

Gain control over utility networks

Owners and users of buildings in both industrial and logistics parks hope to benefit from the carefree use of utility networks. However, in order to meet deadlines, to have basic functionality and the required permits and to begin operations on time, they often make big concessions when buying buildings or taking them to lease.

Utilities must be part of the deal

The developer of the industrial park often constructs and owns infrastructure for the entire park. In order to sell quickly, developers usually say they are in complete control of infrastructure, they will provide free management of utilities (assuring that the costs are already included in the land or building purchase price) or that they will transfer the infrastructure, for free, to the municipality, which will take care of it.

Sometimes the buyer plans to build their own utilities or utility connections. In such cases there also happens that the buyer simply settles for fulfilling the minimal conditions just to obtain the necessary permits, not considering whether he has all the necessary rights he may need in the future.

In fact, buyers are frequently discouraged to investigate in detail the terms of infrastructure use for future needs. The more diligent the potential buyers or their lawyers are in this respect, the more the will of the owner to sell diminishes. However, neglecting the detailed legal regime connected with utilities' provision can bring great problems.

What the user needs

It may take some time until the user of the plant realizes that infrastructure needs to be improved, maintained, or

repaired. The original seller, who may have promised free care of all infrastructure, or his or her legal successor, is suddenly inactive and unwilling to perform what is needed. They may also end up in bankruptcy or liquidation. In cases where the infrastructure is already in the hands of the municipality, needed resources are often missing.

The user might have certain legal rights towards the original owner or developer if so agreed in the purchase contract. However, sanctions do not resolve issues of functionality with the network or the need for their immediate repair. In such case, negotiations may be difficult.

Possible means of control

Few network owners are willing to operate infrastructure if the activity is carried out "for others", and is not profitable. To avoid this, the utilities administrator should be constantly motivated. Sanctions, as negative motivation, may be ineffective, particularly if the original seller has already transferred utilities to another party, or if the seller's economic position is worse. In this case the situation calls for positive motivation.

• Profitability

The system of administration for the infrastructure in question should provide for the fair contribution of all users, both current and potential. Whether or not the system is fair depends on the

type of network and its use. Sometimes it is good if the shares of users depend on occupied land (for example, for maintenance of green areas). Sometimes they should depend on the number of people using the facilities (sewage), and sometimes on the wear and tear of the facility (roads in the case of heavy trucks of some users) and the like.

Unless everything is planned ahead, the system of utilities often collapses - not only financially but also physically.

• Easements

It is not always sufficient that administration is profitable for the administrator. It is useful if network users can perform the intervention themselves in cases of urgent need. However, the user needs the right to access the land or plot concerned - using an easement for such entry. Easements - rights of access to third party land - should be established at the beginning - when the land or building is purchased. Often, after the seller collects the purchase price he/she is no longer as friendly towards the buyer as before.

Even if the costs of intervention are not compensated, easements at least enable the user to intervene and avert damage.

• Major operators

As a rule, the best arrangement is when the user is in a direct contractual relationship with major reliable suppliers of electricity, gas, water, and sewage treatment. If the user only has an indirect relationship, it may occur that one or several direct customers breach the contracts, which may result in sanctions affecting even the most disciplined users.

Purchase of utilities by the user

The utilities owner, feeling the burden of care, sometimes offers to sell them to the user. The buyer should however, keep in mind, especially if infrastructure serves multiple users in an industrial park that with ownership comes both responsibility and expense. If others in the park are not contractually obligated to participate in the costs, they will not be willing to contribute. These relationships need to be defined and under control from the outset.

Using a building for business is a long-term affair. Any compromise on the arrangement of the utilities is a potential problem for the future. Compromise means adopting solutions without sound economic background, not contemplating expansion, lacking necessary easements or removing any possibility of direct contract with major operators.



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