Transit Joint Development

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With transit-oriented development (TOD) becoming a popular and well-accepted movement in the planning field, the role of a lesser known yet early precursor, transit joint development (TJD), is gaining renewed attention. As the name implies, a TJD project is directly integrated with public transit both physically and functionally (often on transit agency property). It can be a powerful tool in making TOD work effectively, especially in pioneering markets outside central business districts (CBDs) where higher-density development is not yet well established. But TJD can also be a more complex process than a private TOD because it often involves a variety of public entities (e.g., cities, transit authorities, and state and federal agencies), each with its own set of objectives and regulatory requirements.

One common feature of TJD is the oversight of the Federal Transit Administration (FTA), which has jurisdiction over projects using federal transportation funds and/or on land purchased using such funds. Given that most transit projects rely on these funds, the FTA has long recognized that its guidelines can affect the size, character, and success of TJD projects. As a result, with the emergence of the popularity of TOD, the FTA has gradually removed regulatory obstacles facing transit agencies and private developers partnering on TJD projects. The FTA's latest regulatory guidelines for TJD, published in the Federal Register last February, represent a culmination in the agency's effort to streamline and simplify the TJD process. The key components of the FTA-revised policies, as articulated in the Federal Register, include the following rules concerning projects. They must:

- enhance economic development or incorporate private investment;
- enhance the effectiveness of mass transit;
- be physically or functionally related to mass transit;
- provide a fair share of revenue for mass transit use (e.g., through lease payments or increased transit fares); and
- pay a reasonable share of the TJD facility costs.

The policies of the FTA were originally designed to protect its central mission and interests—namely, the long-term transit functionality of a particular station or asset. However, the new guidelines clarify and refine these existing policies and provide "maximum flexibility within the law to work with the private sector and others for the purpose of joint development."

For the most part, FTA guidelines are relatively general and do not specify in any detail how a particular TJD must be implemented. For example, they do not dictate specific station area access or design elements, quantify parking or ridership assumptions for particular uses, set monetary thresholds for private investment, or specify replacement parking ratios (except that the replacement use generate at least as many transit trips as the foregone parking).

There are ten FTA regional offices, headed by a regional administrator with support from ten to 22 staff, responsible for overseeing individual projects throughout the United States. Consequently, individual districts may have slightly different approaches to oversight and enforcement. However, the new FTA guidelines also transfer increased responsibility to local transit officials for negotiating the terms and conditions of a particular deal or transaction.

Because the FTA guidelines are more qualitative than quantitative, actual implementation can vary on a case-by-case basis. On the positive side, this provides a fair amount of flexibility to adapt to the unique circumstances of each TJD. On the negative side, the lack of precise rules or uniform enforcement can present uncertainty to developers and/or transit officials about actual project requirements. Indeed, in the past, local transit officials have sometimes expressed confusion about what the FTA rules actually mean. Although the latest Federal Register guidelines are intended to help clarify this confusion, it will likely take time before their implications are fully understood and incorporated at the local level.

According to Paul Marx, an FTA economist in Washington, D.C., confusion over the guidelines has been most prevalent among the smaller transit agencies just beginning to actively consider TJD opportunities. “But even among the larger agencies, there are still a lot of questions about what is or is not allowed, especially when it involves the use of funds or property that directly reduces the cost to private developers,” Marx says. "Can a transit agency build a foundation for a private project? Can it conduct environmental clearance? Can it relocate or enhance utilities? The answer is yes if these activities are needed as part of a broader transit project."

A simplified, hypothetical TJD project on a surface parking lot at a transit station purchased with federal transit dollars provides a good example of the range of outcomes that may be possible under the FTA guidelines. Say the parking lot has 125 spaces that a developer wants to convert into a 50-unit condominium project in conjunction with other improvements to the station area. To comply with FTA TJD guidelines, the developer/transit agency would need to demonstrate...
that, among other things, the project will support a transit ridership level at least equal to the amount provided when the 125 surface parking spaces were available.

If the transit agency makes the case based on ridership surveys that each parking space supports one transit rider compared with four riders per condo unit, then the developer may need to supply at least 105 replacement parking spaces on site to ensure no net loss in the site’s transit functionality. The costs of providing these spaces may render the TOD project financially infeasible, especially if each condominium unit requires at least one space because of the market or local zoning requirements. Other design features needed to maintain or enhance the site’s transit function could increase project costs even further.

FTA policies and funding can play an especially important role in the success of TOD in areas where real estate market conditions for higher-density development have not yet emerged. For example, in suburban areas where the condominium or apartment market is soft, the cost of providing an acceptable amount of on-site parking for both transit and resident use may be economically prohibitive. In these cases, the transit agency can take advantage of FTA provisions allowing them to lease or sell land at below “fair market value” when broader transit and community benefits can be demonstrated. Another way to lessen costs and improve TOD feasibility is to find innovative ways to reduce parking requirements while complying with FTA transit ridership goals.

But perhaps the most important role of the FTA in supporting TOD is the grants and other funding that allow transit agencies to purchase, improve, and hold land in the first place.

Ultimately, developers must determine whether the benefits of developing within or immediately adjacent to transit stations outweigh any restrictions on their project that may be imposed by the FTA. However, the FTA policies are generally not a major impediment to TOD if this type of development is already well supported by an economically vibrant market. Moreover, one way to avoid FTA involvement altogether is for the transit agency and/or developer to purchase the land outright by paying the FTA a “fair market value.” If there is no legitimate transit benefit to be derived from the new development, then the transit agency must pay back the federal government for its interest in the property rather than use the money for its own programs and projects. But if legitimate transit benefits can be demonstrated, transit agencies can either lease or sell land and keep the proceeds as long as they maintain “effective and continuing control” of future use. This can be accomplished through “an easement, a covenant, or any other restriction running with the land that is legally enforceable in the particular state,” according to Marx.

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