Strong Infrastructure Drives Retail Success

The link between infrastructure investment and the retail real estate industry

This report was prepared and written by the ICSC Office of Global Public Policy in consultation with the ICSC Infrastructure Task Force.

ICSC

Preface

This white paper is a collaborative effort by the International Council of Shopping Centers (ICSC) Infrastructure Task Force (ITF) to highlight the importance of infrastructure investment and cooperative regulatory oversight for the competitiveness of the American economy. This paper will demonstrate the many ways that the retail real estate industry can work together with the public sector to provide direct and indirect infrastructure development.

Safe and efficient infrastructure is critical to the retail real estate industry and the communities we serve. We rely on roads and transit to get consumers and workers to our properties and we need reliable routes to get products to our stores.

ICSC members are key drivers for road and utility upgrades in our communities. Retail real estate contributes over $366.4 billion annually in property and sales taxes[1] and billions in impact fees associated with broader commercial real estate development.[2] ICSC members work closely with municipalities to update water, electrical and other types of infrastructure to increase community connectivity and best serve the needs of consumers. Access to retail is a key component of successful transit-oriented development (TOD). The retail real estate community is both a user and a contributor to infrastructure and is an important voice for policymakers as they continue their efforts to restore and modernize America's infrastructure.

This is an exciting time in the continuum of the built environment, where places are being reimagined to provide the amenities that key demographics are seeking. In light of the blending of uses, from retail to residential to office, to the development of automated and shared transportation sources, infrastructure needs for the future should be reconsidered.

Built Environment

The term "built environment" refers to the human-made surroundings that provide the accommodation for human activity. It has been defined as the human-made space in which people live, work and play on a daily basis. The built environment includes places and spaces created or modified by people including buildings, parks and transportation systems.

Executive Summary

Public spending on infrastructure has steadily decreased from a high of 4.2% of GDP to a current rate of 1.5% of GDP in 2016, leading to a $2 trillion gap in committed infrastructure dollars over the ten years ending in 2025.[4] The lack of public sector investment in infrastructure represents a challenge to the competitiveness of ICSC members, who rely on transportation systems that get people and products to and from their developments, utilities that power their facilities and water systems that ensure health and safety for their operations.

While there is bipartisan agreement in Congress and among Americans that a renewed investment in public infrastructure is critically needed, it remains unclear that a pathway exists for a large-scale, politically viable infrastructure package. As stakeholders continue to build consensus around the scope and direction of infrastructure policy at the federal, state and local levels, it is important for the retail real estate industry to be engaged. We continue to look for opportunities to work with other like-minded groups to help formally build a collaborative approach that explains both the infrastructure solutions our members contribute and the opportunities for community economic development associated with sound public infrastructure investment.

ICSC's two key policy areas of focus are:

1. Restore and modernize federal infrastructure funding, with a special focus on the positive impacts of public-private partnerships.
2. Permit streamlining to increase efficiency and maximize the effectiveness of infrastructure funds.

To that end, the following policy recommendations were compiled from a 2018 ICSC member survey and are intended to help shape the dialogue about improving the state of the nation's infrastructure, the future of retail real estate and the communities we serve.

Impact Fees

Impact fees are typically up-front published fees associated with the amount of proposed developed area and vary between jurisdictions. They can be assessed instead of/or in addition to in-kind developer contributions for public infrastructure that are agreed to project-by-project. Impact fees are referred to by a number of names including capacity fees, facility fees, system development charges, capital recovery fees, etc. Common characteristics include that they are charged to new developments, standardized and designed to fund capital improvements.[3]

Proposed Areas of Policy Focus

1. **Restore and Modernize Federal Infrastructure Funding**: ICSC members support efforts to ensure that there is sufficient dedicated revenue to maintain the solvency of the Federal Highway Trust Fund, including but not limited to, urging Congress to explore the creation of a "vehicle miles traveled fee" and evaluate an increase in the federal gas tax, provided those funds remain designated to infrastructure. We also believe that there is opportunity to expand funding sources through improvement of infrastructure-oriented Private Activity Bonds (PAB) and community focused public-private partnerships (P3s).
    - Strengthen the effectiveness of P3s by restoring the federal tax exemption of certain grants. (IRC Section 118 – Contributions to Capital)
    - Enhance existing federal development financing programs (BUILD grants, TIFIA, etc.), allowing for greater flexibility in infrastructure development.

