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Adaptive reuse and the modernization of the New England shopping mall - by Adam Barnosky

January 31, 2020 - Spotlights

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Traditional shopping malls continue to face an uncertain future as they confront changing consumer trends and shrinking retail sales. Once the cornerstone of retail in New England, many communities in the region host aged malls with high or rising vacancies. The problem is multifaceted, but primarily the result of consumers' migration from traditional brick and mortar malls to online sales and more modern, diversified retail centers that complement a robust online retail presence. The continuation of this trend, coupled with the closure of big-box stores and other valuable anchor tenants, creates an uncertain future for once-profitable real estate assets.

“Adaptive reuse” is a term broadly used for the redevelopment and transformation of existing structures. In the context of existing shopping malls, a host of advantages exist for adaptive reuse, including enhancement of the host community's appeal, cost and time savings in development, encouragement of additional investment in the region, and an increase in market and tax valuations. Adaptive reuse can also promote sustainability and environmental benefits depending on the nature of the project in question. Redevelopment and adaptive reuse are key to the successful transformation of defunct shopping malls into modern mixed-use destinations in the decade ahead.

Property owners, host municipalities, and consumers are all stakeholders that stand to benefit from newly redeveloped, vibrant and profitable retail centers in their community. Further, while many proposed large-scale, high-density, mixed-use projects see widespread community opposition, municipalities are now commonly more welcoming to adaptive reuse and modernizing of existing developments. Municipalities are particularly interested where there are community incentives and parcel enhancements, such as transit-oriented developments and LEED certified buildings.

Typically, mall redevelopment includes renovation of existing space or partial to full demolition of the original structure in favor of an entirely new configuration. Over the past decade, commercial real estate developers have worked with municipalities to creatively adapt aging properties for a new generation of consumers and business operators, a trend that will likely continue in 2020 and

beyond. Such adaptations include various leasehold options and auxiliary amenities that address a diverse range of needs. Recent and planned examples of shopping mall redevelopment include a combination of traditional retail space mixed with high-density housing units, along with amenities such as recreational event space, craft beer halls, common area green space, pedestrian skywalks, hotels, office space, and others. Many redeveloped properties require inclusionary zoning that provides for affordable and age-restricted housing units. These mixed-use configurations differ significantly from their retail-focused predecessors and diversify revenue streams from a variety of uses.

Many existing malls permitted by municipalities in the 1970s and 1980s likely predate local zoning ordinances and other regulations. Therefore, redevelopment of existing structures (or entirely new developments) usually requires an extensive permitting process before local and state regulatory authorities. Use variances may likewise be required where projects incorporate elements of retail, entertainment, and residences. Mass. General Law Chapter 40R may also provide a tool where residential components play a significant role in redevelopment. That said, local municipalities are often more inclined to approve new projects where infrastructure already exists (i.e. traffic egress/ingress and parking areas) and may be improved upon. Further, municipal officials and citizens are collectively motivated to avoid vacancies and blight and ensure real estate within the community is maximized to its fullest potential while balancing other community impacts such as additional requirements for police, fire and education. Developers interested in such proposals must understand the regional market and needs of the host municipality to best determine sustainable options for reconfiguration and redevelopment.

From a legal perspective, redevelopment can change the nature of the real estate holding (i.e. from traditional retail lease agreements to a combination of short-term licenses, leases, condominiums, and agreements for municipal/community use). Further, depending on the extent the real estate asset is security for an existing debt, redevelopment will usually require the consent and approval of the lender prior to moving forward. In addition, negotiations could be required with anchor tenant and/or tenants with a long-term leasehold interest in the subject property. Legacy cellphone tower and billboard leases that require continuous operation and careful relocation can further complicate matters. Often, tenants may have rights of first refusal for parcels or units within the current development, co-tenancy rights, or use restriction rights which would otherwise restrict redevelopment. It is imperative for legal counsel to carefully review title, bank documents and all current lease and vendor agreements as part of due diligence on any development project.

As retail trends and consumer interests continue to change, real estate operators must follow suit and continue to adapt in the decade ahead. If carefully planned, the result can be an exciting, innovative, collaboration between developers and community stakeholders.

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