

STATE^{of} THE REGION

This report on real estate development is part of a continuing series of conversations on important business topics created and moderated by Phillips Lytle LLP.

Presented By



Phillips Lytle LLP

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Developers see the future taking shape in Western New York

Generational construction projects are giving impressive shape to Western New York's landscape.

The stadium under construction in Orchard Park and the 3 million-square-foot Amazon distribution facility in the Town of Niagara are projects of size and scale that are unusual for the region.

Concurrently, the demand for affordable and market-rate housing, and industrial and warehousing space is giving rise to development activity in all areas.

It hasn't been easy for the developers who have pursued their projects in the face of high interest rates, financing challenges and reduced availability of financing while dealing with increased costs of labor and materials and the onus of legislative and regulatory requirements.

Phillips Lytle LLP recently gathered area experts to weigh in on the challenges of real estate development as well as the opportunities and incentives that can result in projects of impact large and small.

Moderating the discussion was Phillips Lytle partner Kimberly Nason. Panelists were:

- Lindsey Haubenreich, partner, Phillips Lytle LLP
- Connor Kenney, regional director and partner, SAA / EVI
- Nicole Komin, principal, Shainbrown Komin, PLLC and Bellwether Advisors, LLC
- Nadine Marrero, president, Bridges Development, Inc.
- Timothy Vaeth, project executive, Pike Construction Services

IMPACT ON LABOR, MATERIALS

The fear that the stadium and Amazon projects would pull labor away from all others in the region is somewhat unfounded, Komin said, because many of the vendors on the job have come from outside the area.

There are 80-plus local vendors, but there also are vendors coming from all across the state because it is such



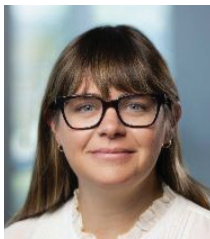
a large-impact project. In the coming months, when the project moves from the foundation and steel stage, there could be some more pull from local vendors, she said.

"Every deal that we're working on in Western New York has multiple tax credits, most of them a brownfield tax credit component and/or historic tax credit and payment-in-lieu of taxes."

CONNOR M. KENNEY

"We still have so many other vendors that are available and looking for work," Komin said. "So, while we're seeing an impact I don't think it's exactly the impact we expected. The jury's still out."

PANELISTS



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MODERATED BY



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LINDSEY E. HAUBENREICH

We’re still in the beginning stages of this project and we still have a long way to go, at least 2 1/2 -plus years.”

Vaeth said material procurement involved in the stadium project is required to be from a mix of sources. For example, more than half of the steel is required to come from New York state, not Western New York, he said. Costs are still up higher from pre-Covid days, but they are leveling off, Vaeth said.

LOCAL INCENTIVES

Kenney said incentives are critical for developers penciling out projects, particularly multi-family housing.

“Every deal that we’re working on in Western New York has multiple tax credits, most of them a brownfield tax credit component and/or historic tax credit and payment-in-lieu of taxes,” he said. “There are a couple of developers that are throwing out a lot of concepts recently and without using tax credits I’m not sure how any of those deals are going to actually come to fruition.”

Haubenreich said more clients who have historically not relied on tax incentives increasingly are finding it necessary. Calling in legal services early in the process is important, she said. An attorney will know availability of incentives and how to time the incentives to maximize their benefits.

“Engage those discussions early with your consultants, with your attorneys,” Haubenreich said. “Have those discussions about what’s available, what options are out there, because with interest rates, with material costs, everything that’s going on that we’re all very much aware of, you need these programs. We all need

these development projects to move forward.”

ADVICE FOR DEVELOPERS

Knowing how to obtain and manage tax credits can be a challenge for seasoned developers and even more so for those pursuing projects for the first time.

It’s one part education, and one part assembling the right team of consultants, Komin said.

“We work with them directly, but we love to work with other individuals whether that’s the right accounting team, the right legal team, the right owners rep team,” Komin said. “That team has to be able to communicate with each other and communicate early and often.”

She recalled a client with a significant project planned who thought that all the tax credits will pay for the next tax credits. He wanted to use historic tax credits to pay for brownfield tax credits to then pay for low-income housing tax credits, which Komin told him is not the way it works.

“There are a lot of notions out there that aren’t necessarily true, so even if you do have a client that’s maybe not new to development but has a lot of information that they’ve gathered, you need to make sure they’re doing it the right way,” Komin said.

Haubenreich said successful developers she has known are those who make the effort to educate themselves, oversee the advisers and take an active role in the process and not rely on the consultants alone.

“You get into it, you learn about it, and it just snowballs into more and more and more ways to take advantage of more credits and maximize them and

expedite your timelines,” Haubenreich said. “The developer has to have a crucial role. You are the one pushing the project, so you need to be aware of what those milestones are and how to push those along.”

PUBLIC HOUSING FACELIFTS

Bridges Development, Marrero said, is taking on redevelopment of three of the “worst” properties in the Buffalo Municipal Housing Authority’s portfolio: Marine Drive Apartments, Commodore Perry Homes, and Shaffer Village. The projects are estimated at nearly \$12 billion.