2. **Integrate and Rationalize Permitting**: ICSC members support efforts to streamline permitting for infrastructure projects in order to decrease costs and bring infrastructure-related projects to market faster. Transparency, upfront communication and accountability should be increased; jurisdictional overlap and duplicative impact studies should be reduced to provide better outcomes for our communities.
    - Streamline federal permitting, especially for transit-oriented development (TOD).
    - Incentivize state, regional and local efforts to shorten decision time and reduce redundancies.

As we move forward, ICSC will be formally engaged in developing legislative proposals at the federal level and partnerships with state and local governments, and other sectors such as water and energy utility groups, contractors and business groups to advocate for comprehensive infrastructure reform and funding mechanisms. There will be a focus on an actionable strategy to identify and implement potential legislative and regulatory changes that will promote private sector investment. We will continue to compile and catalog case studies for use with specific policy and communications initiatives from diverse project types and geographical areas to add a valuable real-world perspective.

The Importance of Safe and Efficient Infrastructure for the Consumer Experience

After years of broken commitments to infrastructure investment, the United States is left with at least $2 trillion in funding needs[5] over the next 10 years to maintain and revitalize existing infrastructure. Not only is there a backlog on maintenance of critical infrastructure, but over the next 20 years we expect the population of the U.S. to reach 374 million people,[6] creating increased demand on our nation's infrastructure. According to the American Society of Civil Engineers (ASCE), over a 10-year period the average U.S. household will lose $3,400 annually in disposable income due to infrastructure deficiencies and an expected loss of 8.3 billion hours in 2020 due to congestion.[7]

Consumer-facing businesses strive to provide the most convenient, fresh and exciting offerings to their customers, creating a need for merchandise and materials to be delivered on time and often. Costs associated with freight delays are more than just the opportunity costs of lost efficiency, they negatively impact consumer confidence. Accessibility has become a fundamental part of being competitive and online shopping has made convenience an obligation in retailing. Along with valet parking and package delivery services, many major retail real estate developers increasingly seek multi-modal regional transit opportunities to provide transportation options for shoppers.

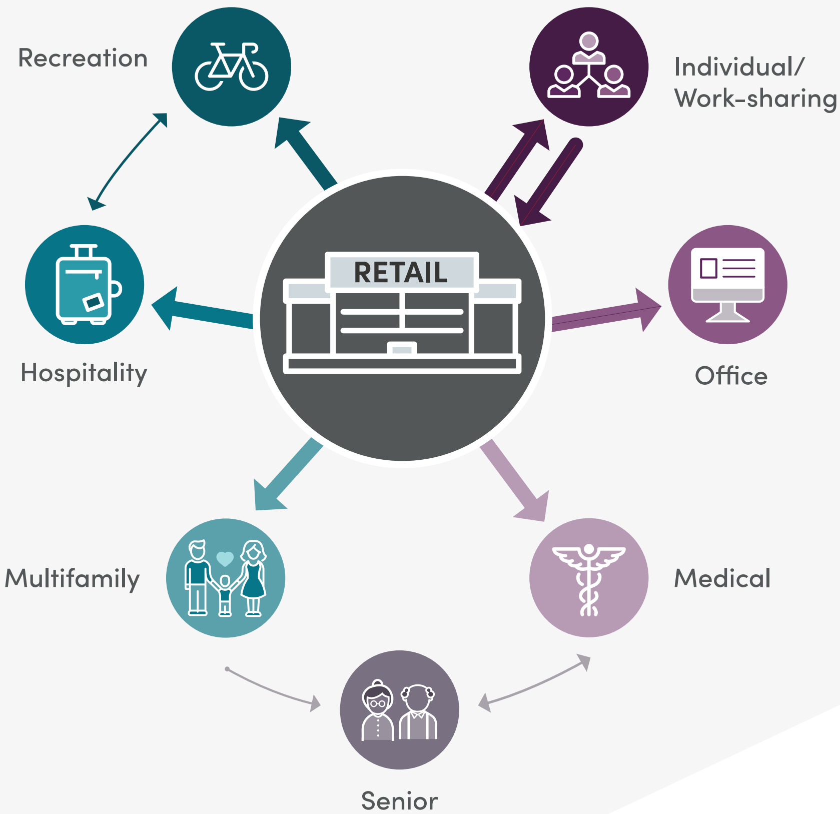
Based on changing demographic priorities, we are also witnessing a convergence of traditional uses in the built environment that will likely alter the way we utilize infrastructure. Increasingly, retail real estate space is being filled with health and wellness, beauty, education, and food and entertainment options, providing for a more robust experience and less stress for busy consumers. There is also an unprecedented shift in pure-play online sellers developing a physical presence to increase brand credibility, access and assist with last mile logistics. According to ICSC research, opening one new physical store in a market results in an average 37 percent increase in overall traffic to that retailer's website, compared with web traffic prior to the store's opening.[8] As multi-channel

