Real Estate Ventures I: Negotiating Development-Phase Agreements
11.351
Fall 2015
3-0-9

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

Teaching Assistants: Christina Marcarelli, CRE ’11, cfenbert@gmail.com
Adam Schwank, CRE ’11, aschwank@gmail.com
Steve Bonelli, CRE ’12, steven.bonelli@gmail.com

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

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 with a general contractor.

Students typically 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 this format of instruction course enrollment is limited and “Listeners” cannot be accommodated.

This course involves a significant amount of reading which is required to be completed prior to discussing the business agreements and case law in class. At the beginning of 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 agreement, 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.
Course Grading:  (for more detailed information, please refer to the attached grading matrix)

Five (5) written responses (15% each)  75%
Class Participation  13%
Class Attendance  12%

100%

Course Schedule:

Thurs. Sept. 10th:  Course introduction; overview of environmental liability; deliberation with counsel re: Right of Entry Agreement.

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

Thurs. Sept. 17th:  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. 24th:  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:  Rick DeAngelis, Boston Properties
Susan Murphy, Dain Torpy

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

Thurs. Oct. 1st:  Continued deliberation with counsel; negotiation of Purchase & Sale Agreement.

Attorneys:  Rick DeAngelis, Boston Properties
Susan Murphy, Dain Torpy
Celebrity Judges:  
Jeff Johnston, CRE ’94, Cathartes Private Investments  
(to be confirmed)  
Jay Valenta, CRE ’03, Roseview Capital  
Tom Andrews, CRE ’87, Alexandria Real Estate Equities, Inc.  
Dan Coughlin, High Street Equity Advisors, LLC  
Michael Roberts, AvalonBay Communities, Inc.  
Jeff Lowenberg, General Investment & Development

Thurs. Oct. 8th:  
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:  
Darren Baird, Goulston & Storrs  
Susan Murphy, Dain Torpy  
Jason Dunn, Goulston & Storrs  
Peter Alpert, Ropes & Gray  
Brian Blaesser, Robinson & Cole

Friday Oct. 9th:  
Optional class session: The politics of land use – how to entitle (or kill) a project.  
(1:00 – 5:00 PM)  
Guests:  
Patricia Fox, Saint Consulting Group  
Matt Kiefer, Goulston & Storrs

Thurs. Oct. 15th:  
Deliberation with counsel re: Development Agreement.

Attorneys:  
Darren Baird, Goulston & Storrs  
Susan Murphy, Dain Torpy  
Jason Dunn, Goulston & Storrs  
Peter Alpert, Ropes & Gray  
Brian Blaesser, Robinson & Cole
Thurs. Oct. 22nd: Continued deliberation with counsel; negotiation of Development Agreement. **Note:** Class will be held at 6:30 PM at the law offices of Goulston & Storrs, 400 Atlantic Avenue (next to Rowes Wharf) in Boston.

Attorneys: Darren Baird, Goulston & Storrs
Susan Murphy, Dain Torpy
Jason Dunn, Goulston & Storrs
Peter Alpert, Ropes & Gray
Brian Blaesser, Robinson & Cole

Celebrity Judges: Pat Campbell, CRE ’87, Commonwealth Development Consulting
(to be confirmed) Shawn Hurley, CRE ’99, Skanska USA Commercial Development
Abe Menzin, CRE ’06, Samuels & Associates
Kevin Sheehan, CRE ’06, Boston Properties
Sonal Gandhi, Boston Redevelopment Authority
Don Briggs, Federal Realty Investment Trust
Mike Jailet & Chris McKeown, Town of Westwood, MA
Douglass Karp, New England Development
Tom O’Brien, HYM Investment Group
Bob McCullough, United Dominion Realty Trust
Ed Marsteiner, National Development
Bill Musto, Baupost Group
Mark Darley, Grosvenor Americas

Friday Oct. 23rd: Optional class session: Permitting mixed-use development. (2:00 – 4:00 PM)
Guest: Mark Darley, Grosvenor Americas

Thurs. Oct. 29th: 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
Rick DeAngelis, Boston Properties

Guests: Jon Randall, Boston Properties
(to be confirmed) Dave Leathers, John Moriarty Associates
Charlie Leatherbee, CRE ’04, Skanska USA Commercial Dev.
Thurs. Nov. 5th: 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
Rick DeAngelis, Boston Properties

Celebrity Judges: Bill Gause, CRE ’93, Leggat McCall Properties  
Kathy MacNeil, CRE ’88, Millennium Partners – Boston  
Charlie Leatherbee, CRE ’04, Skanska USA Commercial Dev.  
Chris Gordon, MIT CRE & Harvard Business School  
Frank Hayes, Bond Brothers  
Pete Hamill, Turner Construction  
Rob Eckert, Samuels & Associates

Thurs. Nov. 12th: **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.

Friday Nov. 13th: **Optional class session:** discussion of real estate investment vehicles and investment structures, and how securities laws affect real estate investment.  
(9:00 AM – 3:00 PM)  
Guests: Jason Dunn, Goulston & Storrs  
Eric Kevorkian, Boston Properties  
Rick DeAngelis, Boston Properties

Thurs. Nov. 19th: **No class session** (to facilitate travel to New York City for those attending “Coming to Terms”, the negotiation joint venture with Columbia University the following day).
Friday Nov. 20th: 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: “Coming to Terms” 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, Akerman 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: Joe Azrack, Azrack & Company
            (to be confirmed) 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.
            Erik Horvat, Fosun Property Holdings
            John Jacobson, Related Companies
            Meredith Kane, Paul, Weiss, Rifkind, Wharton & Garrison LLP
            Jonathan Richter, CRE ’95, Rosewood Investment Corp.
            Peter Sibilia, JPMorgan Investment Management
            Rich Monopoli, Boston Properties
            Philippe Visser, Related Companies
            Chris Taube, Medley Capital Corporation
            John Vickers, Tishman Hotel and Realty

Thurs. Dec. 3rd: 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
Thursday Dec. 10th: 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: Dan Adkinson, Newstar Financial
(to be confirmed) John Hynes, Boston Global Investors
Dave Heller, US Bank
Dawn Neher, New England Development
Claudia Piper, Webster Bank
Sharmil Modi, Baupost Group
Dean Stratouly, Congress Group
Peter Goedecke, Goedecke & Co.
### Course Grading Matrix

**Fall 2015**

#### 15 Point Maximum

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#### 13 Point Maximum

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#### Extra Points

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#### Totals

| Total Course Grade Points | 105.0 |

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**Insightful Responses**

- 1st: 3 points off that assignment
- 2nd: 6 points off that assignment
- 3rd: 9 points off that assignment
- 4th+: 12 points off that assignment

**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

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**Mid-term avg.** 13.0