

Transit Oriented Development: Understanding TODs in the Denver Metro Area

Welcome to the inaugural NAIOP Law Corner article! This is the first in a series of articles designed to provide practical legal insights on various issues that NAIOP members face every day. This first installment focuses on transit-oriented development (TOD) activities and opportunities in the Denver Metro area.

The term “transit-oriented development” broadly describes various forms of mixed-use real-estate development surrounding or near transit stations. TODs strive to create compact, walkable communities that offer fair housing opportunities, provide easy access to amenities, and maximize access to public transportation. TODs range in size and scope from the redevelopment of Denver Union Station to the development of privately-owned property adjacent to a transit station.

In this article, we examine four examples of TOD in the metro area. Future articles will explore other emerging development issues. We encourage NAIOP members to suggest topics by emailing us at bsilberstein@kaplankirsch.com.

TOD in the Region

The unprecedented growth in TOD in the metro area stems almost exclusively from RTD’s ongoing FasTracks build-out. FasTracks is expected to add 122 miles of new light and commuter rail, 18 miles of Bus Rapid Transit service, 31 new Park-n-Rides (with over 21,000 new spaces), and approximately 60 new stations along six new corridors. The West Rail Line is scheduled to open in April, 2013.

Because of FasTracks, regional and local interest (and financing opportunities) in TOD is also increasing. In 2011, DRCOG received \$4.5 million in Sustainable Communities Regional Planning Grant funds, which it will use for pre-development planning for TOD along RTD’s Gold Line and East Corridor. The Denver Transit Oriented Development fund also provides critical funding opportunities; it supports the creation and preservation of over 1,000 affordable housing units through strategic property acquisition in transit corridors. Only in 2010 did the General Assembly allow RTD to develop residential units on RTD land.

RTD is actively looking to the private sector to help jump-start TOD projects at its new station stops. In 2011 RTD established a TOD Pilot Program for four projects within existing or funded rail corridors: Alameda Station, Federal Center, Welton Corridor and Olde Town Arvada. The Pilot Program seeks to leverage public-private partnerships to take advantage of market opportunities and increase RTD’s market share for all trips, not just commuting trips. RTD selected the current Pilot Program projects based on market potential, a pre-existing TOD plan, and the commitment level of the local jurisdiction, developer and property owner. The challenges and lessons learned from the Pilot Program projects feed into RTD’s ongoing development of specific joint development guidelines and design criteria to help facilitate and streamline future TOD projects and proposals. It is clear from our interaction with RTD on several TOD projects that RTD has an increasing awareness of what it takes to create public-private partnerships and get these projects done.

The continuing growth of RTD’s FasTracks system presents the development community with a number of TOD opportunities, but as shown by the four ongoing TOD projects examined below, each TOD site presents unique complexities, challenges and opportunities.

Alameda Station Site. RTD, Denver, DURA and D4 Urban all are cooperating to redevelop this station site. D4’s and RTD’s agreement provides that D4 will construct a new transit plaza at Alameda Station and acquire adjacent RTD-owned property for a multi-family project. Meanwhile, D4 (with and through a metro district) has collaborated with Denver and DURA to provide for construction of a long-needed stormwater drainage project through the Broadway Marketplace, which will open up access to Alameda Station and facilitate the longer term development of the Broadway Marketplace property. This project demonstrates how creatively combining a public infrastructure project with private development can sometimes facilitate a TOD project that might not have made financial sense as a stand-alone project. However, the number of parties and complex nature and timing of the required public and private development require careful consideration and structuring of legal documents, multiple financing mechanisms and extensive and coordinated planning among the different entities.



KAPLAN KIRSCH ROCKWELL

303-825-7000 | www.kaplankirsch.com

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
COLORADO CHAPTER

1720 South Bellaire Street, Suite 110, Denver, CO 80222 Tel: (303) 782-0155 Fax: (303) 820-3844 www.naiop-colorado.org

Union Station. Union Station Neighborhood Company (the master developer of the Union Station site) has been working for years with RTD, Denver, DRCOG, CDOT, Amtrak, the Denver Union Station Project Authority and the developer of the historic train building to plan and implement the redevelopment of this 19.5 acre area that will act as FasTrack's central hub. When complete, the Union Station site will connect eight tracks of commuter and regional rail, three light rail tracks, a 22 bay underground regional bus facility, a 16th Street Mall Shuttle extension, stops for a new Downtown Circulator, over 2,700 residential units, over 285,000 square feet of retail, over 3.2 million square feet of office, 27,000 square feet of cultural space, 248,000 square feet of governmental offices and 280 hotel rooms, along with plazas and open space. Perhaps the greatest challenge for the transportation project has been devising a structure to take advantage of over \$300 million in federal loans (and securing that financing), while enabling the project to proceed through pre-development without that major funding source in hand. USNC collaborated with each of the public agencies to craft a land take-down and financial structure that helped ensure that the development would proceed during the long process of obtaining the federal loans. USNC already has acquired four of the five parcels available for development at the site, and construction is currently underway on both the South and North Wing parcels. Meanwhile, the historic train building development team is well underway on redeveloping the train building.

Denver International Airport (DIA) 61st Avenue Station. This project involves one of the new RTD station stops that will be located along Peña Boulevard once commuter rail is extended to DIA. DIA, which owns the station property and adjacent land, has teamed with Fulenwider, the major landowner to the east of DIA's property, to plan for development of this TOD. Denver, DIA, Fulenwider and other property owners currently are working on the Station Area Plan and other entitlements for the property, including formation of metropolitan districts. Challenges for this TOD include limitations on DIA activities imposed by FAA, construction of approximately \$30 million of necessary infrastructure including the station itself, coordination among the City, DIA, RTD and private landowners, and structuring long term arrangements among the parties to insure maximum development success on both DIA and private land.

Lakewood Federal Center Station. This potential TOD involves approximately 60 acres owned by two landowners – the General Services Administration and RTD. In addition to the West Rail Line station, the property includes a Park-n-Ride facility serving 13 bus routes. The property is ideally situated for TOD, sitting just north of a new medical complex, just west of GSA's Federal Center, and just east of the Union Boulevard commercial corridor. GSA is considering disposal of 40 acres and Lakewood anticipates negotiating for the purchase within approximately 12 months and working to promote redevelopment of the site. To that end, Lakewood has revised its planning documents and zoning code to permit denser TOD and appropriate design guidelines at this site and expects to issue a Request for Qualifications for a master developer for the site. This project provides significant opportunities for urban style TOD in a more suburban community. Lakewood's biggest challenges in realizing its TOD goals will be working through the GSA disposal process, including addressing environmental issues associated with that property, coordinating with RTD regarding RTD's relationship with the master developer and structuring an agreement with the master developer that insures the long term success of the TOD project.

These four illustrations demonstrate the unique nature and challenges of each individual TOD project depending on land ownership, financing sources, public and private entity involvement and other site characteristics. With the enthusiasm surrounding TOD generally, TOD sites will be among the most interesting metro area real estate development opportunities in the years to come.

Kaplan Kirsch & Rockwell LLP advises clients both large and small on TOD projects, including those discussed in this article.



KAPLAN KIRSCH ROCKWELL

303-825-7000 | www.kaplankirsch.com

For more information, please contact:

Stephen H. Kaplan, Partner
skaplan@kaplankirsch.com

Sarah Rockwell, Partner
srockwell@kaplankirsch.com

William M. Silberstein, Partner
bsilberstein@kaplankirsch.com

David I. Spector, Partner
dspector@kaplankirsch.com