retailers reevaluate their distribution channels, logistics infrastructure analysis – roads, rail, intermodal, port connectivity, utility costs and workforce – is now integral to site selection and investment decisions.[9] Regions that have planned for this convergence are seeing exceptional private investment and job creation.

ICSC research demonstrates that the key demographic groups led by Generation X, millennials and baby boomers are looking for amenity-driven places, where blended uses provide for a more integrated live, work, play experience.[10] These consumers value sustainability and active transportation options like walking and biking paths, contributing to healthier communities. The merging of functions and increase in the intensity of uses also contributes to making land-use projects more cost effective, creating opportunities for affordable housing and other potential community priorities. This evolution in consumer preference will impact frequency and timing of transit utilization.

Technology-driven solutions to many logistical issues continue to emerge, eventually creating new opportunities for the transport of people, products and inputs. Self-driving automobiles may have the potential to lessen the number of vehicles on the road and increase traffic efficiency, while releasing space previously dedicated for parking lots and structures. Autonomous delivery trucks or drones may relieve concerns with driver fatigue, delivery hours, idling times and last-mile delivery challenges. Smart electrical and water grids could potentially improve resource efficiency and environmental impacts. These advances and the changes that eventually will be required in the built environment should be taken into consideration as infrastructure policy and funding is shaped.

At-a-glance: amenity-driven retail spaces



Based on the results from a 2018 survey of ICSC membership regarding infrastructure priorities, two of the key factors currently impacting our membership are funding and permitting. The federal government's role to provide dedicated funding for infrastructure is essential and the tools available to cities, states and private partners need to be strengthened. In order to maximize scarce funding sources, cities, counties, regional authorities, states and the federal government must work together to establish frameworks that allow for expedited permitting and provide policy reform to allow for the private market to be a better partner in the process. ICSC supports the following specific policy proposals.

Restore and modernize federal infrastructure funding programs

For decades the federal government has failed to address the erosion of the Federal Highway Trust Fund as the key source of infrastructure funding for highways, roads and bridges that facilitate interstate commerce across the country. Airports, railways and ports that enable products to reach consumers also require capital infusion and modernization. As the maintenance and operability of these assets has fallen behind, growing delays are driving up the cost of products and services. It is time for Congress to provide leadership and consider multiple approaches to advancing infrastructure investment.

The gas tax has been a successful funding source for the Federal Highway Trust Fund and a tried-and-true collection mechanism. Unfortunately, policymakers have failed to adjust the amount collected for inflation, eroding the effectiveness of this program. ICSC is aligned with other business groups in recommending that Congress explore an increase in the gas tax and other proposals. For instance, as technology continues to reduce automotive reliance on fossil fuels, other types of user fees, such as a registration or mileage-based fees should be considered.

