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2018 Best Practices Retreat

Redevelopment: Leasing Opportunities & Issues

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Stark & Stark's Shopping Center and Retail Development Group

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- Founded in 1933, The firm has more than 100 attorneys, over 30 practice areas, servicing NJ/PA/NY
- **Shopping Center and Retail Development Group** has a team of over 25 interdisciplinary attorneys, providing counsel on all aspects of the industry, including:
  - **Leasing**
  - **Sales / Refinance**
  - **Land Use**
  - **Environmental**
  - **Construction**
  - **Bankruptcy**
  - **Liquor Licensing**
  - **Mixed Use**
  - **Franchising**
  - **Enforcement**
  - **Compliance**
  - **Tax Appeals/Condemnations**

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Shopping Center and Retail Development Group

Active in key organizations:

- International Council of Shopping Centers (ICSC)
- International Franchise Association (IFA)
- Certified Commercial Investment Member (CCIM)
- Garden State Brewers Guild (GSBG)
- National Association of Industrial and Office Properties (NAIOP)

Some Highlights on Redevelopment

- Assisting in a $1 billion refinance of a national grocery chain;
- Purchase of 38 buildings in the Bronx, NY for development;
- Successfully rezoning parcels for development in heated township opposition;
- Winning a $4 million judgment for an owner after a week-long tax appeal trial;
- Protecting landlords in Chapter 11 tenant bankruptcy cases, including Toys R Us, RadioShack, Fairway Markets, EMS, Gander Mountain, Payless, rue21, Ignite Restaurant Group

Leasing Topics

- Operations Concerns
- Bankruptcies
- One Lease Does Not Fit All

Operational Concerns

- Inspect the site (photos, reports, etc.)
- Obtain security/HVAC codes
- Notice Signage
- If an auction, may consider on-site person
- Don't be afraid to call police
- Ensure damage is kept to a minimum

Flemington Mall

- When was the last time you looked at improvement escrows – 10 years
- Recently, we obtained release of offsite improvements
- Found money

Operational Concerns

- What does your Lease say about tax appeals?
- Who has the right to appeal?
- Do you want to appeal? (May not if your assessment could be increased)
- Does your Tenant have any say?

What if Tenant Appeals?

Crosspoint Developers v. Wegmans Food Markets

- Court looked to the definition of the term "Tenant" which was clearly defined as Wegmans – no other tenant
- Court found nothing in the lease that allowed the landlord to be reimbursed for legal fees and expenses when the landlord obtains a reduction in a tax assessment
- Wegman's prevailed and did not have to pay any legal fees or expenses relating to the tax appeal

What About Takings? – Condemnation Primer

- In recent years, New Jersey has been undertaking various infrastructure projects that often involve a modification of highway access, taking of road frontage and installation of sidewalks.

What About Takings? – Condemnation Primer

- Retail centers must be diligent in protecting their rights, especially when highway access is involved.

- With New Jersey's new Governor committing to new infrastructure projects, we expect to see additional road projects coming down the pipe.

Tenant Bankruptcy

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Tenant Bankruptcy

- Claims
- Lease assignment
- Lease rejection
- Status of property/Sales

Tenant Bankruptcy - Who's Next?

- **BonTon** – one of a number of stores that Moody's rated with debt ratings of 'Caa' or lower (which represents anywhere from "substantial risk" to the potential for total default on a bond). A filing could be expected in first quarter 2018.

- **Guitar Center** - the world's largest retailer of musical instruments. It has about a year and a half to refinance more than $900 million in debt scheduled to mature in 2019, according to USA Today.

- **General Nutrition Centers ("GNC") -** shares fell more than 18% in November. GNC recently retained investment bank Goldman Sachs to help it analyze alternatives. With its competitor Vitamin World recently using the Chapter 11 process to rid itself of unfavorable leases, GNC is a likely candidate to do the same in 2018.

- **Claire's Stores, Inc. -** very high outstanding debt. As of Oct. 28, it had cash and cash equivalents of only $25.8 million, down $5.4 million from the previous quarter and had $71 million drawn on its credit facility.

- **Bi-Lo -** parent company of grocer Winn-Dixie. Although it survived a 2009 bankruptcy filing, like the similar grocer A&P's second bankruptcy case, the chain appears in dire straits with about $1 billion in debt.

Tenant Bankruptcy

- What about buying property in a Bankruptcy 363 sale and then flipping it into a 1031 Exchange?

Leases – One Size Does Not Fit All

- Traditional

Issues: Requirements

- Square footage
- Parking
- Signage
- Licensing

Leases – One Size Does Not Fit All

- Breweries and Distilleries

Issues: Lease Restrictions

- Restrictions of record
- Co-tenancy
- Permissible use
- Exclusives

Leases – One Size Does Not Fit All

- Medical
  - Urgent care
  - Dental, pediatric, general practice
  - Medical devices

Medical Issues: Drivers, Licensing and Regulatory

- Affordable Care Act – est. 27 million Americans will be added to insurance rolls
- HIPPA
- The Stark Law
- Anti-Kickback laws

Leases – One Size Does Not Fit All

- Educational
  - Tutoring
  - Day care

Leases – One Size Does Not Fit All

- Activities
  - Yoga/Gym
  - Golf

FIND YOUR EDGE

TRUFUSION

BARRE • CYCLE • PILATES • YOGA • KETTLEBELL • AERIAL • BOOTCAMP

Issues: Loan Documents

- Does landlord require written approval from bank?
- Will Tenants require approval from their financial institutions?
- Who are the guarantors, if any?

Harbor Group

- Served as local New York and Pennsylvania on $1.8 billion multi-state 25 property apartment portfolio acquisition and related financing
- Realty transfer tax and bulk sales tax considerations for transaction

Issues: Zoning Considerations

- Variances
- Environmental
- Municipality

Princeton South

- Amended site plans and condominium documents
  - 350,000 sq ft
  - Build-to-suit

Thank You

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