

Effective ways to help your client win the uphill retail development battle

By **Sblend Sblendorio**

In the recessionary climate of the last few years, retail development has been significantly impacted: some projects have been scrapped completely, while others have languished as developers and other stakeholders wait for more favorable circumstances.

Despite the continuing economic uncertainty, there are still projects that remain active. These projects, however, have to contend with a wide range of obstacles both routine and specific to the economic times in which they are being developed.

Especially now, real estate development involves managing several risks, and these risks may be in areas where real estate attorneys have little input, such as financing risk, market risk and entitlement risk. Savvy legal counsel will consider all of these risk areas when providing guidance.

Here are several effective ways to ensure you are positioning your clients to win the uphill retail development battle:

Always ask, "What does the city want?" Consider attractive uses that will appeal to decision-makers and their constituents. Make sure that your clients' desired use for the project fits within the city's own desires for new development. In other words, solve a problem the city already has by making your project part of the solution.

It's also important that you map out best case scenarios in regards to fee generation, sales tax generation, property tax generation, jobs creation and positive impact on infrastructure. Help your client communicate these scenarios to municipal stakeholders.

Create a roadmap for success that proactively addresses likely concerns on the part of the municipality. For instance, you should help your client reconcile their timeline with the city's timeline. To do this, ensure city staff is approached to help build a timeline that is mutually beneficial to both parties. It is also important to include the participation of the developer's financial partners.

Be a partner, not just an advisor. While your counsel is invaluable to this process, there are areas in which consultants are likely necessary, and ensuring you are bringing in the very best consultants given the specifics of the project is

imperative. These days, financing a retail project involves knowledge and skill and some luck. So, your client must have a strong financial consultant. Most developers have those folks in-house, but you need to update models and projections as the project evolves. The nature, size and importance dictate the consultants you need. But, always hire the best, local talent you can find and afford.

For instance, if you expect issues to arise under the California Environmental Quality Act (CEQA), hire a consultant with past experience with the city or that particular issue. If traffic will be an issue, hire a traffic consultant that the city staff trusts. Do not hesitate to ask other developers or their counsel for recommendations.

Many real estate attorneys define their roles based on their comfort zones (e.g., "I'll handle the CEQA review" or "I'll negotiate the purchase agreement.") But, identifying the goal and advising your client by issue spotting is vital to success. The unique economic climate in which most projects are being developed requires fuller participation from legal counsel if the project is to proceed smoothly and as quickly as possible.

To that end, real estate attorneys should play a role in helping clients identify sources of available public participation. Almost every city has identified some form of participation (sales tax rebates, deferred/reduced impact fees, land acquisition assistance). In truth, tools utilized in other municipalities can, with some tinkering, be modified to suit your locale. For example, impact fees can be compared to impact fees in other municipalities and help to justify a reduced fee.

Once you've identified sources of public participation, you must now help your client navigate through use scenarios. The amount and extent of public participation is directly proportional to the desirability of the project. A retail project that adds buckets of sales tax dollar, creates little additional traffic or burden on infrastructure, will not harm any species, is loved by the neighbors and unions, and adds "cache" to the city can probably write its own ticket. But those perfect projects do not exist. So, match the city's assistance to address the needs. For instance, if the city needs jobs, perhaps a credit against building fees for adding high paying jobs is attractive.

Effectively managing the public entitlement process is particularly important as it subjects the project's framework to public scrutiny. A retail project of any magnitude will result in a public hearing (usually several hearings). A developer can expect public input by a design review committee, a planning commission and a council. Every city considers this process important because it gauges the public's interest and guides the elected officials in decision-making. A developer must respect the public's opportunity to opine — no matter how silly the opinions may seem. More and more, citizens recognize that hard times have impacted municipal services and that some development can help the city.

Anticipating public comments and responses will also ensure a more easily navigable path to project acceptance. Navigation of this path takes patience and fortitude.

First, meet with city staff and listen to their views. By staff, I do not mean the staffer at the counter. A developer should not only work through the planning department, but also the city manager's office, the city attorney's office and the engineering department. Additional meetings might include the police or fire departments and other municipalities who provide services within the city. Second, feel the pulse of the decision-makers and note who is soon leaving and who might take the place of a decision-maker. Third, engage possible concerned constituencies — neighbors, citizen groups, environmental groups, unions, etc. Lastly, be true to your vision (or your lender's vision in these times). The retail project must "pencil." You cannot make the project palatable for every citizen or group, but it is very possible to make the project attractive for most.



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