Major infrastructure projects are likely to be beyond the economic ability of regions or states to pay for by themselves. Public sector investment anchored by federal government funding must remain the core capital source for many of these infrastructure projects, however, our members have significant experience demonstrating that public-private partnerships can contribute to closing a portion of the existing need for investment.

Promote private sector investment and encourage broader public investment

As most retail real estate development and redevelopment projects demonstrate, public-private partnerships related to infrastructure extend well beyond toll roads. Federal, state and local governments frequently work with our members to bring infrastructure and economic development with a focus on community or regional priorities such as environmental remediation, density, interconnectivity, sustainability, resiliency or economic equity. Retail real estate development is sought out by municipalities to increase the tax base and to provide an improved quality of life for their residents. Our facilities are often looked to as a suitable use in addressing brownfield or other environmentally contaminated sites. Additionally, states and municipalities raise additional revenue for infrastructure through impact fees on new development. Impact fees may help to assist in the delivery of needed roads, water, sewer, parks, schools, utility upgrades, libraries, and public safety and first responder resources. In many cases, the developer is also asked to include one of these public benefits as an in-kind contribution to the master plan for the development.

For example, a city might partner with a developer by contributing an abandoned property or easement or mitigating the risk of environmental remediation, construction or demolition to build an upgraded water system and provide access to goods and services in an underserved market. State, local or regional authorities will also sponsor grants or provide tax relief to a development project with the expectation that these enhancements will stimulate private investment. The purpose of these incentives is to ultimately benefit the general public by improving critical public infrastructure, creating jobs or attracting new tax revenue for the community. In turn, these projects leverage additional public infrastructure improvements. In many cases, the direct investment facilitates traffic flow and mobility improvements, open recreational space, transit, greater parking efficiency and upgrades to the sewage, wastewater and electrical systems for an entire community or region.

Brownfields

The Environmental Protection Agency (EPA) defines a brownfield as a property where redevelopment may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant. It is estimated that there are more than 450,000 brownfields in the U.S. Clean-up and reinvestment in these properties increases local tax bases, facilitates job growth, utilizes existing infrastructure, provides a solution to undeveloped, open land and both improves and protects the environment. Brownfield regulation and redevelopment are largely governed by state environmental agencies in cooperation with the EPA.

Case Study: Assembly Row, Somerville, MA

Snapshot – A 145-acre mixed-use, smart growth, transit-oriented development along the waterfront of the Mystic River in the city of Somerville, Massachusetts.

Project Objective – To spur redevelopment of the out-of-date Assembly Square Mall and surrounding industrial areas at the site of an old Ford Motor Company assembly plant.

Project Overview – The project includes premium retail outlets, restaurants, residential space, state-of-the-art office, research and development space, a 12-screen cinema and a 200-room hotel. Amenities include a marina, revitalized waterfront park, bike paths and green space.

Federal Realty Investment Trust ("Federal Realty") purchased the defunct Assembly Square Mall along with other properties in Assembly Square. Federal Realty quickly redeveloped the existing mall into the Assembly Square Marketplace, an open-air mall including several large format stores. After two years of preparing the former brownfields site, building began on two residential apartment blocks, a new main street and a new Massachusetts Bay Transportation Authority (MBTA) mass transit station called Assembly Station funded in conjunction with the Commonwealth.

Project Execution – The Commonwealth of Massachusetts issued a total of $40 million in bonds through its Infrastructure Investment Incentive Program (I-Cubed) for infrastructure improvements to support the project, including roads and public parks. The program leverages private investment to finance public infrastructure improvements necessary to support major private development by creating a partnership among developer, host community and the Commonwealth. Ultimately, this collaboration created hundreds of new jobs, increased property values and boosted state and local tax revenues. The Commonwealth also invested $15 million of stimulus funding provided by the federal American Recovery and Reinvestment Act (ARRA) to support critical road, bike and pedestrian improvements.

