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Questions?

If you have any questions about Multi-Family Rental Housing, please contact one of the Co-Chairs of our Real Estate, Environmental and Land Use Practice Group:



Timothy S. Hollister
(860) 251-5601
thollister@goodwin.com

or



Kent S. Nevin
(203) 324-8163
knevin@goodwin.com

www.shipmangoodwin.com

Multi-Family Rental Housing: Opportunities and Challenges

As real estate professionals who have worked through previous economic downturns know, difficulties in single-family and ownership markets lead to increases in households that are in transition or unwilling or unable to buy a home for the first time or as a trade-up. When this part of the population swells, apartment vacancy rates decrease and rents rise, which spurs renewed interest in developing, converting, or rehabilitating multi-family rental housing.

Here we are again. Anecdotes are plentiful (and our own workload is one barometer), but now the sea change is confirmed by research such as the recently-released study "[America's Rental Housing](http://www.jchs.harvard.edu/publications/rental/rh11_americas_rental_housing/AmericasRentalHousing-2011.pdf)," [http://www.jchs.harvard.edu/publications/rental/rh11_americas_rental_housing/AmericasRentalHousing-2011.pdf] by the Joint Center for Housing Studies of Harvard University, which begins:

The troubled homeowner market, along with demographic shifts, has highlighted the vital role that the rental sector plays in providing affordable homes on flexible terms. But while rental housing is the home of choice for a diverse cross-section of Americans, it is also the home of necessity for millions of low-income households.

A further explanation came recently from Steve Witten, Senior Director of Institutional Property Advisors in New Haven, who cites a recent Marcus & Millchap research memo showing that since 2008, home ownership rates have so declined that 2.5 million households have been added to the rental market.

Connecticut appears to be experiencing all of the factors that are sparking a refocus on multi-family rental: depressed prices of homes and condominiums, difficulties obtaining a mortgage (despite continued low rates), minimal new multi-family rental supply, and employment uncertainty.

Shipman & Goodwin's land use and real estate attorneys are working on a variety of multi-family rental developments, which prompt us to offer our clients, consultants, and friends some observations and insights about this semi-bright spot in the real estate economy:

- 1. Acquisition financing.** While the Dodd-Frank Act of 2010 is generally perceived as pulling in the reins on mortgage financing, the legislation includes several provisions

designed to energize HUD programs for multi-family housing, and it singles out affordable housing for support. In addition, the Act spared multi-family mortgage lenders much of the additional regulatory burdens with which their single-family counterparts are now saddled.

2. **Land use permit preservation.** Governor Malloy has signed Public Act 11-5, which entitles holders of zoning, subdivision, and wetlands permits to apply for extensions of up to 14 years. This new law benefits not only holders of permits issued for unbuilt or partially built multi-family, but also of permits for infrastructure and public improvements that support single-family or ownership housing development; these approvals may be converted to support multi-family rental.
3. **Infrastructure finance.** Across the state, we are seeing infrastructure financing being handled successfully through “special taxing districts,” which are quasi-governmental entities created by voters and property owners with the power to tax and use the revenue to benefit existing properties and values through utility repairs, upgrades, or extension.
4. **Fiscal impact studies.** It is now possible to document across Connecticut that multi-family rental developments, particularly those with one and two bedroom units, are among the most “property tax positive” plans that towns can approve, generating robust tax revenues while requiring relatively little in municipal services and public education expenses.
5. **Environmental advantages.** Proponents of smart growth and sustainable development are generating studies demonstrating that higher density development, especially when combined with sewer extensions and Low Impact Design, provide the highest levels of stormwater management and water quality protection.
6. **Density.** Recent seminars put on by the Partnership for Strong Communities have shown that density cannot and should not be evaluated as a single number of units per acre, but as a matter of planning, design, and architecture. Two units per acre, poorly designed, can look overly dense, while 20 per acre, well designed, can present a vista of preservation and open space.
7. **Affordable housing.** Where municipalities resist approvals on parcels that are suitable for multi-family rental, the affordable housing statute, Connecticut General Statutes § 8-30g, remains a viable option, as evidenced recently by several Connecticut appeals court decisions ordering approvals of such developments, as well as several settlements and approvals without court appeals. In addition, incentive housing zones set up under the HOMEConnecticut program may be another option, if and when the Governor and legislature allocate funding and the Office of Policy and Management begins to approve zones that have already been

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1133 Connecticut Avenue NW
Washington, DC 20036-4305
202-469-7750

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

12 Porter Street
Lakeville, CT 06039-1809
860-435-2539

www.shipmangoodwin.com

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submitted to it or are in the local planning stage. Also, the market for raising equity through sale of low income housing tax credits appears to be recovering, and with it the hope that this previously successful program will again become a reliable source of financing for multi-family development.

