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Q&A: Construction Lawyer Barry LePatner Talks Infrastructure and Real Estate

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By: Barbra Murray, Contributing Editor

Upgrading the country's severely dilapidated infrastructure is among the White House's very top priorities, with the administration having allotted $150 billion in funding from the American Recovery and Reinvestment Act for improvements. Specifically, $40 billion will be directed toward the safeguarding of roads, bridges, dams, ports, rail and water systems over a two-year period--a move that is key to the future success of the commercial real estate industry, according to construction lawyer Barry B. LePatner of New York City-based law firm LePatner & Associates L.L.P. LePatner, author of 2007's *Broken Buildings, Busted Budgets*, spoke to *CPN* about the impact that the infrastructure improvement segment of the government's stimulus bill will have on the commercial real estate industry.

CPN: What is your progress report on the impact the stimulus package has had on the nation's infrastructure so far?

LePatner: The administration's commitment to infrastructure isn't addressing infrastructure, per se, it's about jobs. The larger infrastructure issues---rails, bridges, tunnels--all remain to be addressed. We're not on the road to correcting infrastructure; we are on the road to correcting distress to our economic situation. What is yet to come is the trillions that will be needed to update our roads and bridges. The American Society of Civil Engineers' report card on infrastructure gives the country a grade of D and notes that we still need an estimated $2.2 trillion to bring our infrastructure up to acceptable standards from the deteriorated condition it has fallen into.

CPN: Given the hefty price tag attached to the comprehensive overhaul, is it necessary to tackle the issue in its entirety immediately?

LePatner: Infrastructure is central to the issue of how we're going to grow our nation, so it's got to be something that is planned and financed now if we're going to be ready in 5 years, 10 years. We're going to have to commit the funds now; we can't look at this as a long-term problem.

CPN: And how does the fortification of the nation's infrastructure relate to the commercial real estate industry?

LePatner: The strength of our commercial real estate world is a function of amassing people who drive demand, and that is all reliant on a functioning transportation system. Today when we talk about our nation's cities, the 100 largest metro areas seem to be in distress because the lack of efficient transportation systems to move people around is causing congestion. If you have congested cities bogged down by transportation--bridges that have to have lanes closed, clogged highways, etcetera--all of this is an inhibitor of growth in the commercial real estate area. Once we understand the importance of rectifying this problem, commercial real estate will have more opportunities to be profitable.

CPN: So, proper infrastructure and the success of commercial real estate go hand in hand?

LePatner: If you take the core of a city and it's bogged down by traffic, then there's less incentive for the commercial real estate industry to build new properties because you can't move people around and get them to buildings. You need to move them efficiently in and out of the city, so you can build outside the city. Right now, you see the renaissance of people moving back downtown because they're tired of that commute.

CPN: What do you make of the trend of developing mixed-use properties that emerged prior to the commercial real estate's meltdown? Is mixed-use still the future of the industry, once the credit markets defrost and the economy rebounds?

LePatner: Mixed-use is not anything more than the recognition that people no longer want to commute.

CPN: Earlier, we touched on the subject of the opportunities infrastructure rehabilitation can present for commercial real estate; please elaborate on this premise.

LePatner: For example, we're going to see more airports being built around more light rail--all of that will open more opportunities for commercial real estate. But we don't want these new systems to be immobilized; we don't want to see them going nowhere because the roads to and from those new facilities can't handle it. Where we stand with the nation's outlook, despite the downturn in the economy, is over the next 25 years, in terms of population growth, there will be a shifting of the population to the south and southeast, which will lead us to a $25 trillion construction boom. We're going to need office, hotels, airports, roads; we're going to see schools and new residential areas to meet those needs. That's the reality; we're going to grow and enhance our building environment considerably over the next 25 years.

CPN: So, where do we stand right now with the opportunities for growth that infrastructure upgrades can provide the commercial real estate industry?

LePatner: Actual infrastructure repair will come after we stabilize our economy. We've got to get back to restoring the infrastructure of our nation--our roads are our backbone.

LePatner: Delays, Disputes, Mar WTC Rebuilding

September 14, 2009
By: Tonie Auer, Contributing Correspondent

Eight years after terrorists destroyed the World Trade Center, construction is underway on replacing the destroyed Twin Towers. But what has really been accomplished on the site? Not much, according to New York City construction lawyer Barry LePatner.

On the heels of the 9/11 remembrances, LePatner lamented the lack of progress and criticized the governmental agencies leading the lagging project to replace the WTC.

The World Trade Center redevelopment project includes a memorial and several office towers. The City and the Port Authority of New York and New Jersey have overseen the rebuilding efforts with development company World Trade Center Properties operated by Silverstein Properties, which purchased the World Trade Center just six weeks before 9/11.

Disputes between the developers and the governmental entities have led to many delays in the process. In August, Silverstein's company request arbitration, citing delays stemming from the Port Authority's part of the rebuilding efforts impacting the developer's part in the project.

"Looking back, the project was doomed at the outset to be a long-running saga," Barry LePatner, founding partner with LePatner & Associates LLP, told CPE. "This is because both the political entities--which had vested interests--and the Port Authority who owned it have no experience in developing complex infrastructure and major building elements." Additionally," the major developer [Silverstein Properties head Larry Silverstein] has a singular interest in the entire process," LePatner said. That interest was to expeditiously rebuild so that he could restore his business interest, which had been destroyed and covered by insurance," he added.

"There was a classic clash of interests, because the public authorities could never agree on what they wanted there." And those agencies wanted to show the public that they were doing something, so they proceeded without a full understanding of what the process was going to be, LePatner said.

On Sept 9, Janno Lieber, president of World Trade Center Properties, addressed the New York State Senate's Standing Committee on Corporations, Authorities and Commissions to discuss redevelopment of the World Trade Center.

Lieber noted that the federal government provided funding to the Port Authority to rebuild the PATH station and other transportation infrastructure, while Congress put tax-exempt financing in place to speed up the efforts without waiting to satisfy conventional market economics.

With a master plan for the new World Trade Center created to build retail and office space, a memorial, a new above-ground mass transit hub and a performing arts center, the Port Authority signed on to that plan and promised to give us construction-ready sites so that Silverstein Properties could start to build the new buildings.

The Port also agreed to complete critical infrastructure - the PATH Transportation Hub, the Vehicle Security Center and underground roadway, Greenwich Street and utilities - so that we could finish and open the new Trade Center. “Just as we were getting to build, after years of the Port Authority insisting that everything was going just fine at the site, the agency admitted the truth - that every project for which the port is responsible had fallen years behind schedule and hundreds of millions of dollars over budget, threatening the entire WTC rebuilding effort,” Lieber said in the address

Illustrating the slow pace of the redevelopment project, LePatner noted, “It is taking a month for each floor to be built. When 7 World Trade Center was being built, each floor went up in four to seven days.” World Trade Center Properties worked with the city, the state and the Port Authority to rebuild 7 World Trade Center, the last tower to fall on 9/11. Construction began on that project in May 2002 and the building opened in May 2006.

“Right now the most efficacious step that could be taken is to halt the project entirely,” LePatner said. “Get a complete set of design drawings and specifications that can be bid on for a fixed price by contractors and do not keep haphazardly building in a way that will only add billions and billions of dollars without a benefit to the public.” The public agencies “do not have the wherewithal to be entrusted with a project of this magnitude. They’ve proven that,” LePatner said.

LePatner’s insight into the project comes from his representation of the architect for one of the proposed towers as well as his involvement in negotiations for the now-shelved performing arts center for a client. Additionally, he represents one of the companies that now occupies 7 World Trade Center.