The city of Somerville issued $25 million in district improvement financing (known as tax increment financing or TIF outside of Massachusetts) bonds pledging a share of local taxes to support public infrastructure improvements for the project. The bonds are backstopped by a general obligation pledge of the city and financed traffic, road, utility and storm water line improvements. The city also received a Growth District Initiative grant of $2 million to reimburse Federal Realty for a portion of the environmental remediation.

Additionally, approximately $40 million in commonwealth and federal funds were leveraged in constructing the new MBTA Assembly Station, with Federal Realty contributing an additional $15 million to complete the project.

Strengthen the effectiveness of P3s

The 2017 Tax Cuts and Jobs Act (TCJA) effectively repealed a long-held development funding instrument that provided a federal income tax exemption for certain government and non-profit grants. Effective upon enactment (12/22/2017), the law otherwise allowed certain contributions to be grandfathered only if made pursuant to a master development plan approved by a governmental entity prior to that date.

Going back to a series of court rulings from the early 1900s, payments to induce private development for the public benefit represented a non-taxable contribution to capital, as they were made without anticipation of any direct services, but rather to benefit the community at large. In 1954, Congress codified this decision in Section 118 of the Internal Revenue Code to prevent taxpayers from using such contributions to increase their basis and take larger depreciation deductions. The law also resulted in a larger capital gain when the property was ultimately sold, thus it provided a deferral of taxes without eliminating them entirely.

The TCJA repeal of Section 118 was passed quickly as part of a larger tax package with no Congressional hearings. Without the latter, it is unclear whether Congress contemplated the impact to infrastructure, utility and economic revitalization efforts. Unfortunately, the change reduces the after-tax value of many incentives intended to improve underserved areas, such as the provision of no-cost land, cash grants, reimbursements or other transfers of money or property.

The overall outcome is that the federal government is now confiscating a significant portion of state and local tax revenues intended to endow community priorities – which often include environmental remediation and infrastructure improvements. This change further impedes other federal efforts to encourage public-private partnerships and it will undoubtedly jeopardize future infrastructure opportunities.

ICSC calls on Congress to resurrect the Section 118 exemption on federal income taxes for state and local incentives as part of tax-related infrastructure legislation. Additional stipulations regarding the qualifications for the exemption may be warranted at that time.

Case Study: Southwest Waterfront / District Wharf, Washington, DC

Snapshot – A public-private partnership (P3) along nearly one-mile of the Southwest Waterfront on 24 acres of land, with more than 3 million square feet of mixed-use development and public space, and more than 50 acres of water – the largest planned unit development in the history of Washington, DC.

Project Objective – Redevelop underutilized historical site of commercial industry and maritime activity to highest and best use, as a sustainable neighborhood and lasting waterfront community.

Project Overview – The vision and construction of The Wharf is led by PN Hoffman and Madison Marquette. The Wharf is centrally situated on the Potomac River, along the historic Washington Channel. At full buildout, the project will include approximately 1,375 residential units, three hotels (with approximately 675 keys), 945,000 square feet of Class-A office development, 335,000 square feet of retail and restaurants and a 6,000-seat concert and convention hall.

Amenities include approximately 500 marina slips, a below-grade parking garage and 10 acres of parks, open space and promenades. It is the first LEED-Silver certified mixed-use project in the District. Additionally, the project has 1,150 bike spaces, with four bikeshare stations within walking distance. A brand-new water taxi service with four stops connects The Wharf to Georgetown, Virginia and Maryland.

Project Execution – The District of Columbia issued $198 million in tax increment financing (TIF) and payment in lieu of taxes (PILOT) bonds to finance public infrastructure improvements, including parking, roads, piers and parks. Without the IRC Section 118 tax exemption, this project would not have been viable.

The District of Columbia launched the Anacostia Waterfront Initiative, which brought together more than 20 different federal and district agencies that hold land or jurisdiction along the Anacostia River. Resolving title and air rights issues required federal legislation signed by the president. The district government offered the Wharf's developers a free 99-year lease of city-owned land that was valued at $95 million at the time of disposition.

