Real Estate Ventures I: Negotiating Development-Phase Agreements

11.351
Fall 2013
3-0-9

Instructor: W. Tod McGrath, Lecturer, wtod@mit.edu

Teaching Assistants: Michael Tilford, mbtilford@gmail.com
Christina Fenbert, cfenbert@gmail.com
Adam Schwank, aschwank@gmail.com

Time and Location: Thursday evenings 6:00 to 9:00 PM, Center for Real Estate, Building 9-354
(unless otherwise noted).

Course Description:

This course prepares students to negotiate the most important business issues within six of the principal
business agreements a real estate developer executes in connection with the site control, entitlement,
capitalization, and construction phases of a real estate development venture. More specifically, (i) the
site control phase involves negotiating Right-of-Entry and Purchase & Sale agreements with a landowner,
(ii) the entitlement phase involves negotiating a Development Agreement with a municipality, (iii) the
capitalization phase involves negotiating Equity Joint-Venture and Construction Loan Agreements with
capital providers, and (iv) the construction phase involves negotiating a Guaranteed Maximum Price
Contract and General Conditions thereto with a general contractor.

Students generally spend 3 to 4 hours of class time discussing the most important business issues in each
agreement and the case law relating thereto, working closely with prominent real estate attorneys who
specialize in the construction of such agreements. The journey through each agreement ends with a 1 to 2
hour moderated negotiation which is judged by prominent industry practitioners. Students generally
alternate between negotiating the role of the developer and the role of the counter-party to the agreement.
Due to the format of instruction, enrollment in the course is limited.

This course involves a significant amount of reading which is required to be completed prior to working
with the attorneys in class. Accordingly, before the first class session devoted to each agreement,
students are required to hand in individual written responses (not more than 3 single-spaced pages in
length) to questions relating to the specific form agreements, judicial opinions, and other background
readings that are the subject of class discussion and negotiation. There is no mid-term or final exam, or
prerequisite for the course.

Grading: (for more detailed information, please refer to the attached grading matrix)

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<tr>
<th>Component</th>
<th>Percentage</th>
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<tr>
<td>Five (5) written responses (15% each)</td>
<td>75%</td>
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<td>Class Participation</td>
<td>13%</td>
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<td>Class Attendance</td>
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11.351
3-09 Fall 2013

Estimated Time Allocations: Prior to and During Class Sessions

- Right of Entry Agreement
- Purchase & Sale Agreement
- Development Agreement
- GMP Construction Contract
- Graybar Building Associates
- Equity JV Agreement
- Construction Loan Agreement

During Class

- Brownfield Redevelopment
- Real Estate Contracts
- Securing Entitlements
- Zoning
- Panel Discussion
- Case Discussion, Partnership Duty
- MIT Class
- Facilitate Travel to NYC
- Business Objectives, Waterfalls
- SPE’s, Guarantees & Closing

Prior to Class

- Enc. Liability Intro
- Case Law
- Agreement
- Case Law
- Case Law
- Agreement
- Case Law
- Registration Statement
- Agreement
- Case Law
- Agreement

Lecture / Case Discussion
Reading
Preparing Written Assignments
Deliberating with Counsel
Negotiating
Course Schedule:

Thurs. Sept. 5th: Course introduction; overview of environmental liability; deliberation with counsel re: Right of Entry Agreement.

Attorneys: Ned Abelson, Goulston & Storrs
           Hamilton Hackney, Greenberg Traurig LLP

Friday Sept. 6th: Optional class session: Environmental liability and Brownfield redevelopment through the eyes of the developer.

(3:30 – 5:30 PM)
Guest: George Vallone, President, The Hoboken Brownstone Company

Thurs. Sept. 12th: Discussion of environmental liability case law; continued deliberation with counsel; negotiation of Right of Entry Agreement.

Attorneys: Ned Abelson, Goulston & Storrs
           Hamilton Hackney, Greenberg Traurig LLP

Thurs. Sept. 19th: First written assignment due (beginning of class); discussion of the elements of an enforceable contract and case law relating thereto; deliberation with counsel re: Purchase & Sale Agreement.

