

PRESENTED AT

51st Annual William W. Gibson, Jr. Mortgage Lending Institute September 28-29, 2017 AT&T Conference Center, Austin, Texas

DECONSTRUCTION AND RECONSTRUCTION: NEW LIFE FOR A DEAD MALL

JAY HAILEY

JENNIFER COOK PURCELL

Jay Hailey
Jennifer Cook Purcell
DLA Piper LLP (US)
401 Congress Avenue, Suite 2500
Austin, Texas 78701
jay.hailey@dlapiper.com
jennifer.purcell@dlapiper.com
512.750.7000

ACKNOWLEDGMENTS

There are many people to thank for their help in the preparation this article, and for their work on the redevelopment of Highland Mall featured in the article.

Thanks to my lawyer colleagues at DLA Piper, Jennifer Purcell and Carey Venditti, for their contributions to the article, and to my co-workers Debbie Malmstrom, Deborah Sours, and Chrystie Nguyen for their help. Thanks also to many other people at DLA Piper who have worked on the Highland project during the past 7 years.

The important role of Austin Community College in the story about Highland cannot be underestimated. Under the leadership of ACC President/CEO Dr. Richard Rhodes and a very dedicated Board of Trustees, Highland Mall is being transformed into a very important educational center for Central Texas. The other key members of the ACC team are Neil Vickers, William Mullane and Dr. Molly Beth Malcolm, and former President/CEO Dr. Steve Kinslow and former CFO Dr. Ben Ferrell also made important contributions to the project.

ACC has been very well-represented on the Highland project by Cobby Caputo, Denise Cheney, Kathryn Lumkin and other attorneys at Bickerstaff Heath Delgado Acosta LLP, and it has been a pleasure to work with them.

Steve Matthews, President of Steve T. Matthews Company, was the real estate broker on all of the Highland acquisitions. His experience and longtime relationships in the retail industry were key factors in the consolidation of ownership.

And last, but certainly not least, thanks to our client RedLeaf Properties LLC, the master developer of the Highland project. RedLeaf's founder and principal is Matt Whelan, and the RedLeaf team includes Bryan Kaminski, Bob Liverman, Rob Shands and Jenean Farris. The RedLeaf team was able to use its experience and expertise with urban mixed-use development to support and enhance ACC's educational mission, and their public-private collaboration has led to the transformation of Highland Mall.

Jay Hailey
DLA Piper LLP (US)

DECONSTRUCTION AND RECONSTRUCTION: NEW LIFE FOR A DEAD MALL

I. The Problem

Victor Gruen, who emigrated to the United States from Vienna shortly before World War II, is given credit for creating the first modern version of an enclosed shopping mall in Edina, Minnesota in 1956. Southdale Mall, with its two-story, air-conditioned, inward facing mall, was centered around a light-filled square with fountains, trees and a fishpond, and it soon became a model for retail development around the country.¹ The migration of the Baby-Boomer generation to the suburbs; growth of the consumer economy; relatively inexpensive land; and favorable federal tax laws fueled the growth of this new concept.² According to the International Council of Shopping Centers, in 1970 there were 306 enclosed malls across the country, which rose to 555 in 1976; 863 in 1976; and 1,040 in 1996.³ The number of malls in the U.S. grew more than twice as fast as the population between 1970 and 2015.⁴

But, during the past two decades, hundreds of malls and thousands of mall-based stores have closed. A recent report by Credit Suisse predicts that 220 to 275 malls will close over the next five years, primarily because of store closures. In 2014, 3.4% of the malls, representing 30 million square feet, were more than 40% empty, a threshold that retail experts say signals the beginning of the "death spiral". A 2001 report by PricewaterhouseCoopers retail expert Steve Laposa commissioned by the Congress for the New Urbanism concluded that 7% of regional malls were "greyfield" sites and effectively dead, and that another 12% were vulnerable and would probably fail within the next five years. This "deathwatch" has led to an interesting internet cultural phenomenon, including the http://deadmalls.com web site that tracks the status of over 400 dying malls around the country, including 23 in Texas, and the artistic, but very eerie, photographs of abandoned malls by Seph Lawless found on his web site at http://sephlawless.com.

