

Attys Vital As Miami Turns To Transit-Oriented Development

With the Miami area's population climbing and available land on the decline, transit-oriented development is emerging in the market as an attractive means both for tackling the resulting challenges and keeping up with market preferences — and lawyers are positioned to play a central role in its advancement.

Building up density around transit, both at existing stations and along future routes, presents developers and local governments with possible solutions for alleviating Miami's notoriously snarled traffic while also offering advantages in improving housing affordability, addressing environmental issues and even improving the public school system, experts said at a recent panel discussion hosted by CREW-Miami, an association for women involved in commercial real estate.

Transit-oriented development also carries the incentive for developers of following lifestyle and technology trends, as many area residents, especially sought-after younger ones, are starting to embrace living in walkable, amenity-rich urban settings as the car culture of South Florida undergoes upheaval with the advent of ride-hailing services and potentially autonomous vehicles.

“There's no magic bullet, but I think this comes close,” said Anthony De Yurre, a partner at Miami-based [Bilzin Sumberg Baena Price & Axelrod LLP](#), who moderated the CREW discussion and is representing developers on a number of these projects. “It’s not a matter of ‘if you build, they will come.’ They’re coming. They’re coming more every day, so where are we going to put them and what are we going to build for them?”

The complexities of these typically mixed-use projects and the interplay between the private sector and government entities mean the work of lawyers like De Yurre is essential, as they contribute from the early stages of finding opportunities and securing financing sources to negotiating agreements with public entities and advocating for broader regulatory changes.

A Changing Landscape

Miami could be called the first example of transit-development orientation, Patrice Gillespie Smith, senior manager for the Miami Downtown Development Authority’s Planning, Design & Transportation Department, said during the CREW event, making reference to Henry Flagler extending his [Florida East Coast Railway](#) south to what was mostly swamp in 1896.

Now the descendant of Flagler’s company is working feverishly to finish MiamiCentral, a terminal for its new Brightline passenger rail service that is expected to revitalize the downtown’s sleepy western side with not only arriving passengers but also stores and eateries under the elevated train tracks, as well as office and residential towers. The project is also next door to the Government Center transit hub’s connections to the county’s Metrorail commuter rail system, the downtown Metromover tram and numerous bus lines.

Two other major downtown projects, the mixed-use Brickell CityCentre and Miami WorldCenter developments,

both incorporate existing Metromover stations into their buildings, Smith said.

“They said, ‘You know what? We’re going to take care of it to our standards.’ So the county loves it. It’s a win-win, beautiful station,” Smith said.

As those projects make downtown and Brickell even more dense and pedestrian- and transit-friendly, several projects are also rising at outlying Metrorail stations, creating hubs that provide an easy commute to the urban core and can serve as magnets for surrounding neighborhoods, as well.

Link at Douglas Station, which is being developed by 13th Floor Investments with the Adler Group, will bring 1,375 residential units, over 280,000 square feet of office space and 68,000 square feet of retail to the Douglas Road Metrorail station in Coral Gables, southwest of downtown Miami. The station also offers connections to bus lines and free trolley service to downtown Coral Gables. The surrounding area already has seen a number of new residential projects built in recent years.



The Link at Douglas is an example of transit-oriented development coming to the Miami area. The mixed-use project is being developed jointly by 13th Floor Investments and The Adler Group at Miami-Dade County's Douglas Road Metrorail station in Coral Gables.

“The whole idea here really is to create a point of attraction,” 13th Floor Managing Principal Arnaud Karsenti said. “All of these Metrorail stations have effectively been functional eyesores. Ultimately they’re not places that people congregate to; they’re probably places that people try to get away from.”

13th Floor also has one of several projects planned for Dadeland, which has drawn renewed interest in this latest wave of transit-development. The high-density pocket of office and residential buildings sandwiched in the triangle formed by the intersection of U.S. 1 and the Palmetto Expressway started to rise in the 1960s with construction of the Dadeland Mall and gained a rapid transit link to downtown with the 1984 arrival of the Metrorail.

Motion at Dadeland, by 13th Floor, and Rilea Group's The Link will both feature residential towers above street-level retail near Dadeland Metrorail stations. The Link location also sits at the projected end of the Ludlum Trail, a proposed repurposing of a former railway line into a linear park, said Ashley Bosch, Rilea Group's director of development.

Developers are also scouting possible sites along the county's Transitway express bus lanes, stretching south from Dadeland to Homestead, and other future transit corridors included in the county's ambitious Strategic Miami Area Rapid Transit Plan.

"There are potential scenarios for a negotiation the other way around, where you have private land and the government wants to use infrastructure to build a station next to existing rail," De Yurre said.

Providing Solutions

For local government, the primary impetus for transit-oriented development is to get people out of their cars to alleviate traffic congestion, with the added benefit of reducing air pollution.

But affordability is also an important factor, the CREW panelists said. Smith pointed out that moving to an area like downtown that is walkable and offers a variety of transit options, including free trolleys and the Metromover, can greatly reduce residents' expenses, not to mention reclaim valuable time lost to commuting.

Coral Gables City Commissioner Vince C. Lago said that while his city has long had a pedestrian-friendly, amenity-rich downtown that now features improved transit connections, it still sees some 700,000 cars driving into or through the city each day.

