

Duff on Hospitality Law

Hospitality Group Hosts “Time to Build?” Forum

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The [Hospitality Group](#) hosted events in Seattle and Portland March 11 and 12, to discuss the comeback of hotel and hospitality-related development. More than 140 attendees ranging from construction industry representatives to flag representatives and investment bankers participated in the discussions. One panel about Construction and Transactional Development highlighted the return of bricks and mortar to the hospitality conversation.

In both cities, there are grounds for optimism in 2013 given the plans for new rooms - 3,000 in Seattle and 1,000 in Portland. Also, speakers noted that there is unfulfilled demand for hotels like the [InterContinental Hotel Group](#) product in downtown Portland. In addition, creative construction ideas are afoot in the hospitality sector. While new builds may occur in Portland, areas like Seattle, San Francisco, and Los Angeles are making headway with adaptive re-use. For example, in Los Angeles, vacant office buildings are available and developers are finding these buildings can be converted into hotels in a cost effective manner. This kind of redevelopment in neighborhoods close to tourist amenities represents an exciting economic development opportunity in areas that no longer successfully serve office uses.

Garvey Schubert’s Julia Holden-Davis warned about some of the contract risks associated with hospitality related construction and present market conditions:

- Given labor and material demands, adequately screening potential contractors and subcontractors for both technical and financial competence is key;
- Financial terms and active oversight are important to ensure that lower tiers are paid.
- Risk transference clauses are only as good as the other party’s financial ability to address those risks. Because of this, considering appropriate insurance and bonding requirements can be important for the long term success of a project, and the comparative up front cost to the potential risk can be minimal.
- The risk of hidden conditions should be considered, especially when it comes to adaptive re-use. These hidden conditions can significantly change design parameters, increase construction costs, and delay completion of the work. Early analysis, as well as risk-shifting provisions, can be key factors in addressing these concerns.

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- The extent of renovation or alteration work can also lead to additional requirements under ADA, local permitting ordinances, and building codes. It is important to understand these implications, plan appropriately, and comply with the applicable requirements.

When you are ready to move forward with a development, it is important to draft your contracts with particularity about which party will be required to shoulder the particular risk. Most importantly, when you are ready to move forward consider ways to “lock in” pricing as construction costs have already increased by 2.6% over 2012 construction costs, and an escalation to 5% is expected by the end of the year.

If you would like to know more about the forum, please contact [Greg Duff](#).