In turn, Hoffman-Madison Waterfront – the developers and institutional partners – have funded the balance of the approximately $2.5 billion project through private capital.

Enhance existing federal development financing programs

Transit-oriented development (TOD) is another example of how public-private partnerships work together to improve the condition, utilization and convenience of public transit by bringing people, activities and services together, with walking and cycling connections and transit service to the rest of a city or region. TOD maximizes the amount of residential, business and leisure space within walking distance of public transit. A TOD typically includes a central transit stop (such as a train station, light rail or bus stop) surrounded by a high-density mixed-use area, with lower-density areas spreading out from this center. By incorporating economic development into a transit plan, a project can maximize the success of all components and take advantage of existing construction and development expertise.

The federal government should build upon proven federal credit instruments such as Private Activity Bonds (PAB) and allow for greater flexibility in infrastructure development initiatives through the Transportation Infrastructure Finance and Innovation Act (TIFIA) and U.S. Department of Transportation Better Utilizing Investments to Leverage Development (BUILD) grant programs to recognize the mutually beneficial aspects of engaging with private development opportunities as part of an infrastructure maintenance or development plan. ICSC supports the Move America Act (S. 146/ H.R. 1508) to lower borrowing costs by expanding tax-exempt financing for public-private partnerships (P3) and providing tax credits to leverage additional private equity investment as a low cost/low risk option for states.

The federal government offers several economic development and infrastructure financing tools related to TOD. Unfortunately, these programs are scattered across agencies and are difficult to navigate, making them inefficient or unfeasible to use. ICSC recommends that the federal government evaluate the full range of economic development and infrastructure financing tools available to determine ways to make them more applicable to real world development cycles.

Case Study: 30th Street Station / Schuylkill Yards, Philadelphia, PA

Snapshot – Utilization of a U.S. Department of Transportation BUILD Grant at the third-busiest rail station in the U.S. to expand and improve transit capacity and support the development of a $3.5 billion public-private partnership, Schuylkill Yards, a 14-acre planned urban innovation community.

Project Objective – Expand the capacity of the 30th Street Station and improve circulation between transit modes to meet present and future transportation needs.

Project Overview – The project will provide new and expanded stairs, escalators, elevators and fare payment configuration. It will redesign the entrance and transform station aesthetics to modernize the station and improve connections across transit modes. The 30th Street Station serves as an intermodal connection between Amtrak, SEPTA, New Jersey Transit and intercity bus routes, and is a critical connection to Philadelphia's largest employment centers.

At street level, the north entrance to the station will have a new glass enclosure and canopy, a new ramp to Drexel Square and new granite stairs, curbs and floor finishes inside the station. The mezzanine level will get a complete reconfiguration of fare lanes, new elevators and stairs to improve access to Market-Frankford Line trains. Additional elevators will be installed to prepare for the station's future lower level connection to Amtrak facilities. Other enhancements include upgraded lighting, security and escalators between the street and mezzanine.

The project improves economic competitiveness by supporting the development of the large public-private Schuylkill Yards development project. Schuylkill Yards will rise on 14 acres between Drexel's University City Campus and Amtrak's 30th Street Station. The project will include approximately 5 million square feet of entrepreneurial spaces, teaching and research facilities, corporate offices, residential and retail development, and hospitality and cultural venues. A public realm plan includes new public spaces and green connections to the rest of University City, anchored by the 1.3-acre Drexel Square.

Project Execution – Southeastern Pennsylvania Transportation Authority (SEPTA) applied for and received a BUILD grant of $15 million. $21 million from the SEPTA's capital budget and $2 million from Brandywine Realty Trust represent the private funding secured to reach the estimated project cost of $38 million.

Case Study: Youngstown SMART2 Network, Youngstown, OH

Snapshot – Recipient of a U.S. Department of Transportation BUILD Grant, the SMART2 Network is a modern and efficient multimodal transportation system in downtown Youngstown providing infrastructure linking major regional anchor institutions impacting an economic resurgence across the Mahoning Valley.