High real estate prices keep many workers from living within the city, Lago said, but requirements in zoning codes for minimum unit sizes and requirements for parking spaces — which add about \$35,000 each to a building's cost, according to De Yurre — present obstacles to developers delivering more affordable units, panelists said. Changes are afoot. Coral Gables made changes to allow units of 500-600 square feet in parts of the city, Lago said.

Karsenti also pointed out that unlike downtown projects that tend the hew to the high-end luxury market, 13th Floor's Link and Motion projects along the Metrorail will be more of a "middle-to-upper-class area ... where the working class of Miami can enjoy [themselves]."

"I think everybody from Miami wants to be part of the action, but not everybody is able to [do that]," Karsenti said. "What about if you live in West Kendall or West Miami? Why don't you have a chance? ... The whole idea is also to create a place where people can feel cool ... and of course people can also access those other

points of interest by taking the Metrorail from there.”

The rise of transit-oriented development also could benefit the county’s school system, Rilea Group’s Bosch said, as a refocusing on the urban core should allow the county to reallocate resources to existing schools instead of building new schools to accommodate western expansion.

“What we are seeing with TODs is that [the county is] going to be able to maximize those already existing budgetary responsibilities instead of expanding to new ones,” he said.

Lawyers’ Roles

Putting together transit-oriented development requires a number of pieces to come together, and lawyers can play an important role at just about every step, De Yurre said in an interview.

More and more clients are now coming and asking for help in identifying opportunities that make sense for them, especially with high land costs, he said.

“We literally do the research for the client and help them find sites — that would be government-owned sites and ideally within the TOD structure — and then help them put the solicitation together,” De Yurre said. “And it’s very much as if we’re part of the in-house team of the developer. We wear our lawyer hats, but also our real estate development hat in putting that forward.”

Lawyers can help drive these projects forward by shepherding unsolicited proposals to government. This approach became more viable in Florida with recent legislation pushed by lawyers and the real estate industry that requires the details of such submissions be sealed until after the initial phase of a subsequent bidding process so that competitors do not get an unfair advantage over the original proposer.

“Every single one of [Miami-Dade County’s 30-plus municipalities and the county] has a different solicitation process, and each station has its own unique process, so that’s really where we’re driving value as attorneys for the client,” De Yurre said.

The intensity of negotiations depends on whether the project is a true public-private partnership with the builder redeveloping government land in a so-called rapid transit zone or more simply building on private land in the vicinity of a station, although incentives are often available for development within a certain distance from a station as well, De Yurre said.

Typically, if the developer is selected for a project, the lawyer will negotiate a letter of intent that would cover what public benefits and improvements the developer will make to government infrastructure, according to De Yurre. Everything is ultimately memorialized in a development agreement, similar to a joint venture agreement.

“It is the type of development that, at every stage, the lawyer is taking a much more active role in driving solutions and deals and working very much hand in hand with the client, as opposed to the client just telling me we found this piece of property, we’re going to do this and this, get me these entitlements, or, if it’s close, the financing on it,” De Yurre said.

It is also important for the attorneys to understand from the beginning what components of government infrastructure are involved, so they know what they might have to deal with on the financing side.

“For example, we might have to pay for all of the improvements to infrastructure, but we may not ultimately own that asset or that improvement we make,” De Yurre said.

The developer might build out improvements for an agreed-upon price and then turn it over to the municipality to bond out that portion of the project, or the private partner might just pay for that portion out of pocket as part of its negotiated public benefit.

Financing these projects can be tricky, because it is still sometimes difficult to get lenders to understand mixed-use projects, De Yurre said, more often with local traditional lenders than private equity lenders out of New York, who are more familiar with the process.

“If a project has too many uses, they don’t get it. They have underwriting that says, ‘This is office, this is residential, this is retail.’ And when you mix things together, it really takes a lender that understands how to underwrite that,” he said. “Then throw in some government infrastructure that we’re paying for with that financing as well, and then again it takes a specialized lender working hand-in-hand with the attorney explaining the process and solutions.”

Negotiations can also get into discussions of building the project in certain phases. A city might want residential built first because that will help provide ridership and drive demand for office and commercial portions, for example.

Lawyers also play a significant role in working with government officials to improve the affordability of these projects.

“As attorneys, in working with our clients, identifying solutions, we can work internally with municipal staff and do things like microunits to increase density, do things like reductions of parking count,” De Yurre said. “One of the biggest impediments to affordability are these same issues, so I look at affordability and TOD as two sides of the same coin.”

Often these initiatives, such as a variance on parking requirements, are approved on an individual project, and then the government sees that they work and decide to institutionalize it, but it also takes efforts to push organizations such as the Downtown Development Authority, builders associations or other lawyers to push policy changes.

“It’s very much a community effort that involves the developers, attorneys, professional organizations that we’re all members of, and getting in front of them,” De Yurre said.

Karsenti and Bosch shared similar sentiments on the CREW panel, noting that there is less of a competitive dynamic than a collective shift driving transit-oriented development.

“We’re also interrelated in all of these projects. For any one of them to succeed, we all need to be successful,” Karsenti said.

De Yurre said that part of his job is looking at what's next and working with committees and government officials to help them make "practical policy that works."

"Everybody serves their community in a different way, and this is how I serve the community. And a lot of the other practitioners in this world are very different from our other departments in that we will take up the gauntlet and we will move this forward with the government, and not necessarily for a particular client," De Yurre said.