

December 2008

Group Contact:

Barry Trilling, Partner
203.363.7670
btrilling@wiggin.com

About the Climate Change and Sustainable Development Group

Committed to meeting client needs as they are affected by a rapidly changing environment, Wiggin and Dana's Climate Change and Sustainable Development Practice Group advises clients reacting to new mandates for change. In particular, the Practice Group advises with regard to the adoption of environmentally-desirable business practices, emerging business opportunities, and litigation associated with climate change and sustainable development. Another useful seminar on these groundbreaking trends is planned for the autumn.

As a firm, Wiggin and Dana is committed to reducing the environmental impact of its offices. Wiggin and Dana's Green Team is implementing a plan to achieve the firm's goal of creating an environmentally sustainable workplace.

Transit-Oriented Development: Land Use Planning Responds to Climate Change

By: Anika Singh Lemar

In the scramble to address climate change, state and municipal governmental agencies, private developers, and local communities—both in Connecticut and nationwide—are increasingly turning to "transit-oriented development" or "TOD" which situates housing close to public transportation and commercial and retail amenities. By incorporating mixed uses and density, TOD ensures that walking and bicycling are reasonable transportation options and that there is sufficient ridership to sustain the public transit at the center of a development. This type of planning discourages the use of cars and their associated carbon emissions, which account for almost one-fifth of greenhouse gas emissions in the United States. Developers, in turn, are adapting to and benefiting from this trend because it typically allows greater housing and population densities than does traditional residential zoning. In addition, TOD often allows for flexible parking standards which enable developers to construct fewer parking spaces per unit, and thereby reduce costs, due to sharing spaces between shoppers during the day and residents at night and the ability of some shoppers to walk to stores from their homes.

Municipal Transit-Oriented Development

In Connecticut, municipalities with access to commuter rails have a particularly enticing opportunity to embrace transit-oriented development. For example, the Town of Guilford has formulated a comprehensive plan for developing its downtown that calls for consideration of multi-family residential and mixed-use developments in the vicinity of the Town's train station. This station provides commuter rail access to New Haven, New York, and New London.

Larger municipalities, like Stamford and New Haven, have likewise prioritized developments and pedestrian-friendly infrastructure near their busy train stations to take advantage of their rail connections to New York, Boston, and beyond. The City of New Haven is working with the State Department of Transportation to reconfigure Union Station, its central train station, to include new retail, commercial, and residential space. In 2007, New Haven entered into a development agreement with Becker + Becker for the development of 360 State Street, a residential tower across the street from the State Street Station, the smaller of New Haven's two train stations. New Haven is currently negotiating an agreement for the development of a mixed-use 4.5-acre parcel located about one-half mile from Union Station, expected to include a regional theater as well as residential and office space.

In Stamford, Jonathan Rose Companies and Antares Investment Partners are constructing

Climate Change and Sustainable Development Practice Group

Transit-Oriented Development: Land Use Planning Responds to Climate Change *continued*

WIGGIN AND DANA

Counsellors at Law

mixed-use projects close to the City's downtown central train station, which provides commuter access to New York and New Haven as well as regional access on Amtrak. Jonathan Rose Companies recently broke ground on Metro Green Apartments, the first phase of a residential and commercial development. The next phase includes the development of a 350,000 square foot, 17-story office building on this site. Jonathan Rose Companies intends to secure Leadership in Energy and Environmental Design (LEED) certification for both the residential and office phases of the project. Antares Investment Partners has embarked on a \$3 billion redevelopment of a formerly industrial 80-acre brownfield site in Stamford's South End and within walking distance of the central train station. Antares anticipates that, when completed, the development, known as Harbor Point, will include six million square feet of residential, hotel, retail, office, and recreational space.

Stamford has also undertaken the Stamford Urban Transitway, a \$49 million project to promote access to the central train station and to encourage public transportation and pedestrian and bicycle traffic. In addition to creating dedicated lanes for the use of buses and high-occupancy vehicles, Stamford is building and enhancing sidewalks and creating bicycle lanes. The project is scheduled to be completed in the fall of 2009.

Some towns and cities have planned development around train stations that do not yet exist. For example, in connection with its anticipated new train station, the Town of Fairfield anticipates the construction of four office buildings, a hotel, and a ten-acre town park. Similarly, in Redding, Connecticut, the Georgetown Land Development Company plans to construct 416 residential units, including apartments, lofts and single-family homes and 300,000 square feet of commercial space on a former factory site. For approximately 150 years, up until the mid-1990's, the Gilbert and Bennett Company manufactured wire cloth, netting and fencing on the site. A central component of this brownfield development is a revived train station. No portion of the development will be more than a ten minute walk from the train station.