The plan for Marine Drive involves building new, relocating residents and demolishing the current structures in a three-phase project that will keep 620 affordable housing units on the waterfront. The plan is using brownfield tax credits and involves public housing developers from Chicago and New York.

Having affordable housing on a revitalized waterfront it’s almost unheard of, Marrero said.

“Cool cities like Baltimore and Toronto, they’re all developing housing for condos, for private access, for recreation, and people of lesser means have been moved to undesirable locations. We’ve all seen the news articles that say, ‘Move them out of Marine Drive and put them all in Perry.’ We have tenants who have been there for 30 years; why should they not benefit from the revitalization? It’s a huge project that should be game changing for the property but also for the idea of where affordable housing can be placed. It doesn’t always have to be in the least desirable neighborhoods, it doesn’t always have to be where people feel other people should live. It should be spread across the entire community.”

Demolition began at the Perry

Homes, finally, after delays in the project while the region debated the location of the new stadium, which included the Perry campus. Marrero said the project will transform the dilapidated, vacant public housing development into a new, all-electric community of 400 units that will be followed by more revitalization.

Shaffer Village, tucked away on Ontario Street, in the Riverside neighborhood, reflects the most inferior public housing planning of the 1950s and 60s, she said. It has no public access, no streets, no visibility, which combine to create an unsafe environment. Project discussions involve changes to the development’s layout and merging it with the surrounding neighborhood.

Marrero added that Bridges Development also is rehabbing 200 senior housing units on Jefferson Avenue.

CLCPA EFFECTS

The effort to have the state go all-electric by edict of New York’s Climate Leadership and Community Protection Act has slowed somewhat as Albany debates the particulars of gas versus electric.

“That conversation is evolving,” Haubenreich said. “It’s always the push from your environmental groups saying this is where this needs to go and they are lobbying the state hard, so it is something we’re likely to see actually come to fruition at some point in the future.”

She predicts changes in building codes related to the climate act, such as bans on fossil-fuel equipment that goes into new buildings that are seven stories or fewer, followed by larger buildings. Changes from the New York Stretch Energy Code also will be a factor increasingly in the region.

It supplements New York’s



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NADINE MARRERO, AICP



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TIMOTHY VAETH



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NICOLE M. KOMIN, ESQ.

energy code that was created by New York State Energy Research and Development Authority. Local jurisdictions can opt into, though so far only downstate developers have taken advantage of it, she said. The code significantly affects energy efficiency on average 10%.

Haubenreich said developers need to be attentive to the concept of emitted carbon, which captures the amount of carbon emissions that come from construction materials. In the United States, for example, manufacturing construction materials and products account for 11% of the global greenhouse gas emissions, she said.

The Environmental Protection Agency as well as New York State are going to be interested in the life cycle of that material, its source, the manufacture of it, transportation used in delivery and in some cases how it is disposed.

"Your suppliers are going to have to start tracking the carbon emissions associated with their materials," Haubenreich said. "They are going to have to start creating what are essentially nutrition labels for their materials."

"There are incentives to utilize what are called low EC products, so with this increase in regulation we should also correspondingly see increase in incentives."

DIVERSITY EFFORTS

Most large-scale contractors have a diversity director that will help reach the goals of employing companies that are owned by women, minority populations or the disabled. Pike Construction keeps a database of such businesses in Buffalo and Rochester and seeks others through work fairs and small business meet-and-greets, Vaeth said.

But there's no guarantee the companies are prepared for a large project.

"A lot of these companies are small, and to get them into a place where

they're secure enough to participate, it's not that easy," he said.

For example, small companies working on large-scale projects might not have the cash flow that would allow them, for example, to withstand a 30-day payout that changes to 60 days, he said.

There has been a crackdown on businesses that claim to be owned by women or minorities, he said. The business has to prove the ownership by having the owners involved on a day-to-day basis; it can't be in name only. Some businesses have had their designations clawed back after not meeting the standards.

Vaeth would like to see greater guidance and more services to take the small contractors to the next steps.

"It's going to be more and more heavily scrutinized, which on one side, is good," Vaeth said, "but we have to figure out how to get those smaller companies to where they can grow and participate in large-scale projects, especially in their own communities."

FUTURE LOOK

The panelists were encouraged about the future of real estate and development in Western New York, primarily in smaller-scale projects rather than the stadium and the Amazon facility. Growth areas, they said, include manufacturing, warehousing, and affordable housing and senior housing. Not just the building or rehabilitation but how they are woven into the fabric of the entire area.

"Buffalo is a very unique place and it's a climate refuge, that's going to play a very important piece in the real estate construction and commercial industry," Komin said. "Because there are now all these requirements and regulations we have to abide by, we are going to start seeing an influx of people into the city of Buffalo and Western New York region. How are we going to work with this influx of individuals?"

Kenney said that population growth should be cause for serious

consideration by the development community.

"We really need to think about what type of city do we want to be," Kenney said. "Do we want to be a city that is dominated downtown by tech professionals and lawyers, or do

we want to build out the city to be one that is ultimately inclusive and representative of Buffalo as a whole. We really need to be cognizant of where we are building and who we're building it for, because it is going to shape our city 20 years from now."

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