

## Unlocking Hidden Value in Real Estate

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The value of commercially zoned real estate can often be increased by the use of creative development structures that facilitate the development of different, but compatible, adjoining uses, which may not be possible with a typical subdivision. While combined developments present unique challenges, the benefits clearly justify the efforts.

I have represented clients in three recent combined developments that provide good examples of this trend:

**The AvalonBay – Norwalk Mall Shopping Center:** A so-called “zero lot line subdivision,” waiving setback requirements permitted the mall owner to subdivide the mall property and sell the mall parking lot to AvalonBay for development of a large apartment complex physically connected to the retail mall.

The development and operation of interconnected projects created many interesting challenges. There were shared and borrowed structures from the subsurface to the roof tops, including subsurface building footings for one owner’s structure located on the other’s lot; common walls; and shared utilities, accessways, parking and drainage for one lot passing over the other lot.

In such instances, owners must work closely with their real estate attorneys to identify and craft all easements and covenants necessary to ensure harmonious co-development and future coexistence. In this case, the time and effort resulted in a co-development that increased the value of the real estate, provided new housing and retail and revitalized a downtown core.

**The Future Avalon East Norwalk – Norden Park:** The 80-acre Norden Park was assembled by United Technologies in the 1950s as the site for Norden Systems. A conventional two-lot subdivision in 2005 enabled the owner to sell the half of the park that contained the 650,000-square-foot office building, while retaining the undeveloped 40 acres which later were zoned for multifamily use.

AvalonBay purchased this property to develop an apartment complex, but this presented some challenges. One public road, Norden Place, provides the sole access to the park. To comply with subdivision requirements, Avalon’s lot was given a typical “flagpole” access to the public road. Since construction of separate, parallel access roads would have eliminated existing parking and other improvements, a set of easements was crafted providing for shared use of a single access way and numerous cross-easements for utilities, parking and the like. But progress did not stop there.

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The office lot was approved for a second building — a 176,000-square-foot data backup and disaster recovery center. Since further subdivision was impossible, a two-unit commercial planned community, very similar to a two-unit condominium, was created. Each unit can be separately owned and financed as if they were subdivided lots.

Initially, the Norwalk zoning code did not specify the parking requirements for a disaster recovery center which, except in times of regional emergency, would have a small population. The solution: a zoning text amendment requiring less than one-third the office parking requirement supplemented by a stand-by valet parking plan to be implemented during an emergency. The result: After years of efforts by many parties, what was once a tired industrial property is now a modern mixed-use development, containing an additional high-tech office building and a multi-family housing complex.

**Jackson Laboratory Facility:** In a development that continues to make headlines in Connecticut, earlier this year, UConn Health Center and Jackson Laboratory entered into a joint venture to build and operate a 173,000-square-foot research laboratory on the Farmington campus of the UConn Health Center. The new facility is projected to create more than 300 permanent jobs in 10 years and more than 600 jobs over a 20 year period, while establishing a research hub that could generate thousands more.

The Jackson Laboratory facility will be constructed on a long-term ground lease on UConn's 161-acre campus. Jackson Labs was granted an option to purchase the underlying fee in the 16-acre ground lease parcel if it achieves certain employment goals within a specified period of time. As with the Norden Park and Norwalk Mall developments, careful consideration was required in order to draft the easements, covenants, conditions and restrictions necessary for the compatible use of the UConn hospital and the Jackson Laboratory research facility.

In densely developed areas, such as Fairfield County, making room for new real estate developments can often be a challenge. However, through the use of creative development structures, developers and their attorneys can come up with solutions that unlock hidden value.

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### Professionals

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