Project Objective – Redevelop critical transportation infrastructure in Youngstown's downtown and central business district to connect key economic institutions in the city and spur redevelopment in the downtown area.

Project Overview – The SMART2 Network project will provide autonomous transit shuttles, transit waiting environments, pedestrian and bicycle facilities, green infrastructure such as permeable surfaces and LED lighting, streetscaping and wayfinding to connect anchor institutions such as Youngstown State University, Mercy Health, Youngstown Business Incubator and Eastern Gateway Community College.

The project will connect key economic institutions in the city and spur redevelopment in the downtown area, improving economic competitiveness. The project includes innovative technologies such as autonomous shuttles that will operate in a dedicated shuttle lane, as well as the installation of fiber optic conduit to facilitate high-speed broadband and enable roadway data collection.

The project area is well positioned for high-impact private investment. Over 327,000 square feet of office, 34,000 square feet of warehouse and 10 acres of industrial land are currently available for development within the project area, including a 1.56-acre site with rail access. This area is eligible for New Market Tax Credits and the impacted census tracts have recently secured an Opportunity Zone designation, further enriching property value.

Project Execution – Eastgate Regional Council of Governments applied for and received a BUILD grant of $10,853,192. In addition, $4,879,451 in committed federal funds and $10,541,689 in Non-Federal Match comprise the total project development cost of $26,274,332.

The city of Youngstown is exploring the implementation of several Downtown Redevelopment Districts (DRD) within the project area to provide innovative financing for long-term maintenance and operations of proposed SMART2 enhancements. A DRD functions similar to a TIF district but offers municipalities additional options in funding projects and programs with funds generated by the DRD. Youngstown also has more than $81 million in water improvements planned to support area redevelopment.

Case Study: Blanco Vista, San Marcos, TX

Snapshot – A 575-acre cross-jurisdictional project consisting of 2,080 single-family homes and additional sites for commercial and light industrial use made possible by new infrastructure.

Project Objective – Bring infrastructure necessary to support commercial and residential development, including a railroad overpass and utility services, to previously vacant land spurring economic growth.

Project Overview – Located on a tract of vacant and agricultural land near the city's northeastern boundary, the site held great potential due to its proximity to the Blanco River and Interstate 35 but lacked the infrastructure necessary to support commercial and residential development. The primary barrier to development was a major railroad track that runs parallel to I-35 and halted traffic several times a day for upwards of 15 minutes. This would prevent emergency services from accessing the site and therefore the city was unwilling to extend utility services to the development without an above-grade crossing.

Construction of the $7.8 million overpass not only increased the value of the new development but also provided long-awaited regional mobility improvements, increased safety for area residents and the first leg of a loop around San Marcos. Due in part to this transit-oriented improvement, it is estimated that the city and county combined will collect nearly $57 million in new sales tax, franchise fees and ad valorem tax revenue over the 30-year life of the Tax Increment Reinvestment Zone (TIRZ). Importantly, the city of San Marcos is now in a position to partner with the developer to protect the environmentally sensitive Blanco River nearby and benefit from $31.7 million in public infrastructure improvements, $260.8 million in residential development and $11.5 million in new commercial development.

Project Execution – The city of San Marcos TIRZ #2 was created to help finance infrastructure costs primarily related to the overpass on Yarrington Road at its intersection with the Union Pacific Railroad. With both cities having struggled in the past to cover a funding shortfall for this project, the TIRZ provided a means to close the gap by including limited zone participation agreements with additional taxing jurisdictions to cover construction costs and increase transit-oriented development opportunities beyond the immediate project site. The multi-jurisdictional approach required Extraterritorial Jurisdiction (ETJ) boundary adjustments with the cities of San Marcos and Kyle and cross-jurisdictional agreements between both cities, Hayes County and the Texas Department of Transportation to define and settle a legal perimeter for the project.

Due to the significant capital investment in infrastructure and new construction provided by the developer, projected TIRZ revenues are well in excess of the public project costs to be financed by the TIRZ and sufficient to reimburse the developer in a timely manner without the issuance of bonds.

