

Plan Ahead & Negotiate Wisely to Maximize Value of Shopping Center Outparcels

By Megan C. Zaidan, Esq.
Walter | Haverfield LLP

Outparcels – small lots on the periphery of a retail center – allow developers to create added value to shopping centers. Outparcels are often utilized by banks or restaurants, as outparcels are more attractive to these users based on the increased visibility and ability to add specific features, such as a patio or drive-thru, which are important to the user's business.

Developers will most often convey the parcels either by long-term ground lease or outright sale to the end user.

Legal subdivisions

From a developer's perspective, it may be necessary for the outparcel to be legally subdivided from the larger shopping center parcel as a condition of sale to the end user. If a developer knows in the initial stages of development that it is likely to sell off one or more outparcels, it would be wise to create the separate parcels early in the development process. Such a pro-active approach is particularly important in jurisdictions with time-consuming subdivision processes. The sub-dividing of the outparcel from the large shopping center could expedite subsequent sales of any such outparcels created.

Alternatively, the developer may require the end-user to cause the parcels to be subdivided; however, the developer will need to remain involved and aware of the subdivision plans to ensure the outparcel conforms with local zoning and setback requirements, as well as the overall plan of the shopping center.



Megan C. Zaidan, Esq.

Equally important for the developer is to ensure that outparcel plans independently meet or exceed applicable parking requirements

From a developer's perspective, it may be necessary for [an] outparcel to be legally subdivided from [a] larger shopping center parcel as a condition of sale to the end user.

without infringing upon or making use of parking spaces allocated to the shopping center on the whole.

Recorded documents

Once subdivided, the respective obligations of the developer and the parcel owner (or ground lessee) will likely be governed by a Reciprocal Easement Agreement (an "REA"). The REA will set forth each party's obligation for matters such as access, utilities, maintenance and insurance. In addition, the developer may also look to impose certain operating and building restrictions upon the outparcel within the REA, including height restrictions to ensure any building constructed thereon will not block the visibility or signage of the shopping center's tenants.

The developer may also look to limit the number of tenants or users of the lot. If the outparcel is not restricted to a single user, it could be developed into a multi-tenant strip-center that could eventually

compete with the larger shopping center for small shop tenants. Finally, the developer would likely look to include architectural and signage standards for the outparcel, so it conforms with the shopping center, ensuring a more

uniform appearance.

An often-overlooked REA provision for developers to consider

is a repurchase right in the event the end-user does not commence construction or open for business within a specified period of time. Because outparcels add value to the overall shopping center, empty or non-operational outparcels can be problematic for the developer.

As a result, it is critical that the overall shopping center owner has a clear and efficient means to reacquire and control the parcel should the intended end-user not fulfill or complete its construction or business opening obligation. Once the developer reacquires the

property, it would have the ability to identify and secure a different user for the parcel.

Shopping center tenants vs. outparcel owner rights

When selling (or ground leasing) an outparcel, a developer must make certain the parcel is subject to all use restrictions and exclusive-use rights of the tenants at the shopping center. Failure to do so could result in competing uses and adversely impact the value of the center. Some of the center's larger tenants may try to negotiate rights with respect to the outparcels in their leases. To the extent possible, developers should limit the ability of tenants to have any consent rights regarding outparcels. Most commonly, tenants will seek consent rights in connection with the sale of an outparcel or will try to place use restrictions on the outparcel. Further, developers should make sure in negotiating any "no-change" or protected areas in a tenant's lease that any areas that may be sold in the future as outparcels are excluded from such areas.

Conclusion

Outparcels offer certain advantages to users and allow developers to extract additional dollars from their retail shopping centers. However, the developer should be thoughtful about the development of the outparcel and the documents affecting the outparcel to ensure that the developer will have a smooth and mutually beneficial relationship with its new neighbor(s). **P**

Our strength is in our numbers.

We provide the building blocks to get commercial deals done:

- One of the area's largest **real estate practice groups**
- Unmatched level of experience ■ Breadth of services
- Depth of resources



The Real Estate Attorneys of

Walter | Haverfield LLP
ATTORNEYS AT LAW

Cleveland | 216.781.1212 | www.walterhav.com

Zaidan practices in the Real Estate Practice Group of Cleveland-based Walter | Haverfield LLP.