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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

4 Keys To Logistics Building Amid E-Commerce Boom

By **Andrew McIntyre**

Law360 (February 14, 2020, 6:14 PM EST) -- Demand for logistics space near major cities is soaring as e-commerce customers come to expect same-day or even two-hour shipping, and lawyers say developers would be wise to keep several key points in mind as they consider building new facilities.

Logistics properties have a unique set of design, layout and engineering considerations, and there are also often environmental issues that crop up when developers break ground on such projects.

"It is the hottest segment of the market now by far," said Mike Liever, a partner at Orrick Herrington & Sutcliffe LLP. "You have all kinds of ... people who want this last-mile distribution capability. It's going to continue to be hot. I think that trend will accelerate."

Here, Law360 looks at four key factors for developers of logistics properties to consider amid the current boom in e-commerce.

Parking and Access

While there's no shortage of tenants waiting on the sidelines to take new logistics space, lawyers say getting the right design when it comes to access and parking is crucial — and a major challenge.

"The biggest challenge is making sure you can correctly direct the traffic flow of the vehicles and have good ingress and good egress," said Rob McPeak, a partner at McDonald Carano LLP. The challenge is "really being cognizant of the number of cars and trucks that are coming and going, and making sure they can handle that circulation."

McPeak said that in addition to traffic flow design, finding a site that has proximity to major highways is an important part of the process, since every minute spent on delivery can count as shipping times get shorter and shorter. Sites also need to be close to major metro areas in order to allow e-commerce companies to make good on their shipping timeline promises.

"It's not even hours. In some cases, it's minutes the customer is looking for," McPeak said.

Or course, creating the necessary space for trucks to make turns requires additional land, and that can simply rule out certain sites.

"It is definitely more challenging finding the land," Liever said. "The land is highly sought after."

Environmental Diligence

New logistics properties are often built at industrial sites close to urban cores, and the properties

in many cases have been sitting idle for years or decades.

That, lawyers say, can often mean there will be environmental issues, mainly in the form of soil contamination.

“There may be stuff under the building or near the building,” Liever said. “It’s a higher risk typically with industrial than with other properties.”

Liever said all parties involved in the deal, including lawyers, need to put environmental diligence at the top of the priority list for such projects.

“From a legal point of view, the focus there would be making sure your client has done an environmental analysis and had experts look at it. And I’d also have my environmental partners look at it,” Liever said.

And that list of experts includes lenders.

“They will look very hard at any environmental issues first. They too will get their own reports,” Liever said. “That’s something the lender’s not going to take the risk on. They often have a right to come in and do their own inspections.”

Concrete Thinking

While finding the requisite space to make traffic patterns work at logistics projects is a challenge in and of itself, the next test arises when a developer goes to pour concrete for the parking lot.

Some developers have overlooked the importance of engineering when it comes to the parking lot, and inadequate concrete can create major problems, given the immense stress from heavy truck traffic.

Nossaman LLP partner Simon Adams said that doing a thorough analysis of what exactly is required for the concrete parking lot is one of the most important aspects of the development process.

“I’ve had situations with clients who rented space and the parking space was not engineered properly,” Adams said.

Adams said two of his clients experienced problems with concrete at logistics properties, and in once case, the “parking lot fell apart” because it wasn’t built properly to support the weight of trucks.

Such problems can be a major source of contention between owners and tenants, since they generally occur after the tenant has moved in.

Tough Cost Calls on Design

As the e-commerce boom continues amid the shift from brick-and-mortar shopping to the internet, logistics sites are getting more expensive and scarce, and developers are having to make difficult decisions when it comes to cost.

Developers in Europe over the past decade have been building multistory logistics properties, given that land is limited and costly, and now U.S. developers are increasingly faced with a similar cost decision: pay more for more land and build a single-story property or buy less land and invest more in building multiple stories.

“Cost is the big thing," said Steven Wasserman of Colliers International. “You have to have functionality. These trucks are very big. Trailers alone are 53 feet.”

Wasserman noted that there are safety and engineering concerns when trucks are going up multiple stories.

He said the cost of building multistory properties is three to four times more per square foot than single-story properties — but developers save on land costs when they build up.

Despite the cost, some companies are going in the multistory direction. Prologis Inc. pioneered the concept in the U.S., recently building a multistory facility in Seattle where Amazon.com Inc. has space. Bridge Development Partners LLC and DH Property are building a multistory property in Brooklyn, New York.

While multistory is still not the norm, it’s getting more expensive to build traditional single-story properties, and U.S. developers may increasingly consider building multiple floors.

Sometimes “going up becomes the only option," Adams said. "It makes sense when the land values are expensive. Until now, America has been very fortunate and has had the land available. It’s been cheaper to go sideways. It’s entirely a function of land value. That’s going to push more multistory solutions if the land is expensive.”

--Editing by Jill Coffey.