



REAL ESTATE LAW & INDUSTRY



VOL. 4, NO. 12 PAGES 421-454

REPORT

JUNE 14, 2011

HIGHLIGHTS

Financial Agencies Delay Comment Deadline on Risk-Retention Proposal

Federal banking regulators announce they will extend the comment period until Aug. 1 on proposed risk-retention requirements for mortgages and several other types of securitized assets. **Page 424**

BNA INSIGHTS: Operating Expense Cross-Ups as They Apply to CRE Leases

Alexander X. Jackins of Seyfarth Shaw reviews ways in which gross-ups can help assure fair apportionment of operating expenses in commercially leased buildings, while keeping unanticipated cost variations to a minimum. **Page 434**

INDUSTRY SPOTLIGHT: Coordination Boosts ROI From Green Buildings

Scot Horst, the United States Green Building Council's senior vice president of Leadership in Energy and Environmental Design systems, says the greening of buildings has the potential to rebuild the U.S. economy. **Page 447**

New Apartments, Catering to Baby, Echo Boomers, Stress Size, Location

Doug Bibby, president of the National Multi Housing Council, says the multi-family rental properties of the immediate future will contain smaller units, located in larger buildings in walkable neighborhoods, and will look a bit like an extended stay hotel suite. **Page 429**

ECONOMIC NEWS: CRE Price Indices Offer Divergent Views of Recovery

Sam Chandan of Chandan Economics writes that CRE pricing indices released by various firms appear to have diverged significantly since the downturn. He notes that each methodology has validity and each adds perspective on the overall real estate market. **Page 442** . . . Elsewhere, a panel of experts speaking during an ALI-ABA webcast suggest that the commercial real estate market is on a clear path of recovery. **Page 424**

Trends in Parking Survey Indicate Sustainability a Major Industry Concern

A late May survey on trends in parking from the International Parking Institute indicates that one of the most significant industry concerns, coming just after revenue, is the creation of sustainable parking solutions. The need for "green and sustainable parking solutions" was cited by more than one-third of the survey respondents as a major concern. **Page 437**

Promise to Get Consent for Hotel Project Unenforceable Due to Disclaimers

The U.S. District Court for the Northern District of Oklahoma partially grants a motion to dismiss breach of contract and constructive fraud claims from a hotel developer alleging a property seller promised, but failed, to secure necessary permissions for the construction of a hotel on the property sold. **Page 440**

REITWEEK

INDUSTRY TRENDS: Speaking at the National Association of Real Estate Investment Trusts' REITWeek event, New York University economics professor Nouriel Roubini says the United States has limited fiscal and monetary policy tools left to use if the economy continues its sluggish recovery. **Page 445**

MERGERS & ACQUISITIONS: Panelists at a REITWeek discussion of recent mergers and acquisitions say conditions are improving for sensible deals among companies in the real estate sector, but that each transaction must be driven by its own financial logic. **Page 445**

DEAL OF THE WEEK

MIXED-USE DEVELOPMENTS: A California developer plans to build an eight-story, multi-family property within walking distance of Twitter's new San Francisco headquarters, in an area that is expected to generate technology startups and accompanying rental units. **Page 433**

ENVIRONMENT

TRANSIT-ORIENTED DEVELOPMENT: West Valley City, Utah, breaks ground on a \$500 million transit-oriented development project, which will enhance regional connectivity for 80 percent of the state's population. **Page 451**

Environment

Transit Oriented Development

Utah Breaks Ground on New TOD Project; Transit Seen as Major Business Attraction

West Valley City, Utah, population 129,000, broke ground May 19 for a \$500 million transit-oriented development (TOD) project, which will enhance regional connectivity for 80 percent of the state's population.

West Valley City is the second largest urban area in the state, and the project will be Utah's second largest commercial development, according to Nicole Cottle, community and economic development director for West Valley City.

Cottle, speaking to BNA June 6, said that her city plans to utilize the TOD project to heighten the citizens' quality of life, attract new business, and to give her city a downtown. The project, called Fairbourne Station, is slated for completion seven to 10 years from now. It will include 200,000 square feet of retail space, 200,000 to 250,000 sq. ft. of office space, 1,000 residences and 162 upscale hotel suites. The project includes four linear acres of urban park and plaza space, according to a May 19 statement from West Valley City.

Mayor Mike Winder called the Fairbourne Station project "the premier transit-oriented development in the mountain west," in the statement. Fairbourne Station will be anchored by the town's City Hall, police headquarters, a courthouse, and library branch. A public plaza and promenade, slated for completion in under two years, will provide a gathering place for community events, Cottle said. "We are creating [a] downtown for our city, to let our [citizens] have a place where they can come and have a downtown of their own."

