

Development Rights

JMBM | Jeffer Mangels Butler & Marmaro LLP
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JMBM and ULI Welcome Richard Bruckner, Newly Appointed L.A. County Director of Regional Planning

Jeffer Mangels Butler and Marmaro LLP (JMBM) recently hosted a cocktail reception welcoming Richard Bruckner, newly appointed Director of Regional Planning for Los Angeles County. The reception was presented in cooperation with the Los Angeles District Council of ULI of which David Waite, a Partner in JMBM's Government, Land Use, Environment & Energy (GLUEE) Group serves as Program Chair.

In introducing Bruckner, Waite noted that he comes to his new assignment with an extensive background in planning, including his years as Planning Director in Pasadena and his active involvement in ULI.

In brief remarks to the 40 individuals attending the meeting, Bruckner said that his priority is to develop a comprehensive general plan for the county, with two primary components. The northern part of the county, including the Antelope Valley, will be designated primarily as open space

Bruckner has initiated activities that will assist in streamlining the entitlement process.

incorporating lower density, while development will be focused in and around the city of Santa Clarita. In the southern part of the county, infill development will be designed in proximity to light rail stations. In response to a question, Bruckner agreed that L.A. County's entitlement



From left: Richard Bruckner, Dan Rosenfeld (Senior Deputy to Los Angeles County Supervisor Mark Ridley Thomas) and David Waite at the JMBM reception.

process is in need of repair. He has already initiated discussion with the Public Works Department to coordinate activities and intends to form a committee to assist in streamlining the system. Bruckner also responded to a question about the future of Marina del Rey, saying the county needs to take advantage of the tremendous opportunity the Marina offers and do so more expeditiously. ■

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JH7@JMBM.com

Affordable Housing Mandates Must Comply with State Law

by Benjamin M. Reznik

Two recent court decisions have materially changed the affordable housing game as it's been played by local governments throughout California.

In *Palmer/Sixth Street Properties, L.P. et al. v. City of Los Angeles* (a case in which JMBM represented the developer at all the administrative hearings), the California Court of Appeal upheld our challenge to a Los Angeles affordable housing mandate in the city's Central City West Specific Plan on the basis that it violated the state's Costa-Hawkins Housing Act. Los Angeles had attempted to impose a 15 percent affordable housing requirement on Palmer's 335-unit Piero II development. This would have effectively reduced the rental income from the project violating Costa-Hawkins, which prohibits cities from applying rent control to new projects. In the other case, *Building Industry Association of Central California v. City of Patterson*, the Court of Appeal invalidated an in-lieu affordable housing impact fee being assessed on a single family for-sale residential project. The court found that the fee, which the city had increased from \$734 to \$20,946 per unit, bore no relationship to the actual impact the development would have on the community.

Focusing on the Carrot

For far too many years, municipalities throughout California have attempted to use mandates to force private development

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of low-cost and affordable housing. It's clear from the above cited cases (and others of recent vintage) that this approach is unworkable. We can all agree that the shortage of available low-cost, affordable and even workforce housing needs to be addressed if this state is to move forward both socially and economically. However, imposing onerous mandates on private developers without incentivizing them in any way just doesn't work.

It's clear that moving forward, we have a major educational challenge to demonstrate to policy makers that mandates alone do not work.

Cities need to step back and find more enlightened ways to engage the private sector in meeting this critical need. In doing so, cities could begin by embracing, rather than resisting, California's existing affordable housing statutes, notably Government Code Section 65915 and SB 1818. Both of these laws seek to incentivize the development of affordable housing by allowing the building of additional (bonus) market rate units to offset the cost of mandated affordable or low-cost units and allowing the developer to apply for zoning concessions or incentives. Incentives can include such things as relief from set back requirements, reduced on-site parking mandates, increased building heights and square footage, among others. Such incentives translate into the economic reality that helps make the inclusion of affordable housing in a private development possible. While the state mandate for increasing affordable housing has been around for years, local governments have been circumventing these state requirements thereby necessitating the adoption of SB1818 in 2008.

UPDATE: Hollywood Hotel Receives L.A. City Council Approval



As reported in our last edition of "Development Rights," JMBM land use attorney Sheri Bonstelle represented client Jeffrey Records, chairman and CEO of MidFirst Bank, in gaining approval from the Los Angeles City Planning Commission for a new luxury boutique hotel in the historic Security Pacific Bank Building in the heart of Hollywood's entertainment district. The Los Angeles City Council subsequently

approved the project entitlements in February 2010. According to architect Rottet Studio, the new hotel will reflect Hollywood's Golden Age with its myriad of classic features, beginning with a grand entrance and porte cochere (illustrated in the accompanying photo). The hotel will feature a total entertainment experience that begins with casual

refreshments in the roof-top bar and café with sweeping views of the Los Angeles skyline, continues with a sumptuous feast in the project's elegant dining room at ground level, and ends with live entertainment in the hotel's nightclub located in the original subterranean bank vaults. A construction commencement date for the hotel has not yet been set. ■

It Takes Creativity to Solve Problems

State law in no way precludes opportunities for cities to be creative in encouraging the development of affordable housing. There are a variety of other initiatives local governments can implement to assist in the private development of affordable housing. These include lowering development fees, expediting the project approval process, and increasing flexibility when it comes to zoning issues. Unfortunately, the

current economic climate may militate against some of these initiatives. The unavailability of construction funds have brought many residential and commercial projects to a screeching halt. Simultaneously, cities need money and we can expect them to increase rather than lower development fees. Lay-offs in the planning departments will make it more difficult to fast-track the project approval process. Nonetheless, short term fixes should not be allowed to crowd-out the implementation of long term solutions.

