

COMMERCIAL CONDOMINIUM DEVELOPMENT: MAXIMIZING DEVELOPMENT OPPORTUNITIES IN MICHIGAN

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Commercial condominium development may be an untapped opportunity to help move troubled properties, especially in times when good investments are scarce. Whether you own existing properties or are planning new construction, you should consider taking advantage of condominium ownership as part of your formula for success.

Residential and vacation property condominiums have been embraced as a common and popular vehicle for real estate ownership. Condominium development has been favored because of the relative ease of recording master deeds and obtaining necessary site plan approvals compared to recording platted subdivisions. Further, condominium development can be readily tailored to specific markets, providing the opportunity to offer a wide range of products from raw building sites to luxury condominium units with every amenity and service included.

The same benefits and principles obtained in residential condominium development can be applied to commercial/industrial condominium development. Commercial/industrial condominium development offers owners flexibility and opportunity to reach out to previously untouched markets. Office buildings, industrial warehouses and shopping center complexes, for example, can be developed or converted to condominium units that are attractive to business owners and investors looking for investment and equity positions in real estate.

In a commercial/industrial condominium, the real estate, whether it is

land within an industrial park or one or more commercial buildings, is divided into individual condominium units that can be sold, leased, or exchanged. For example, the units in an industrial park may consist of building sites with available utilities, or the unit could consist of the site together with an industrial building structure or warehouse, or the unit could include the site together with a leased building structure.

These same principals can be applied to a commercial building, medical office, or strip mall retail center. In a multi-tenant building, the building can be divided into separate condominium units by floor or any combination of areas within the building envelope. In this arrangement of condominium units and common elements, the condominium developer of a multi-tenant building or strip mall will have the flexibility to lease or sell units as the market will permit, in any combination. All of the units can be leased in their entirety or some units may be sold while others are leased. In addition, the units can be combined and divided to create units which best meet the market or purchaser's needs.

Commercial/industrial condominium ownership can provide additional benefits to the developer beyond the flexibility to sell and lease units as discussed above. In a commercial/industrial condominium the developer can in most cases obtain a greater aggregate selling price from the sale of individual units versus the sale of the property as a single entity. Another advantage to condominium ownership is the ability to pre-sell units prior to the start of construction. Along those same lines,

financing options may be more favorable, as the construction and financing of units can be undertaken in phases. In the area of leasing, by creating a condominium, leases can be made more attractive by offering options to purchase the condominium in the future. From a management perspective, the developer/owner of a condominium shifts legal title to common areas and associated maintenance responsibility to the association of co-owners. The association is then responsible for all common ownership items such as security, landscaping, snow removal, parking lot maintenance, insurance, common water and sewer, and management fees. Unit owners can determine their budgeted expenditures on an annual basis.

The developer/owner may also realize tax advantages by creating or converting property to condominium ownership. For example, in a typical fee title sale, the owner must recognize all of the realized gain on the sale of the real estate in the year in which the payment is received. By using a condominium form of ownership, an owner that wishes to spread its income or gain from the sale over several years has greater flexibility, i.e., by dividing the property into units, the owner can time the sale of units and defray the taxable gain. In addition, prior purchasers may find themselves in need of space and will seek the acquisition of additional units that can be held separately or combined into the existing unit. Conversion of existing commercial and industrial property to a condominium can also provide the owner with a competitive advantage. Rather than facing liquidation of a single large property, the developer, by converting to a condominium, can expand market opportunities by breaking the facility into smaller pieces, thus providing the ability to reach a greater number of potential buyers.

There are also many benefits for

purchasers of commercial/industrial condominium units. First, condominium ownership provides smaller companies the opportunity to obtain an equity position in real estate which would not be available if they leased space. Second, by owning a unit, the unit owner has eliminated the issue of lease renegotiation and possible forced relocation at the end of a lease term. Third, the condominium unit owner can adapt the unit to its particular use without fear that improvements will have to be abandoned at lease end. Fourth, condominium ownership provides stability, i.e., it eliminates rent increase, rent escalation, etc. Finally, condominium ownership can provide a higher level of control and influence over management of common areas, maintenance, enforcement of restrictions, and non-competing uses. The condominium unit owner can also take advantage of tax related benefits such as the deduction of interest payments, real estate taxes, expenses of operation (such as utilities) and depreciation. In addition, a condominium owner may be able to take advantage of a like-kind-exchange to avoid taxable gain.

There are many benefits to commercial and industrial condominium development for both the developer and the purchaser. Condominium ownership should not be overlooked as a method of developing commercial and industrial property.

About the Author:

Christopher Hajek is an attorney with The Hajek Firm. Mr. Hajek concentrates his practice in real estate law including condominium, adaptive reuse, and traditional neighborhood developments. In addition, Mr. Hajek has experience in litigation of real estate, construction, contract and commercial litigation matters. Mr. Hajek is a member of the National Association of Home Builders, the Building Industry Association of Southeastern Michigan, and serves on the State Bar of Michigan Real Estate Section Condominium Committee.

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