought the adjacent property are going to bring with them a pig, a goat, chickens, two four-wheelers... and the "cool" landscape will be a great place for a motorized dirt-bike track!



Vernacker
Professional Real Estate Services

There is No Substitute for Experience
verna@vernacker.com • 262-534-7400

Equal Housing Lender REALTOR® CRS Graduate REALTOR® Institute REALTOR® SRES SFR SHORT SALES & FORECLOSURE RESOURCE