Attorneys: Paul McDonough, Goulston & Storrs
           Susan Murphy, Dain, Le Ray, Wiest, Torpy & Garner, P.C.
           Bob Ruzzo, Holland & Knight

Guests (to be confirmed): Steve Goodman, CRE ’94, GFI Partners

Thurs. Sept. 26th: Continued deliberation with counsel; negotiation of Purchase & Sale Agreement.

Attorneys: Paul McDonough, Goulston & Storrs
           Susan Murphy, Dain, Le Ray, Wiest, Torpy & Garner, P.C.
           Bob Ruzzo, Holland & Knight
Celebrity Judges:  Jeff Johnston, CRE ’94, Cathartes Private Investments  
(to be confirmed)  Jay Valenta, CRE ’03, Roseview Capital  
Dan Coughlin, High Street Equity Advisors, LLC  
Mike Roberts, AvalonBay Communities, Inc.  
Mike Walsh, Boston Properties

Thurs. Oct. 3rd:  **Second written assignment due** (beginning of class); discussion of zoning, regulatory takings and case law related thereto.  **Note:** Class will be held at 6:30 PM at the John Adams Courthouse, One Pemberton Square, Boston.

Judge Celebrity:  The Honorable Mark V. Green, Justice, Massachusetts Appeals Court  
Attorneys:  Matt Kiefer, Goulston & Storrs  
Darren Baird, Goulston & Storrs  
Susan Murphy, Dain, Le Ray, Wiest, Torpy & Garner, P.C.  
Jason Dunn, Ropes & Gray  
Peter Alpert, Ropes & Gray  
Brian Blaesser, Robinson & Cole

Friday Oct. 4th:  **Optional class session:**  Securing entitlements by building trust through the permitting process.

(12:00 – 2:00 PM)  
Guests:  Rick DeAngelis, Boston Properties  
Kevin Sheehan, CRE ’06, Boston Properties

Thurs. Oct. 10th:  Deliberation with counsel re: Development Agreement.

Attorneys:  Matt Kiefer, Goulston & Storrs  
Darren Baird, Goulston & Storrs  
Susan Murphy, Dain, Le Ray, Wiest, Torpy & Garner, P.C.  
Jason Dunn, Ropes & Gray  
Peter Alpert, Ropes & Gray  
Brian Blaesser, Robinson & Cole

Thurs. Oct. 17th:  Continued deliberation with counsel; negotiation of Development Agreement  
**Note:** Class will be held at 6:30 PM at the law offices of Ropes & Gray, Prudential Tower, Boston.
Thurs. Oct. 24th:  

**Third written assignment due** (beginning of class); overview of construction contract types, potential areas of conflict, and case law related thereto; deliberation with counsel re: Guaranteed Maximum Price Construction Contract and General Conditions.

**Attorneys:**  
Sean Boulger, Wilmer Hale  
Kraig Peterson, Wilmer Hale  
Rick DeAngelis, Boston Properties

**Guests:**  
Jon Randall, Boston Properties  
(to be confirmed) Dave Leathers, John Moriarty Associates  
Charlie Leatherbee, CRE '04, Skanska USA Commercial Development

Weds. Oct. 30th:  

**Optional class session for students with scheduled class conflicts:** Continued deliberation with counsel; negotiation of Guaranteed Maximum Price Construction Contract and General Conditions.  
**Note:** Class will be held at 6:30 PM in the Boardroom of Boston Properties, Prudential Tower, Boston.

**Attorneys:**  
Sean Boulger, Wilmer Hale  
Kraig Peterson, Wilmer Hale  
Rick DeAngelis, Boston Properties

**Celebrity Judges:**  
Bill Gause, CRE ’93, Leggat McCall Properties  
(to be confirmed) Kathy MacNeil, CRE ’88, Millennium Partners — Boston
Charlie Leatherbee, CRE ’04, Skanska USA Commercial Development
Chris Gordon, MIT CRE & Harvard Business School
Frank Hayes, Bond Brothers
Charlie Buuck, Turner Construction

Thurs. Nov. 7th:  **Fourth written assignment due – TEAM write-up** (beginning of class); discussion of investment in Graybar Building Associates, securities laws, partnership duty, and case law related thereto.

