

# MIXED-USE DEVELOPMENTS CONTINUE THEIR EVOLUTION

The popularity of this multi-use vehicle has also brought a few considerations for developers that should be addressed early in the development and design processes.

By Paul Titcher

Changing demographics and the public's desire for convenience has sparked an explosion in mixed-use development. The acceptance and success of these developments has led to a revitalization of downtown areas and sparked a new trend of urban living. When this trend first started in the mid-2000s, a few visionary developers experimented with newly constructed and adaptive reuse projects despite an uncertain market. While the Great Recession stalled some progress, mixed-use development has continued to grow on a scale that would have seemed unbelievable just a decade ago.

The numerous benefits offered to cities, developers and residents alike have contributed to the popularity of mixed-use developments. City planners recognize mixed-use projects can facilitate downtown revitalization by generating business activity in areas that slow or shut down after business hours. In addition, these projects are often located near mass transit, which helps address the primary planning goals of encouraging the use of mass transit and decreasing dependency on automobiles. This has caused a growing number of cities to enact zoning provisions, such as density bonuses or reduction of parking requirements, that encourage and attract mixed-use projects. These incentives can have a measurable impact on a developer's bottom line.

Despite the benefits, developers should be advised that mixed-use projects can be very complicated and require careful planning and attention to detail to avoid common pitfalls. Unique issues related to zoning, entitlement, design, financing, construction, insurance and organization of the project must all be successfully addressed to maximize the benefits of this specialized type of development.

The approval process, zoning and entitlements present challenges to a mixed-use developer that do not arise in a single-use context. Although some cities have created specific zones conducive to mixed-use development, many have yet to enact workable mixed-use overlay zones to simplify the entitlement process. Most property suitable for a mixed-use project is zoned either commercial or residential. The dilemma facing a mixed-use developer is straightforward — the residential zone may allow for development of the residential component of the project but not the commercial, and vice versa.



*Courtesy of Gensler*

The 6.3-acre Metropolis in Downtown Los Angeles will eventually contain a 21-story hotel, 33-story residential high rise, restaurants and retail space when construction is complete.

## Design Planning

While mixed-use land-use approvals are a key element in the process, that is just the beginning. Developers must carefully design mixed-use projects to prevent or mitigate future problems, especially those that can lead to strife or litigation. These problems typically include noise, traffic, cost-sharing, and the placement and allocation of parking. This design planning is even more important if the project includes residential condominiums or if the developer intends to sell various components of the project to different parties. These parties are inexorably linked in perpetuity, so the potential for future disputes is almost a certainty.

Fortunately, a number of these problems can be anticipated and addressed at the planning stage. For example, soundproofing between the commercial and residential components of the project is critical — residents do not want to be disturbed by noise from a business operation. Likewise, proper design of ventilation systems is important since residents will not tolerate fumes and smoke coming from adjacent businesses like restaurants. A developer needs to consider the location, use and design of access areas in the project to maximize the benefits to the commercial tenants and minimize the impact on the residents. Considerations may include whether the retail and residential units will share elevators, parking areas and other common areas, as well as the location of retail loading areas and trash collection areas. Even small details are essential. For example, many retail and restaurant chains require satellite antennas to access entertainment sources and communications and inventory control systems. This may require conduits and easements across and through the residential components of the project to the roof.

Parking requirements and location must also be carefully examined. A developer will need to calculate the number of spaces required to adequately serve both components of

the project. In working out the parking supply and demand, a developer could separate the commercial and residential parking structures or implement a single, shared parking structure. If parking is to be shared, however, additional issues must be identified, coordinated and resolved at the outset. These range from separate and designated parking areas and entrances for commercial and residential users, to misuse of designated spaces, (e.g., retail customers using residential spaces), security, valet program coordination, guest parking, etc.

## Organizational Issues

Given the complexities and issues that arise when multiple parties own the components of a mixed-use project, many developers have elected to maintain a single ownership structure to avoid these issues. Where that is not the case, the team will need to address a number of complex organizational and operational issues. First of all, a property owners' association will likely be formed to coordinate the maintenance of the project structure and common areas. In a standard residential condominium project, homeowners association issues (such as cost sharing and control) are straightforward and familiar. However, new issues arise when voting power is allocated among both commercial and residential owners. The key to the allocation of votes is to ensure that neither group unfairly impacts the other. For example, if the residential owners are given too much power, it may enable them to create overly restrictive rules with respect to the retail units. One common result is that the retail owners are prevented from leasing to certain types of tenants. To prevent such problems, the project team must carefully consider this issue from both sides to strike a balance between these competing interests.

A mixed-use developer must also consider and determine an appropriate allocation of expenses among the various users. Since a mixed-use pro-

ject will have common areas serving both the residential owners and retail tenants in different degrees, it will be necessary to determine who is responsible for the various expenses. Maintenance costs can be based on a number of variables, including square footage, number of parking spaces and internal usage studies. A developer may also have to allocate utility costs. If utilities are not separately metered, a formula (often similar to that utilized for maintenance costs) will need to be adopted.

Use restrictions are another critical issue to consider. Use restrictions place limits on the activities permitted in the commercial space, including the types of tenants (e.g., no nightclubs), types of activities (e.g., no live music) and hours of operation. Developers must work hard to strike a balance that protects project residents without impairing the developer's ability to lease any retail space.

## Maximizing Flexibility

Regardless of the type of project that is originally contemplated (e.g., unified ownership, condominium sales, etc.), developers should consider taking steps early on to ensure flexibility in the future to modify the project. For example, if the developer initially intends to maintain ownership of the entire project, it can still take steps during the initial planning stages to give it the option to separate ownership in the future. This could involve the creation of separate lots for various project components and the like. Similarly, if a project is initially planned to include a condominium component, the project documents should include provisions to allow for leasing of units in the event that market conditions change.

The rewards will be maximized and the surprises will be minimized if the challenges and issues associated with a mixed-use project are identified and tackled early on by the project team. As long as the demand for convenience draws residents and consumers to cities invigorated by mixed-use projects, developers will increasingly turn to mixed-use developments, with all of their unique challenges.



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