



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
COLORADO CHAPTER

NAIOP – COLORADO 2009 PUBLIC POLICY PRIORITIES

NAIOP VISION STATEMENT: Advancing responsible commercial real estate development.

NAIOP MISSION STATEMENT: NAIOP, the Commercial Real Estate Development Association, is the leading organization for developers, owners and related professionals in office, industrial and mixed-use real estate. NAIOP provides unparalleled industry networking and education, and advocates for effective legislation on behalf of our members. NAIOP advances responsible, sustainable development that creates jobs and benefits the communities in which our members work and live.

With the above Vision and Mission Statements in mind, listed below are NAIOP's public policy priorities for the current year. These issues are generally listed in order of priority to NAIOP's membership. NAIOP's specific legislative priorities for the 2009 Session are listed at the end of the public policy priorities. The Legislative Affairs Committee and the NAIOP – Colorado Board have approved this policy statement and the list of legislative priorities.

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Economic Development

Economic development, which in practice includes job creation and retention, support for education, affordable workforce housing, etc., continues to be our members' number one concern. NAIOP will continue to actively support the economic development efforts of the Metro Denver Economic Development Corp. through a monetary contribution. This effort will include membership in the Colorado Competitive Council (C3) as part of our lobbying efforts in conjunction with the Denver Metro Chamber.

NAIOP supports sound tax and fiscal policies that work in conjunction with fiscally sound economic development efforts to retain and expand existing businesses and attract new business to our state. While our efforts will be focused primarily on the Front Range urban corridor, we will support sound policies that benefit our entire state.

Taxation

NAIOP supports sound tax and fiscal policies that work in conjunction with fiscally sound economic development efforts.

The Gallagher Amendment continues to shift the burden of real estate taxes from residential to commercial property. This, in combination with TABOR, which limits the government's taxing ability, is forcing local governments to look for new and creative ways to finance needed infrastructure and to pay for upkeep of existing infrastructure. This imposes undue burdens on developers and owners of commercial real estate as jurisdictions look to impose impact fees and other charges as alternatives to tax increases that would require voter approval. These fees are hidden taxes that result in a higher cost of doing business and owning a home in Colorado.

The current tax situation also encourages local jurisdictions to seek out properties that generate sales tax revenue to the detriment of residential and other commercial development. This issue alone can have a detrimental effect on growth, encouraging communities to seek retail development and shun the housing necessary to house the employment base. NAIOP will seek long-term solutions to these issues, as the ever-increasing tax burden on commercial real estate along with escalating impact fees ultimately will make our state uncompetitive.

Taxation, Continued

This bias of city governments towards commercial and especially retail development becomes an issue in the ongoing eminent domain argument in our State and across the nation (see Eminent Domain below). Commercial property makes up approximately 25% [of assessed value] of all property in the State and yet is mandated by the Gallagher amendment to always pay 55% of the property tax. Ultimately a continuation of this discrepancy will make commercial real estate uncompetitive with other States and we will be unable to attract new, or retain existing, businesses.

Reduction of the ever-increasing property tax burden on commercial property will continue to be a top priority. As an organization we need to provide a meaningful and comprehensive comparison of commercial property tax rates in competitive states, and a study of how current tax policy is affecting the affordable housing issue.

Transportation/Infrastructure

A sound transportation network and infrastructure including mass transit and highways are key components in our efforts to retain, expand and attract businesses and jobs. NAIOP will continue to support responsible and fiscally feasible multi-modal improvements to the state's transportation infrastructure. NAIOP supports efforts to bring increased federal financial support for transportation/infrastructure projects in Colorado.

Water

Sound water policy that recognizes the basics of our current water law and provides for conservation and new storage is key to our ongoing economic development efforts.

Everyone is well aware of the recent drought and the problems this situation has created. In addition, Colorado has experienced rapid population growth and anticipates such growth to continue, placing increasing demands on available water resources. NAIOP understands the complexities of Colorado water law and is sensitive to the challenges of solving these problems. NAIOP also realizes that we live in an arid environment where periods of drought are inevitable and is sensitive to the environmental consequences of our actions.

Water, Continued

With appropriate planning, and barring a “call” on the Colorado River Compact, Colorado has sufficient supplies of water to meet the state’s immediate needs. Colorado needs to plan for the proper storage of this valuable resource in order to mitigate the inevitable droughts and the disparities between where and when the water flows and where and when it is ultimately needed. NAIOP will work towards a combination of sensible conservation and increased storage to ensure adequate supplies of water for all legitimate users within the state.

NAIOP supports equitable and responsible planning, development and finance of water projects for statewide benefit. NAIOP is opposed to attempts to use water policy as a vehicle to stop growth in our state and reaffirms its commitment to the basis of our water law – prior appropriation. NAIOP does not support changes in the law that would further restrict or prohibit the transfer of water rights.