8. **Sewer connections.** Municipal sewer authorities have a great deal of discretion about whether and when to extend sewers or allow new connections that allocate a substantial part of existing capacity, but that discretion has limits. Recent court cases have held that sewer agencies are in charge of sewer system planning, financing, construction, management, and maintenance, but they cannot use sewer capacity to dictate land use policy, such as forcing single-family homes on large lots, a/k/a sprawl. The courts have also held that where a property is located within a sewer district and there is ample capacity, an agency may not arbitrarily deny a connection permit.
9. **Conditional permits.** Whenever a development requires multiple permits from multiple agencies, the issue arises: who goes first? Some commissions set up a tail-chasing game of denying a permit until all others have been obtained. Here again, the courts have recently shown a way out, affirming the use of "conditional approvals," meaning permits that, by their nature, cannot be used unless and until all necessary permits have been obtained. So, for example, a zone change cannot be conditionally approved because such a change, once voted on, permanently changes what uses are allowed on the rezoned parcel. However, wetlands permits, special permits, site plan approvals, and sewer permits can all be issued conditionally in the sense that they cannot be used unless and until all other necessary approvals have been obtained. In other words, conditional permits are those that can be issued without risk because if any other needed permit is denied, the conditional approval becomes moot. Conditional permits, therefore, break the logjam. Conditional permits can be a very useful part of the permitting process for multi-family rental.
10. **Fair housing accessibility.** The federal Fair Housing Act's handicapped accessibility rules have now been in place for nearly 20 years, yet compliance issues still arise. Likewise, rental office staff and leasing agents need to be trained in fair housing compliance to ensure that no prospective tenant is turned away on the basis of race, familial status, gender, source of income, age, or any other protected characteristic.
11. **Green building.** Recently, LEED (Leadership in Energy and Environmental Design) certifications for residential development have been criticized for their cost, length of time, and complexity. The National Green Building Standard (NGBS), published in 2009 by the National Association of Home Builders' Research Center and the only green building standard approved by the American National Standards Institute,

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Hartford, CT 06103-1919
860-251-5000

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Stamford, CT 06901-3522
203-324-8100

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202-469-7750

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203-869-5600

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is emerging as an alternative. Two of our attorneys are LEED APs, and we are working on one NGBS development. We can help builders and developers who are considering a formal green designation to sort through these choices.

12. Energy programs. The Connecticut Clean Energy Finance and Investment Authority continues to make a variety of grants, low interest loans, tax credits, and other financial incentives available for multi-family construction; and alternative energy sources, including fuel cells, geothermal, and solar.

13. Construction management. Multi-family construction should implement the latest industry technology. Specifically, the 3-D capabilities of Building Information Modeling (BIM) offer benefits both during and after construction. During construction, BIM allows designers, builders, and subcontractors to detect and avoid physical clashes among building systems before they happen, provide more accurate estimates, and reduce overruns and speed schedules. Afterward, BIM provides accurate as-builts and a transparent 3-D model to guide operations and maintenance activities.

14. Performance bonds. Connecticut has new legislation about performance bonds. The law, which will take effect in October 2011, is intended to curb past abuses of performance bonds, but municipal staff and attorneys are raising concerns (on Internet listservs, at least) about how towns will react and handle bonds after the new law takes effect. As of the date of this Alert, this is a stay-tuned situation.

Multi-family rental opportunities are abundant. We hope these insights are useful to our clients, consultants, and friends who are evaluating them.

Tim Hollister and Kent Nevins,
Co-Chairs, Shipman & Goodwin's Real Estate,
Environmental and Land Use Practice Group

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