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### LAW: Making the Most of Mixed-Use Opportunities

As cities around the country continue to redevelop their urban centers, opportunities abound for developers eager to build mixed-use projects that fit in with today's market-driven realities. Many people are tired of long commutes to their downtown jobs and mind-numbing drives to shopping centers, and yearn for safe and enjoyable urban living experiences with all the convenient amenities. Combine an aging American population with a lack of desire to pay for an outgrown suburban home, and what do you find? A strong marketplace for residential development tactfully integrated with multifaceted retail, office and entertainment uses—the classic mixed-use development project.

Mixed-use development is no longer limited to urban districts in cities like San Francisco, Seattle or Portland. Even in the greater Los Angeles area, where strip shopping centers are commonplace and cars probably outnumber people, mixed-use development in the urban core is taking off. Developers now specifically design residential construction to cater to a strong feeling of community, which results in bringing people together in ways that erase the need to separate work, home life, shopping and entertainment experiences. Today's urban marketplace demands this kind of development. Implemented properly, mixed-use development not only fulfills the planning objectives of public agencies—which often streamline approval processes in high demand projects—but also benefits owners and investors, while satisfying real market demands.

#### Site Selection

For many years, residential, retail or office site selection focused on a single-use location. Developers would get control of a parcel of land or assemblage and then find a user or users for a single-use development. In a mixed-use project, this strategy simply does not work. The developer must expand its horizons by considering a number of variables. In addition to the traditional real estate variables of price and location, factors worthy of consideration in selecting a suitable mixed-use development site include some or all of the following:

- Neighborhood and community dynamics
- Convenient transportation
- Nearby shopping
- Fun and safe pedestrian experience
- Short commute to workplaces
- Nearby parks, museums, entertainment and recreation
- Locations of schools/churches
- Green or "smart" building design

If the mixed-use development contemplates renovation of existing buildings, be sure to examine ways that the improvements can be reused to protect any architectural design or fit in with the neighborhood feel. Warehouse and loft-style residences are renowned for converting existing buildings into an upscale redevelopment neighborhood.

### Completing Due Diligence

As with most successful development projects, embracing the “look before you leap” philosophy will serve you well. Remember that because multiple uses are involved, any number of variables will impact the viability of a mixed-use project. For example, identifying key commercial or retail tenants in advance may jump-start an otherwise questionable project. Getting the right tenant mix on the residential side will also be crucial to project success. Rigid adherence to single-use design or simplistic market analysis, without appropriate accommodation for mixed-use tenant needs or demands—especially on the residential portion of a development—often leads to failure. Consider the following due diligence items:

- A savvy developer with good site control will first complete a summary market report containing such things as comparable sales and leases, rental growth rates, absorption and vacancy rates, migration trends, typical user profile (for the residential, retail and office phases), new and planned construction in the neighborhood, projected expenses, and prevailing cap rates.
- Once you understand the prevailing market conditions, complete a thorough financial analysis of the development, including preparation of income, expense and capital budgets, replacement cost analysis, historical and future tax analysis, environmental costs, insurance premiums, cost of capital, and return on investment analysis.
- Operational analytics typically include finding suitable management and leasing personnel for this kind of project. You should conduct tenant interviews, prepare a marketing plan, line up service vendors and prepare contracts, bind adequate insurance coverage, conduct risk management analysis (accident, damage and theft reports in the area), prepare a security system analysis, and evaluate overhead expenses.
- Physical site assessment will include reviewing engineering reports, building plans, environmental conditions, geotechnical conditions, completing design review, parking and transportation analysis, utility availability, etc.
- Legal review will encompass such things as purchase and sale contract, zoning compliance, title and survey review (easements, encroachments, reciprocal access needs, etc.), parking compliance, permitting, code compliance, lease forms, service vendor contracts, construction contracts, tax issues, financing documentation, governmental interface, neighborhood associations and closing issues.

### Financing the Project

Fortunately, mixed-use development projects are becoming so commonplace that institutional financing is often readily available for a well-heeled project with adequate developer equity. Lenders familiar with these kinds of projects also know that local municipalities and agencies now encourage mixed-use redevelopment. Because of increased costs of this type of development, government agencies’ involvement is often necessary and their participation is usually quite helpful. For example, financial incentives from transit-oriented development programs, and various partnership arrangements with the municipality or the local development commission, frequently allow development of mixed-use projects that otherwise won’t get done because of concerns about unfavorable economic returns.

Even if governmental financial incentives are not available, sometimes government agencies may include nonmonetary incentives to encourage mixed-use, such as an increase of the floor area ratio in the downtown zone for including a residential element, or permitting neighborhood zones that make it a lot easier to build commercial and office services in the neighborhood.

For projects that include affordable housing components, subsidies can help the financial returns for the developer and make a project more economically viable. Nonetheless, some developers shy away from mixed-use because of unpredictable economic return, especially if governmental support and subsidies are uncertain or too time-consuming to obtain.

### Competing Priorities for the Site

There are, of course, numerous other questions that will need to be answered and issues to resolve as the framework for the mixed-use project gets under way. Constant tension will surface as competing priorities become apparent and the parties attempt to answer these questions and resolve pressing issues. Consider the following:

- What is the highest and best use for the property being considered for redevelopment? How does it function in the context of everything around the property?
- How will the project respond to changes in the neighborhood?
- What are the long-term prospects for the area?
- What needs in the neighborhood and region are currently unfulfilled?

- What are the property owner's needs and objectives, and how can the project meet or exceed those needs and objectives?
- What are the financial objectives (i.e., long-term income stream, tax credits, or short-term profit maximization)?
- How can the project achieve the highest returns with the least risk?
- What are the financing constraints and objectives?
- What are the critical paths and timelines to getting the project done on budget and on time?

As you can see from the above sampling of competing priorities, any number of challenges confront the developer and planner proposing a mixed-use development, including added complexity because of the multiple uses, restrictive zoning codes, increased construction costs, financing challenges, wary equity investors and a lack of suitable locations. But even these challenges will not deter the market demands for urban livability and the success of a well-designed project.

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