Nevertheless, many retail experts think the obituaries are premature for approximately one-third of the remaining malls. Most of these are A-rated flagship malls with vacancy rates of 10% or less that cater primarily to affluent shoppers. They will most likely continue to do well, but B and C malls in tertiary markets are described as dinosaurs that will likely die. There is a clear demarcation line between the haves and the have-nots, which is evident among the malls as well as the people who shop there.⁸

Retail experts have given several reasons for this dramatic change. Most significantly, there are too many malls and not enough customers. The development climate of malls was driven less by demand and more by opportunity. The current level of 20 square feet of retail space per capita in the U.S. is at least six times the amount of retail space per capita in Europe. Furthermore, the demographics have changed. In the 1970s, about half of U.S. households had children, whereas fewer than one-third do today, and the number of single-person households is rising. Smaller households have less need for consumer goods. The consumer goods of the consumer goods.

II. The Opportunity

Notwithstanding the serious problems retailers, developers, investors, lenders, and government officials must face with obsolete and declining shopping malls, many of them have recognized the opportunity these sites present for other types of development. In 2002, the Congress for New Urbanism published a report entitled *Greyfields Into Goldfields: Dead Malls Become Living Neighborhoods*, in which the authors identified an opportunity to "reclaim vast suburban swaths" by developing these dead mall sites. ¹² As one development consultant points out: "A mall is roughly 110 acres. It has power, water, a ring road, a huge parking lot. All that infrastructure has been built and permitted, and in place, so you have two scenarios. You can attempt to reuse the existing structures, or you can scrape them." ¹³

Ellen Dunham-Jones is a leading advocate for reclaiming these malls for other purposes. She is a Professor of Architecture and Urban Design in the College of Architecture at the Georgia Institute of Technology, and is the co-author of "Retrofitting Suburbia" with June Williamson, Associate Professor of Architecture at The City College of New York. In the book, Dunham-Jones and Williamson identify three principal retrofitting strategies:¹⁴

- *Reinhabitation*. The adaptive reuse of existing structures for more community-serving purposes, often as "third places" for social interaction.
- Redevelopment. Replacing existing structures and/or building on existing parking lots, generally with a compact, walkable, connected mix of uses and public spaces that support a less auto-dependent and socially engaged lifestyle.
- Regreening. Demolition of existing structures and revitalization of land, as either
 parks, community gardens, or reconstructed wetlands, which is sometimes a
 phasing strategy for eventual redevelopment.

According to Dunham-Jones and Williamson, the primary trend in mall retrofitting is the tear-down of most or all of an aging enclosed mall and the replacement with a mixed-use town center development, and they bring their New Urbanist perspective to their presentation of the following examples and case studies in three chapters of the book.¹⁵

Mizner Park, Boca Raton, Florida.

Located on the original 29 acre Boca Raton Mall site, Mizner Park was created from an early private/public partnership between the Boca Raton Community Redevelopment Center and developer Crocker & Company. Completed in several phases, the mixed-use development incorporated the 1920s architect Addison Mizner's original colors and style, and includes 272 homes, office space, a public promenade and park, as well as 1900-seat concert hall and outdoor amphitheater. Mizner Park has spurred development around downtown Boca Raton, and its retail and residential are in demand.





Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the <u>UT Law CLE eLibrary (utcle.org/elibrary)</u>

Title search: Deconstruction and Reconstruction: New Life For A Dead Mall

Also available as part of the eCourse 2017 William W. Gibson, Jr. Mortgage Lending eConference

First appeared as part of the conference materials for the 51st Annual William W. Gibson, Jr. Mortgage Lending Institute session "Deconstruction and Reconstruction: New Life For A Dead Mall"