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Auto Dealership Sites Offer High-Density Residential Opportunities *by David P. Waite*

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Evaluating a closed auto dealership for reuse and redevelopment presents unique land use challenges and opportunities. From a land use perspective, there are generally two types of dealerships.

Older dealerships—typically located for decades on small urban properties of one to two acres (0.4 to 0.8 ha) within well-established communities—usually are part of the street front urban fabric and have long-established zoning, land use, and operating permits. Many cities have grown and evolved around auto dealerships, with high-value commercial and residential land uses now located adjacent to the dealership. Commercial zoning on these sites is

flexible in some cities, particularly if they have recently amended or updated their general plans and zoning codes to reflect new land use patterns and opportunities for infill, mixed-use, or transit-oriented development.

For example, development standards for infill dealership sites may allow a mix of high density residential, multifamily, and commercial development, with height and setback requirements allowing high density development along commercial corridors. Existing road, water, and sewer infrastructure is often sufficient to support redevelopment of infill dealership sites for such mixed uses. If a property is located near existing or planned transit and public parking facilities, parking requirements may be relaxed. Traffic, circulation, and

The bigger question is whether the automobile industry will ever recover to the degree needed to support the acres of land currently devoted exclusively to dealerships.

vehicle-trip counts associated with a change in use from an auto dealership to

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JMBM 2010 Real Estate & Land Use Survey

Caution remains the watchword even as bearish sentiment declines

JMBM's 2010 California Real Estate & Land Use Survey gathered data from 98 executives, 49 percent of whom identified themselves as developers and 49 percent as capital providers. Respondents indicating they were "bearish" about the market declined from 22 percent a year ago to 11 percent today. The majority of respondents remain cautious, and their responses indicate that their biggest challenges remain the same as in 2009:

1. Finding the right opportunities for investment
2. Protecting existing investments
3. Acquiring debt

Where are the opportunities?

Finding the right opportunities for investment remains a challenge for executives, though many see the acquisition of distressed assets—including bank-owned properties and loans in the FDIC portfolio—as the best opportunity. Yet many believe that prices for distressed properties are still too high and that lenders are not liquidating fast enough to reset the market.

Many respondents added that those without cash should not bother to look at all. Still, a bit more than half (51 percent) of our respondents think that distressed assets have not yet hit bottom, slightly fewer than last year (54 percent). "There are opportunities in any market," said one executive, "but timing is everything."

When will the capital pipeline start flowing?

Acquiring debt: About a third (39 percent) of respondents believe it will be easier to acquire debt in 2010 than it was in 2009, but 49 percent think it will be harder. Eight percent think it will be about the same, with the remaining seven percent abstaining. "Low leverage and strict requirements are the 'new normal,'" said one executive. "Lenders are showing signs of slowly healing themselves with internal profits," said another. "There will be an increased capability to lend."

Acquiring equity: Forty-four percent of respondents believe acquiring equity will be easier in 2010 than it was in 2009, and 44 percent believe it will be harder. Seven percent think it will be about the same and five percent abstained. "It's the same old story," said one respondent. "Cash is king."

How will the FDIC impact the market?

Nearly half (46 percent) of our respondents believe FDIC-accelerated bank closures in 2010 will further damage the real estate market, while 28 percent believe it will help the market rebound. Twelve percent think it will have no impact and 13 percent abstained. "It would help if they sell properties at realistic prices," said one of the survey respondents. "The FDIC reduces the alternatives, especially for the regional investor," said another.

Is it a good time to entitle or re-entitle properties?

Forty-six percent of respondents believe that a lack of new applications will get existing projects approved faster, 44 percent believe applicants can be more aggressive with their applications during bad economic times and 43 percent believe that zoning authorities will be more lenient during bad economic times. Still, one respondent noted, "All planning departments have cut staff, so the process has slowed even despite these issues."

Ben Reznik, Chairman of JMBM's Government, Land Use, Environment and Energy Department agrees with that observation and emphasizes that the processing time for land use applications will continue to worsen as more municipalities face severe budget shortfalls.

What were the effects of the American Recovery and Reinvestment Act (the Stimulus Bill)?

There were few beneficiaries of the Stimulus Bill among the survey's respondents. Fully 95 percent saw no benefit to their business from these federal funds, while 5 percent experienced a benefit.

Ready for growth

"Our survey indicates that developers and capital providers are attuned to the market and very realistic about the current situation," said Reznik. "But the industry is filled with savvy executives who are successfully steering their companies through this Great Recession and have poised their businesses for growth." ■

We would like to thank our clients and friends who participated in the survey.