Thurs. Nov. 14th:  **No class session** (to facilitate travel to New York City for those attending the Negotiation Joint Venture with Columbia University on November 15th).

Friday Nov. 15th:  **Optional class session:** discussion of financial, governance and exit issues in joint-ventures; deliberation with counsel and negotiation of Equity Joint-Venture (LLC) Agreement.  **Note:** The Negotiation Joint Venture with Columbia University will be held from 10:00 AM to 7:00 PM at the Columbia Business School; we will initially meet in Room 301 of Uris Hall (approximately 118th Street between Broadway and Amsterdam, directly behind Low Library on the north side of campus).

Attorneys:  
- Jim Broderick, Goodwin Procter
- Paul Schwartz, Goodwin Procter
- Rick Leland, Fried Frank Harris Shriver & Jacobson LLP
- Lee Parks, Fried Frank Harris Shriver & Jacobson LLP
- John Sullivan, DLA Piper
- Barbara Trachtenberg, DLA Piper
- Rich D’Alessandri, AIG Global Real Estate Investment Corp.
- John Mallinson, AIG Global Real Estate Investment Corp.

Celebrity Judges:  
- Jonathan Richter, CRE ’95, RREEF
- Joe Azrack, Apollo Global Management
- Jeff Barclay, Goldman Sachs & Co.
- Chuck Burd, III, Bentall Kennedy
- Oliver Carr, III, CRE ’92, Carr Properties
- Larry Ellman, CRE ’92, Berkshire Realty Ventures
- Rob Gifford, AIG Global Real Estate Investment Corp.
- Gentry Ashmore Hoit, Park Madison Partners
- Meredith Kane, Paul, Weiss, Rifkind, Wharton & Garrison LLP
- Dave Ridini, Canyon Partners
- Rob Silpe, Boston Properties
- Chris Taube, Aetos Capital
- John Vickers, Tishman Hotel and Realty
- Casey Wold, Tishman Speyer Properties (to be confirmed)
**Thurs. Nov. 21st:**  
**Fifth (final) written assignment due** (beginning of class); overview of closing agendas, special purpose entities, required guarantees, and case law related thereto; deliberation with counsel re: Construction Loan Agreement.

**Attorneys:**  
Stuart Offner, Mintz Levin Cohn Ferris Glovsky & Popeo  
Andrew Pearlstein, Seyfarth Shaw

**Friday Nov. 22nd:**  
**Optional class session for students with scheduled class conflicts:** continued deliberation with counsel; negotiation of Construction Loan Agreement and guarantees.

**Attorneys:**  
Stuart Offner, Mintz Levin Cohn Ferris Glovsky & Popeo  
Andrew Pearlstein, Seyfarth Shaw

**Celebrity Judges:**  
(to be confirmed)  
Tom Andrews, CRE ’87, Alexandria Real Estate Equities  
Chris Boehm, Intercontinental Real Estate Corp.  
John Hynes, Boston Global Investors  
Brian Kavoogian, Charles River Realty Investors  
Dawn Neher, New England Development  
Claudia Piper, Webster Bank
## Course Grading Matrix

### 15 Point Maximum
- Per Document

#### If <= 3 Days Late:
- 1st = 3 points off that assignment
- 2nd = 6 points off that assignment
- 3rd = 9 points off that assignment
- 4th+ = 12 points off that assignment

#### If >3 Days Late:
- Additional 30% off that assignment

### 13 Point Maximum
- Per Class Session

#### If Absent:
- 1st = 0 points off course grade
- 2nd = 2 points off course grade
- 3rd = 5 points off course grade
- 4th = 8 points off course grade
- 5th+ = 12 points off course grade

### Insightful Responses
- 

### 2 Extra Points
- Per Class Session

#### One Time Only

### 3 Extra Points
- Per Class Session

#### One Time Only


### Team

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### Totals
- 75
- 12
- 156
- 1
- 1

### Contribution to Course Grade
- 75.0
- 12.0
- 13.0
- 2
- 3

### Total Course Grade Points
- 105.0