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REPURPOSING OF TRANSIT FACILITIES

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As passage of a federal infrastructure bill nears, long-awaited transit investment may finally be near as well. In South Florida in particular, local governments have begun to focus on Transit Oriented Development (TOD) as a means of modernizing transportation options and maximizing efficiencies between transportation and other development.

The TOD planning model has allowed local governments to offer height and density incentives for developments within a certain distance from transit facilities such as light rail and bus stations. The TOD model has taken various shapes and evolved to include development opportunities not only on privately-owned properties but also on publicly owned properties. A classic example is the repurposing of transit facilities, such as "park and ride" stations, or Metrorail stations as they are known in Miami-Dade County.

The Miami-Dade Metrorail system is comprised of numerous stations throughout the County where riders can jump on and off as well as connect with the Metro Mover system downtown. Each of the stations offers parking for residents where they can leave their cars throughout the day. Miami-Dade County has realized that many of these facilities are underutilized. A series of requests for proposals ("RFPs") have been issued by the Miami-Dade County Transit Department in furtherance of engaging local developers to partner with the County for the development of mixed-use projects at underutilized stations. The RFPs call for experienced developers with a proven track record to submit proposals for developments that are profitable without compromising the Metrorail "ridership" experience.

Vizcaya Station

One example is the Vizcaya Station property, located in the "Roads" section of the County and adjacent to the world-famous Vizcaya Estate. The Transit Department issued an RFP calling for a mixed-use development that would be compatible with the surrounding community. The RFP required that parking for the proposed development be sufficient to include the parking otherwise provided for the freestanding station as the parking area was to be eliminated by the proposed development. Specific architectural features were required to preserve the architectural character of the surrounding area, including some of the historical elements in the area. There was also an "Art in Public Places" requirement in keeping with the County's Cultural Affairs Department regulations. The biggest challenge for the bidding developer is to submit a proposal which offers the highest and best use without compromising compatibility with the surrounding neighborhood. That challenge is obviously significant when the station happens to be located adjacent to a single-family neighborhood.

As discussed more fully in our blog post of May 24, 2021, many infrastructure projects rely upon Public Private Partnerships (P3s) for the financing of these projects, and TODs are no exception. The P3 arrangement for the redevelopment of Metrorail stations called for a long-term ground lease (90 years) with periodic renewal terms. For more insight into the Metrorail or other TOD projects as well as P3 opportunities, please reach out to a member of Berger Singerman's Infrastructure Task Force.

The Politics of it All

Once the RFP process has taken its course, the project is awarded and a Development Agreement is negotiated between the County and the winning proposer. Once negotiated and finalized, the package is forwarded to the legislative body, in this case, the Board of County Commissioners, for approval. Like any other public hearing for real estate development, P3 deals also find themselves at the mercy of public input and/or opposition. Directly and indirectly affected constituents are offered the opportunity to express support or opposition for these deals. The County, no different than private developers, must keep constituent concerns in mind while trying to maximize and better utilize transit facilities.

TODs, like P3s, are complex and require experienced team members on the private side. Developers seeking to partner with local government for these projects can benefit from qualified legal assistance in the process. At Berger Singerman, we offer legal guidance from experienced, accomplished governmental attorneys whose knowledge and skill can be valuable to the winning proposer.

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