Towns without rail amenities can also utilize land-use tools to decrease automobile dependence. For example, planners and government officials in Hamden expect to implement a hybrid type of zoning in early 2009, incorporating "form-based" zoning alongside use-based restrictions in a newly proposed code. "Form-based" zoning regulates building size and setbacks, the interface between streets and buildings, and the scale of development and streets, rather than defining zones according to "traditional" uses (residential, commercial, industrial, etc.). As a result, "form-based" zoning permits mixed uses which, in turn, encourage walking because residences and stores are close to each other. In addition, the proposed code will ease parking restrictions. For example, the new code will allow on-street parking to count towards minimum parking requirements and will allow property owners to share parking spaces among mixed uses.

New State Requirements and Funding Incentives

Although land use regulation is typically local, some state governments have also entered the fray by mandating overarching land use goals and requirements in an effort to combat

Climate Change and Sustainable Development Practice Group

Transit-Oriented Development: Land Use Planning Responds to Climate Change *continued*

WIGGIN AND DANA

Counsellors at Law

the effects of climate change. Since 2005, Connecticut law has required regional planning agencies to identify potential sites for TOD. Pursuant to this mandate, the Housatonic Valley Regional Plan of Conservation and Development has identified eight sites; some of these sites incorporate existing train stations, while others would require the construction of new stations in the long-term. More immediately, the Connecticut General Assembly has authorized funding for TOD planning, development, and implementation. The applicable state statute defines TOD as residential, commercial, and employment centers that are within one-half mile or walking distance of "public transportation facilities" such as bus rapid transit and rail.

More recently, on September 30, 2008, Governor Arnold Schwarzenegger of California signed into law an anti-sprawl measure. The law establishes greenhouse gas emission reduction goals for land use planning. It will also require regional transportation plans to include sustainability strategies designed to reduce greenhouse gas emission from cars and light trucks. California will provide financial incentives to local governments that build more compact neighborhoods and that otherwise develop land consistent with these plans, subject to certain exemptions.

New Voluntary Standard for Neighborhoods

Recognizing the effect that neighborhood-level land use choices can have on energy consumption, the United States Green Building Council has expanded its LEED rating system to include a program specifically tailored to neighborhood development. This new standard would supplement the Council's widely used standards for environmentally-sensitive buildings. The "LEED-ND" rating system, in its pilot form, rewards developments that are compact, utilize brownfield sites, reduce automobile dependence, include mixed uses, and are located close to housing, jobs, and schools. The standard requires certain factors, such as compactness and proximity to infrastructure. Other factors, like site design elements and reduced automobile dependence, are voluntary but improve a development's rating. Six Connecticut developments, including Stamford Metro Green, Harbor Point, Georgetown Land Development, and 360 State Street (New Haven), have applied for certification under the pilot LEED-ND system. The pilot program is no longer accepting new projects. The United States Green Building Council expects to launch the permanent LEED-ND rating system in 2009.

A Passing Trend?

Climate change and the cost of energy are affecting land use choices and real estate development in Connecticut and nationwide. In the public sector, municipalities and states are increasingly seeking to encourage more efficient use of land and transportation resources and infrastructure. Similarly, in the private sector, developers are seeking to entice residents and businesses to sites that provide access to multiple transportation options, including transit and walking. As a result, development that is accessible by transit and provides for pedestrian access to commercial and retail uses is gradually becoming more available. We have yet to see whether this form of development is part of a tempo-

Climate Change and Sustainable Development Practice Group

Transit-Oriented Development: Land Use Planning Responds to Climate Change *continued*

WIGGIN AND DANA

Counsellors at Law

rary trend or will become a permanent fixture in real estate markets in Connecticut and nationwide. In light of limited energy resources and increasing government regulation affecting land use and transportation, however, it is likely that compact, transit-oriented development will accelerate as the nation's attention becomes increasingly focused on addressing the challenges due to climate change.

Anika Singh Lemar is an Associate in Wiggin and Dana's Climate Change and Sustainable Development and Real Estate Practice Groups. Anika is involved in all areas of Wiggin and Dana's real estate practice, including commercial real estate and land use matters. Before joining Wiggin and Dana, she was a Skadden Fellow and Staff Attorney at the Community Development Project of the Urban Justice Center in New York. She has taught land use and urban redevelopment law at Pratt Institute and Yale University and has written on land use matters for Next American City and the New York University Review of Law and Social Change. If you have any questions or comments about this article or its subject matter, please contact Anika Singh Lemar at 203.498.4325 or alemar@wiggin.com.

The Wiggin and Dana Sustainable Developments e-Newsletter is a periodic newsletter designed to inform clients and others about recent developments in the field of climate change and sustainable developments law. Nothing in the e-Newsletter constitutes legal advice, which can only be obtained as a result of personal consultation with an attorney. The information published here is believed to be accurate at the time of publication, but is subject to change and does not purport to be a complete state-ment of all relevant issues.

In certain jurisdictions this may constitute attorney advertising.