Too Small to Succeed? Although 129,000 people spread over 35 square miles may not seem dense enough to support a TOD project, Cottle said that the city's planning staff has created and zoned specific, highly dense nodes "so that the transit makes sense in those areas." The residential component to Fairbourne Station will be 64 units to the acre and the accepted minimum for a successful TOD is 25 units to the acre, she said. "We are prime for transit here. At this location we are within 15 minutes of 2 million people, and we have a very dense retail and residential structure right here at this node."

Cottle said the project sends a signal, nationally, "that we are economically strong, that we are continuing to grow and have a bounty of economic development, even in lean times. Frankly, we view the fact that [Utah] could build a million square feet of retail between 2008 and 2010 as nothing short of a miracle, given the economic status of the country."

The Wasatch Front. This TOD project is part of a larger vision: to better connect the Wasatch Front, which contains 80 percent of Utah's population. The Wasatch Front consists of a chain of cities and towns stretched along the Wasatch Range in the north central part of the state, from approximately Santaquin in the south to Brigham City in the north. "In a couple of months," Cottle said, "you are going to be able to [travel] on transit all the way across the Wasatch Front." This will create a "great transit backbone which has been very carefully planned and supported, both locally at the state level and at the federal level."

Utah, Ahead of the Curve? Fairbourne Station is not the first major TOD project in the state. Salt Lake City already boasts two others. The Gateway, which is already operational, covers 30 acres and contains a gross leasable area of 689,694 sq. ft. City Creek Center, also in Salt Lake City, is a \$2 billion, 30-acre project slated to open in spring 2012. City Creek Center will feature a pedestrian street with a retractable roof and 750 residential units. Mike Allegra, then chief capital development officer at the Utah Transit Agency, told BNA in 2009, "We are embarking on a long-range community-land use transportation nexus," (2 REAL 294, 1/13/09).

You can't entice a company to come to a location where there is no infrastructure, no backbone.

NICOLE COTTLE, WEST VALLEY CITY

Projects like this have put Utah well ahead of the curve as far as western states are concerned. Asked why the type of projects usually associated with the crowded cities of America's Northeast is so popular in Utah, Cottle said that the general philosophy in Utah is that transit is the key to economic development and growth. "Transit, not only in the light rail form, but also with bus, rapid transit, good highway and freeway systems, and good backbone . . . has borne fruit for us." The Utah state legislature and the federal government have been "very supportive," she said, and "that really has brought a lot of economic development to the area. I would say that outside of the really dense metropolitan areas across the country, we are really a leader in this area."

'We Should Have Done This a Long Time Ago.' Solidly conservative Utah might seem an unlikely place for a concept usually associated with places like Washington, D.C., and New York City, but Cottle said "we are also very smart. Because we are . . . economically, fiscally, and politically conservative, we have the ability to move on things when it is appropriate. In this state we have recognized that the future is good, strong transit, whether that is fiber, road, or a transit line."

One of the earliest advocates, she said, was Dennis Nordfelt, West Valley City's mayor from 2003 to 2010, a former policeman who initially opposed mass transit and is now a full-fledged advocate. "We should have done this a long time ago," Nordfelt was quoted as saying. "It would have been less costly. But it's even more costly to do it later."

"You can't entice a company to come to a location where there is no infrastructure, no backbone," Cottle said. "We really believe that you have to have the best [infrastructure] there is to get the best companies."

Financing. Fairbourne Station is an RDA (redevelopment agency) area, which allows for the use of tax increments, Cottle said, "but the significant portions of the investment will come from private money." The Redevelopment Agency of West Valley City is the master developer of the project. Partners in the redevelopment project include Embassy Suites, office development, and real estate investment firm Hines, and ICO, one of

Utah's largest commercial developers, according to the statement.

Economic Base. The economic base of West Valley city is strong enough to support the project, Cottle said. "We are in such a good scenario here because we have such a broad spectrum of all different types of economic base . . . ranging from hi-tech, aerospace manufacturing, all the way to call centers. In this particular development our goal is to have Class-A office space." According to the national data specialists ESRI Demographics' Data Market Report, West Valley is expected to experience continued growth in population, average household incomes, and average home values for the next several years.

The first tenant will be the Embassy Suites Hotel, which will break ground July 15, Cottle said, and added that, "We feel that this will be a TOD worthy of Utah's second largest city."

By KEVIN LAMBERT