Challenge	2010	2009
Finding the right opportunities for investment	#1	#2
Protecting existing investments	#2	#3
Acquiring debt	#3	#1
Restructuring/working out stalled projects	#4	#5
Managing buyer/seller expectations	#5	#6
Acquiring equity	#6	#4
Getting projects entitled	#7	#7

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One would hope that local governments have gotten the message that mandates do not work unless they are linked to economic reality. In other words, if a bank will not loan on a project that cannot demonstrate sufficient cash flow to service its debt, all the well-intentioned mandates are useless and counter-productive. On the other hand, more and more of my clients are opting to participate in the state's density bonus program (SB1818) because the additional market rate units and zoning incentives make it economically viable. No mandate needed!

Unfortunately recent discussions in Los Angeles indicate the message hasn't been received. In response to the Palmer decision, the City of Los Angeles Planning Department presented a report on the city's proposed Mixed Income Housing Ordinance in February to the Planning & Land Use Management and the Housing, Community and Economic Development Committees of the City Council. The department presented four options for the city to consider: change state law and pursue the city's original plan; require an affordable housing impact fee on all new development; impose an affordable housing fee only on for-sale projects; or require affordable housing set-aside fees on all new rental and for-sale projects in the city with a provision that the fee on rental housing only become effective when and if the legislature amends Costa-Hawkins. No mention was made of incentivizing the private development of affordable housing!

It's clear that moving forward, we have a major educational challenge to demonstrate to policy makers that mandates alone do not work unless they are linked to economically driven incentives sufficient to satisfy the loan underwriting requirements of banks and institutional investors for such projects. Without that, projects simply will not get built and everyone suffers. ■

Benjamin M. Reznik is Chairman of the Government, Land Use, Environment & Energy Department at Jeffer Mangels Butler & Marmaro LLP. For more information, contact Ben at 310.201.3572 or BMR@JMBM.com

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a mixed-use project may be negligible, minimizing the need for road and traffic improvements.

Though all these factors portend a favorable transition in land use from auto dealership to infill development, potential negative factors associated with such a change include a lengthy entitlement and environmental review process to obtain permits and approvals, and the possibility of community or political opposition to an infill project with increased height and density. In addition, the potential for costly environmental cleanup of contamination associated with underground fuel storage tanks, wastewater clarifiers, service and repair bays, and chemical storage facilities needs to be thoroughly evaluated as part of an environmental assessment and site characterization.

New dealerships—usually located on the suburban edge of development, often are associated with larger auto malls and pose potentially more significant land use challenges for reuse and redevelopment. They typically are located on at least four to five acres (1.6 to 2 ha), and some facilities are as large as ten to twelve acres (4 to 5 ha). These developments emerged in the 1980s and 1990s as communities sought commercial development opportunities on lower-value suburban land to generate sales tax revenue.

Because these sites are often zoned in city general plans for exclusive use as an auto dealership, allowing other commercial or residential land uses requires the strong and sustained will of city political leaders. As is the case with older dealerships, auto malls and their acres of pavement will be replaced by new, higher-value land uses as suburban communities urbanize and land values rise over decades of growth and development.

The decision facing city leaders in the near term is whether to rezone new dealership sites to allow more flexible land uses in an era of dealership consolidation. Many cities that depend

on sales tax revenue from auto dealers will resist such a change, instead holding out hope that emerging technologies, such as electric cars, will eventually revive the industry.

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The bigger question is whether the automobile industry will ever recover to the degree needed to support the acres of land currently devoted exclusively to dealerships. At the very least, cities will need to create a high degree of flexibility in their land use plans to allow alternative land uses on shuttered dealership sites until the industry has recovered to a degree that its likely future size and scale can be known.

Even with the increased activity triggered by the federal "cash for clunkers" rebate program, the risk of a sustained period of visual and economic blight on these properties seems far too great to allow cities to await a sustained auto sector recovery, especially when the industry is unlikely to resemble in the future what it was in the past. ■

David Waite is a Partner at Jeffer Mangels Butler & Marmaro LLP in the Firm's Government, Land Use, Environment and Energy Department. His real estate development practice includes zoning, CEQA compliance, discretionary permits and entitlements, subdivisions, public-private partnerships, infrastructure agreements, and compliance with climate change laws. For more information, contact David at 310.785.5319 or DWaite@JMBM.com

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What's Inside?



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Benjamin M. Reznik
310.201.3572
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David P. Waite
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DWaite@JMBM.com



***UPDATE: Hollywood
Hotel Receives L.A. City
Council Approval***
Sheri Bonstelle
310.712.6847
SBonstelle@JMBM.com

The Development Rights publication is published three times a year for the clients, business associates and friends of Jeffer Mangels Butler & Marmaro LLP. The information in this newsletter is intended as general information and may not be relied upon as legal advice, which can be given by a lawyer based upon all relevant facts and circumstances of each particular situation.

FORWARDING SERVICE REQUESTED

1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Attn: Benjamin M. Reznik
Government, Land Use, Environment & Energy Department
310.201.3572 • 310.712.8572 fax
BMR@JMBM.com