

# Transit-Oriented and Joint Development: Case Studies and Legal Issues



John L. Renne, Ph.D., AICP  
Early Research Professor  
Urban Planning and  
Transportation Studies  
UNO Transportation Institute  
Department of Planning and Urban Studies  
jrenne@uno.edu  
August 19, 2010



THE UNIVERSITY *of*  
NEW ORLEANS



TCRP  
Transit Cooperative Research Program  
Sponsored by the Federal Transit Administration

# LEGAL RESEARCH DIGEST

January 1999--Number 12

---

Subject Areas: IA Planning and Administration, IC Transportation Law, VI Public Transit, and VII Rail

## The Zoning and Real Estate Implications of Transit-Oriented Development

*This report was prepared under TCRP Project J-5, "Legal Aspects of Transit and Intermodal Transportation Programs," for which the Transportation Research Board is the agency coordinating the research. The report was prepared by S. Mark White. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.*

### THE PROBLEM AND ITS SOLUTION

The nation's transit agencies need to have access to a program that can provide authoritatively researched, specific, limited-scope studies of legal issues and problems having national significance and application to their businesses. The TCRP Project J-5 is designed to provide insight into the operating practices and legal elements of specific problems in transportation agencies.

The intermodal approach to surface transportation requires a partnership between transit and other transportation modes. To make the partnership work well, attorneys for each mode need to be familiar with the legal framework and processes of the other modes. Research studies in areas of common concern will be needed to determine what adaptations are necessary to carry on successful intermodal programs.

Transit attorneys have noted that they particularly need information in several areas of transportation law, including

- Environmental standards and requirements;
- Construction and procurement contract procedures and administration;
- Civil rights and labor standards; and
- Tort liability, risk management, and system safety.

In other areas of the law, transit programs may involve legal problems and issues that are not shared with other modes; as, for example, compliance with

transit-equipment and operations guidelines, FTA financing initiatives, private-sector programs, and labor or environmental standards relating to transit operations. Emphasis is placed on research of current importance and applicability to transit and intermodal operations and programs.

### APPLICATIONS

Local government officials, including attorneys, planners, and urban design professionals, are seeking new approaches to land use and development that will address environmental impacts of increased automobile traffic and loss of open space around cities and towns, and alleviate financial pressures on governments and their constituents. Among these approaches is the urban design concept of transit-oriented development, which emphasizes that where transit facilities are in place, or planned to be put in place, there should be a mix of commercial, retail, residential, and civic uses within close proximity to the facilities designed for the best possible interface. The highest density would be closest to these fixed gateways or other transit facilities.

This research produced information on legal and other issues associated with transit-oriented development. The report should be useful to transit and development attorneys, financial officials, planners, development officials, and anyone interested in transit-oriented development.

## **A. Planning for TOD and Joint Development**

- 1. Federal New Starts Criteria for Capital Transit Projects**
- 2. State Laws and Programs**
- 3. Regional Laws and Programs**

## **B. Funding TOD and Joint Development**

- 1. Funding for TOD/Joint Development-Related Infrastructure**
- 2. Funding for TOD/Joint Development-Related Housing and Infill Development**

## **C. Agency Authority to Sponsor and Invest in TOD/Joint Development Projects**

# Legislative and Administrative Programs and Policies:

## Federal

### States:

California

Connecticut

Florida

Illinois

Maryland

Nevada

New Jersey

Oregon

Pennsylvania

### Regions:

Atlanta, Georgia

Portland, Oregon

San Diego,

California

San Francisco Bay

Area, California

Fresno, California

## **Case Law:**

**Substantive Due Process/Zoning Authority**

**Procedural Due Process**

**Vested Rights**

**Consistency**

**NEPA and “Mini-NEPAs”**

**Eminent Domain**

**Religious Land Uses**

# Case Studies

# Pearl District Case Study Highlights

Type of TOD/TJD: \$3.5 billion of private TOD development within two blocks of a streetcar line built since 2002

Lead Agency: Portland Development Commission (PDC), which provides planning support, predevelopment assistance, property acquisition, and redevelopment and public infrastructure along with grants and loans to spur redevelopment

Key Legal Issues: Zoning, public-private development agreements, property tax abatement

Key Elements to Success:  
Development Agreement provisions providing for Minimum development densities and a \$700,000 private-Sector contribution to fund Streetcar construction



# Fruitvale Case Study Highlights

**Type of TOD/TJD:** Non-profit initiated development around heavy rail station in a blighted inner-city

**Lead Agencies:** Unity Council Community Development Corporation (CDC) in partnership with the Bay Area Rapid Transit District (BART) and the City of Oakland

**Key Legal Issues:** Community-BART partnership to overcome local objections, creative financing, ground lease and land swap, and transit agency relaxation of commuter parking replacement standards

**Key Elements to Success:** Community champion enabled CDC to partner with the transit agency to create a new vision for the station precinct



# Bethel Case Study Highlights

**Type of TOD/TJD:** Non-profit initiated development around heavy rail station in a blighted inner-city neighborhood

**Lead Agencies:** Bethel New Life Community Development Corporation (CDC) in partnership with the Chicago Transit Authority (CTA)

**Key Legal Issues:** Community partnership to overcome station closure and creative financing

**Key Elements to Success:**  
Community champion enabled CDC to partner with the transit agency to create a new vision for the station precinct and create a LEED Gold rated project



# Plano Case Study Highlights

Type of TOD/TJD: Municipal led redevelopment of a suburban downtown

Lead Agencies: City of Plano and Dallas Area Rapid Transit (DART)

Key Legal Issues: Creation of a New Urbanist-style zoning code, land assembly

Key Elements to Success:  
Municipal leadership in planning, zoning, land assembly, and development marketing.



# Morristown Transit Village Case Study Highlights

Type of TOD/TJD: Transit agency initiated joint development on the parking lot of a commuter rail station in suburban/historic township

Lead Agencies: New Jersey Transit

Key Legal Issues: Structuring a joint development and re-zoning

Key Elements to Success:  
New rail service and state assistance through the NJ Transit Village Initiative made Morristown a good case for NJ Transit's first Transit Joint Development



# Conclusions