Integrated and rationalized permitting

Land-use approvals can take several years, adding significant costs to infrastructure projects. Even seemingly simple projects to repair existing infrastructure must navigate multiple authorities. Each delay impacts the next stage of development, creating a domino effect of project setbacks. ICSC members believe that land-use permitting can and should be streamlined at all levels of government without reducing the standards of public safety and environmental protection, as has been achieved in Germany, Canada and Australia.

Streamline Federal Permitting, Especially for TOD

Included in the Fixing America's Surface Transportation Act (FAST Act) was a specific section establishing a streamlined permitting process at the federal level. The provision included caps on the amount of time for review, a statute of limitations on lawsuits related to reviews and required coordination and accountability among the agencies. While the FAST Act federal permitting improvements are a meaningful step forward, we know that there are still projects where regional review authorities have a history of looking at aspects of a project outside of the agencies' scope (i.e. economic viability) or requiring cost-prohibitive mitigation. On average it takes 12 months to obtain a permit for a waterway or body of water that is regulated as a "Waters of the U.S." Additionally, it is important to note that federal permitting "actions" trigger companion statutory reviews by agencies other than the state permitting agency, including reviews under the Endangered Species Act, the National Historic Preservation Act and the National Environmental Policy Act. Not only are these reviews costly, but project proponents often do not have input during the additional assessment period. Also of note, consulting agencies are not bound by a specific time limit and there is potential for citizen-driven litigation, effectively weaponizing the environmental review process. Lengthened permitting times and the costs associated with the additional reviews jeopardize infrastructure development while not necessarily or materially improving project design.

Incentivized permit streamlining at the state, local and regional level

The federal government could leverage additional private capital investment in our nation's infrastructure, through creating new incentives to state, local and regional authorities to implement permitting reform and provide greater certainty in the planning and approval of infrastructure projects. We believe that these reforms will create an environment where infrastructure can be developed more quickly, costs are lowered and opportunities are increased for community infrastructure priorities.

Our members report that transparency regarding the permit process and providing pre-application conferences between regulators and applicants allows for issues to be identified and mitigated up front. Additionally, open communication in any land-use determination process provides direction for a developer to address community concerns such as density, sustainability and resiliency measures, as well as clarity with the planning agencies about the cost constraints associated with these priorities.

ICSC has identified best practices in non-federal permitting from jurisdictions across the country that we believe should be incentivized through federal legislation:

- Transparency in permitting processes, including defined timelines for completion at each stage and cost
- Pre-application discussions between developers and permitting authorities
- A results-oriented culture that includes open collaboration, feedback and accountability
- Ombudsmen and third-party contractors to manage and minimize delays and obstacles
- Safeguards against the legal system being used as a tactic to halt projects

Conclusion

Modernizing and maintaining infrastructure is a central issue for the retail real estate industry. ICSC, on behalf of its members, looks to play a leadership role with policy makers as discussions on this issue progress. Due to the scope, complexity and competing interests associated with the topic, we expect the multi-year conversation on infrastructure investment and related program reforms to continue. Even beyond the current discussion on deferred maintenance, the needs and opportunities in the future of the built environment will necessitate additional involvement for ICSC in the years to come.

Every opportunity should be considered to increase innovative and integrated development opportunities and address the outstanding infrastructure problems across the country. The central role of state, regional and local authorities is a pervasive theme throughout the discussion of infrastructure and the built environment and should not be downplayed. In today's administration of infrastructure funding and land use policy, local agencies must not only partner with private sector interests but prioritize a project for it to be actualized. The ICSC team looks forward to finding opportunities to build upon existing relationships with these groups and develop new areas of collaboration, continuing the work set forth in this white paper to advance the policy objectives of public-private partnerships and permit streamlining. Together we can build a future that provides opportunity and convenience for all.

Endnotes

1. ICSC Research calculations based on U.S. Census Bureau, Sales Tax Clearinghouse and NCREIF data.
2. Duncan Associates, "National Impact Fee Survey 2015."
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