Commercial Real Estate · Sponsored Content by Otten Johnson

7 ways COVID-19 is impacting Denver real estate and land use law

Email | Share | Share | Tweet | Save | Print | Order Reprints

Over the past five weeks, our firm has produced a series of special alerts to look at this crisis through the lens of our land use, real estate and business practices.
JOHN COLETTI

By Brian J. Connolly – Shareholder, Otten Johnson
Apr 30, 2020

COVID-19 has disrupted most aspects of daily life in Denver and beyond. While the long-term impacts of the pandemic are unknown, it will undoubtedly impact the real estate industry. Over the past five weeks, our firm has produced a series of special alerts to look at this crisis through the lens of our land use, real estate and business practices. Below, we offer seven observations from that series on how real estate is being, or might be, affected.

1. Zoning protects us from disease. During the Industrial Revolution, factories were located adjacent to crowded residential areas, resulting in overcrowding, poor sanitation and heavy pollution. In response, early zoning ordinances segregated land uses and established standards for building design to ensure access to light and air. Today, zoning principles, such as mixed uses, walkable neighborhoods, transit-oriented development, and place-based design, contribute to the general health and welfare of our communities. These raised standards increase our ability to fend off disease and make community services, like grocery delivery, easier to facilitate.

2. Local emergency powers allow cities to shut down businesses. Weeks ago, mayors and governors nationwide required all non-essential businesses and activities to shut down. These orders have a drastic effect on the commercial real estate market, but they are generally lawful. Disaster ordinances typically include a trigger allowing for the mayor or another official to exercise additional authority, making new rules without following typical legislative procedures. Many ordinances then provide that the emergency declaration and powers will continue until terminated by the official declaring the emergency or the city council.

3. Public land use meetings have gone online. Under open meetings laws, certain meetings of local government bodies, including electronic meetings, at which "public business" or "formal action" will be taken must be kept open to the public at all times. In conducting electronic meetings, local governments must be mindful of complying with constitutional due process requirements, such as affording affected parties the opportunity to appear before the decision-making body and be heard. To contend with the pandemic, many jurisdictions are updating their regulations to allow remote participation in public meetings.

4. Now's the time to entitle. Periods of economic uncertainty present opportunities for protecting and enhancing the value of land. Landowners with unentitled property or outdated entitlements might now consider pursuing new zoning or subdivision approvals. With markets slowing, many local governments have staff capacity to assist with these efforts. It's also important for landowners and developers to review the status and potential lapse dates of existing entitlements. Vested property rights are also important. Generally speaking, property owners don't have a vested right to the current zoning or entitlements' approvals for their property. However, obtaining vesting – a legally enforceable assurance that future regulations will not impair or prohibit an approved project – is one way to ensure that a slowed project can resume and rely on validly issued entitlements in the future.

5. Housing trends aren't likely to change. In past pandemics, while housing transactions stuttered to a near halt when stay-home orders prevented open houses and similar transactions, home prices generally stayed put and the market picked up quickly once restrictions were lifted. Whether or not the current crisis drives people to live in rural or suburban environments, it does not change several big-picture considerations. Costs of infrastructure delivery remain high, transportation costs are higher for suburban-dwellers, and we are unlikely to see job markets flock to the suburbs. A prolonged slowdown will likely exacerbate the current problem of significant supply-demand mismatches at affordable price points in the Denver housing market.

6. The pandemic is accelerating changes in retail. Prior to COVID-19, brick-and-mortar retailers were struggling. Consultants were advising retailers to invest in technology and focus on customer convenience. Such advice would turn out to be prescient, as physical retail has ground to a halt. Just as significantly, lack of sales tax revenue, which drives municipal budgets, affects local governments' ability to provide services. Coronavirus has accelerated and expanded the transition to online shopping. The current crisis presents an opportunity to consider and implement changes to zoning codes and budget strategies that will encourage thoughtful and forward-thinking retail development.

7. Working from home may be here to stay. In 2019, more than 4.7 million working adults in the United States worked from home, but as of April 7, more than 316 million people, including children and working and non-working adults were urged to stay home. Based on the present experiment, more employees and companies will find that telecommuting is feasible for most workers, and may find benefits in it. Yet most companies do not operate fully remotely, and even during the shutdown, it seems that tech companies are still grabbing office space in Denver. Offices probably are not going away, but their function may well change.

While the coronavirus outbreak has transformed the real estate market, at least for the time being, we are optimistic there will be a bounce-back once things are again "normalized," and businesses are free to open and employees are free to return to their offices.

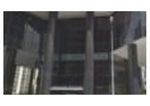
Learn more about the services of Otten Johnson for land use clients.

Otten Johnson is a leading commercial law firm in Colorado, highly regarded for its real estate and land use practices. Their attorneys work with clients in a wide array of industries, with a particular emphasis on finding real world, business minded solutions. Otten Johnson's clients include owners, developers, builders, investors, banks and financial institutions, commercial tenants, managers and brokers.

> *Brian J. Connolly is a shareholder in the land use, litigation, and real estate practice groups at Otten Johnson. He represents public- and private-sector clients in matters relating to zoning, planning, development entitlements and other complex regulatory issues. Connolly has received national recognition for his work on First Amendment issues and local government regulation.*

RECOMMENDED

COMMERCIAL REAL ESTATE
Occidental puts 130K square feet in downtown Denver tower on market



GOVERNMENT & REGULATIONS
More employees are refusing to return to work. Here's how Colorado companies can deal with it.

COMMERCIAL REAL ESTATE
14-hour days and a long list of questions: How a Denver firm helped refinance a shopping center during Covid-19