Sustainability

NAIOP Colorado supports sustainability and green buildings and is involved in promoting these disciplines and associated best practices in numerous ways. NAIOP continues to demonstrate leadership in these important areas by working proactively with various stakeholders (public and private) to increase awareness and provide education and resources to the real estate industry, as well as participating in programs such as The Greener Denver Business Program. NAIOP firmly believes that mandates for green development will actually impede progress and be counterproductive, whereas education, awareness, and incentives can help to be a catalyst for increasing green development and sustainability.

Growth Management

Despite the recent economic slowdown, there are still groups who would seek to stop or severely control growth. NAIOP will continue to resist these efforts and protect our members’ interests while continuing to support sound growth management policies. It is our belief that Colorado Statutes reflect sound policy and we should work to ensure that these laws are being implemented and followed. NAIOP will strongly oppose any proposed anti-growth measures.

Construction Defects

While NAIOP and its members advocate sound development and construction practices, basic tort reform is necessary to stop the rash of construction defect lawsuits that adversely affect our industry. Many of these lawsuits seek damages that far exceed the cost of construction, or seek treble damages for alleged construction defects. The impact of these lawsuits is to discourage development, increase the cost of construction, and increase the cost of insurance, if available. The ever increasing costs related to these lawsuits impact affordable housing and all of our customers as these costs are passed on to the consumer.

HB03-1161, referred to as “The Construction Defect Action Reform Act (CDARA),” brought much needed reform, but this law has been eroded recently with the passage of HB07-1138. These lawsuits are not limited to the residential side of our industry but have spread to the commercial area as well, including mixed-use and transit-oriented development. NAIOP will strongly oppose efforts to further weaken CDARA.

Labor Issues

NAIOP Colorado is opposed to the federal Employee Free Choice Act (EFCA – “Card Check”) in its present form. NAIOP Colorado would also vigorously oppose any effort to change, modify, or eliminate Section 14B of the Taft Hartley Act which would eliminate Right to Work.

Affordable Housing

For NAIOP members, the issue of affordable housing focuses on workforce housing for both our members’ employees and the employees of their tenants. NAIOP believes that affordable housing is a community-wide issue and solutions should not be imposed on just one industry, real estate. NAIOP will resist efforts to fund affordable housing “solutions” through imposition of real estate transfer tax or any other tax solely on our or any other industry. NAIOP will work on this issue with various interested parties, but will also continue in our efforts to show how many policies, such as ever increasing impact and water tap fees, higher taxes, etc., only make this problem worse.

Condemnation (Eminent Domain)

NAIOP supports the rights of property owners, including the right to receive just compensation if property is taken by condemnation/eminent domain. NAIOP also supports the continued availability of eminent domain as a tool of last resort for accomplishing public purposes, including development and redevelopment of blighted areas.

NAIOP recognizes that the power to use eminent domain, while sometimes controversial, can also be a critically important tool for the redevelopment of blighted areas. Because of the ability to use eminent domain, municipalities have been able to undertake a variety of redevelopment efforts that contribute to the elimination of blight and to the long-term vitality and economic well-being of the entire community and the state.

Urban renewal and tax increment financing have also been used by our members and others in partnership with local government to promote urban infill and renewal, and NAIOP continues to support the judicious utilization of these tools.

Prompt Pay/Retainage

NAIOP will continue to oppose attempts to restrict freedom of contract in construction contracts. If faced with the likelihood of passage of a Bill/Bills limiting freedom of contract with respect to payment time and/or retainage, NAIOP will negotiate in good faith to secure the best compromise possible, always being mindful of protecting the interest of our principal members.

Surface Rights vs. Mineral Rights

NAIOP supports protection of the property rights of both mineral owners and surface owners of land. We oppose legislation and regulations that fail to recognize, fail to minimize and fail to compensate for damage to the value of surface ownership when multiple well sites and access roads are created for mineral development. NAIOP supports efforts to achieve an equitable balance of competing ownership rights through agreements among the various owners.

Brownfields

Brownfields are abandoned or under-utilized properties where expansion or redevelopment can be hindered by real or perceived contamination. Cleaning up and reinvesting in these properties improves and protects the environment, increases local tax bases, enhances urban infill and redevelopment, and facilitates economic growth.

NAIOP supports brownfields clean-up and redevelopment, with particular support for voluntary clean-up programs. NAIOP supports the removal of legal, tax and financing obstacles to the acquisition and environmental remediation of brownfield properties and opposes measures that would hinder remediation efforts or limit economic development.

2009 Colorado Legislative Session Priorities

(These are not in any specific order and they will be addressed as they arise during the session.)

1. Sustainability
2. Prompt Pay/Retainage
3. Construction Defects
4. Growth Management
5. Transportation/Infrastructure Spending
6. Taxation
7. Eminent Domain

2009 Federal Legislative Priorities are handled in conjunction with our Corporate Governmental Affairs Lobbying team and include such issues as:

1. Labor (EFCA – Card Check)
2. Carried Interest Taxation
3. Capital Gains Taxation
4. Wetlands
5. Tax Extenders (Tenant Improvement and Brownfield Mitigation)
6. Brownfield's and Brownfield Remediation