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Nov 2, 2020

CONSUMER REAL ESTATE CANADA

The Takeaways & Trends - Cross-Canada Consumer Real Estate Market Conditions Conference Call

FROM MAIN STREET TO THE MAIN MALL AND ANYWHERE THAT RETAIL HAPPENS IN CANADA...KEEPING RETAILERS, FOOD SERVICE SPECIALISTS, E-COMMERCE PROFESSIONALS, RETAIL SPACE BROKERS, BUILDING OWNERS & DEVELOPERS AND INDUSTRY SUPPLIERS CONNECTED!

Hello fellow Canadian consumer real estate professionals, we hope you enjoyed the recent CREC update on Canadian consumer real estate market conditions. Here are the takeaways and trends from our call on Nov. 2, 2020, compiled by the call moderator Michael L. Kehoe...

- In St. John's NL, The Brick opens a new store, chain store vacancies in the Avalon Mall are a concern.
- In Toronto, the downtown core continues to hollow-out, Pathway System is deserted, downtown residential condo values being impacted.
- Winnipeg now the COVID-19 capital of Canada. Consumer real estate impacted.
- Saskatoon downtown being impacted, City offering free parking on weekends to draw consumers in.
- Vancouver, several new retail and mixed-use developments are proceeding. Former Amazon office building 100% vacant. Lack of foreign students impacting residential & consumer real estate.
- Canadian malls expecting 20-30% decrease in holiday sales.
- In Calgary, quick recycling of turn-key spaces, especially in those under 2000 square foot - previously occupied restaurant category. A significant increase in unemployed oil & gas professionals transitioning into new entrepreneurial ventures and leasing space for alternative health & fitness facilities, a fashion boutique and other businesses. Some good coming out of this situation in Alberta and we need to be optimistic.

We welcomed a new contributor on the call, Nikki Poole a commercial Broker in St. John's, Newfoundland with Perennial Management a full service commercial real estate brokerage for an update on the Newfoundland and Labrador market.

Our special guest this week was Craig Patterson the Publisher at the Retail Insider, Canada's most read on-line industry publication.

Craig advised the call participants:

- Avon expanding with 1st experiential storefronts: Montreal 1st, then Toronto & Vancouver (Los Angeles opened last week, 19,000 sq ft)
- Luxury retail expansion: Jo Malone 3 stores (Toronto/Vancouver), Thom Browne Yorkdale, Gucci reno completed on Bloor, Bogner opened holiday pop-up on Bloor, Isaia opening in Yorkville, Golden Goose at Yorkdale, CNTRBND, Margela also at Yorkdale.
- Digitally native Couple Diamonds opened 1st flagship in Yorkville Village.
- HBC launches real estate division and is sued/applications to evict. HBC's future is questionable as some stores prepare to close, downsizing of units starting (rumour Saks will pull Canadian stores by January).
- Downtown Vancouver road tolls - businesses unhappy.
- Foot Locker brick-and-mortar: Flagships Vancouver and Toronto.
- Edmonton: Lego store opening Nov 13, 2020 at West Edmonton Mall.
- ICE District grocery store cancelled in Edmonton.
- Winnipeg: EQ3 opening 44,000 sf store at CF Polo Park + Others in former Sears space.
- Ottawa: OVO/Canada Goose at CF Rideau.
- Toronto - Avengers Station opening at Yorkdale.
- Montreal: Uniqlo flagship, Pilgrim (Danish jewellery) Place Montreal Trust.
- Maritimes: less affected, some foodservice making positive moves.
- LL. Bean expansion (Toronto and beyond).
- T. Kettle/David's Tea (45 locations, Doug Putman/Sunrise Records).
- 3 Indigo stores unionize, challenges amid low share prices.
- Tik Tok/Shopify: Social commerce expansion more competition for retailers.
- Le Chateau shutting down, Swimco, others to come.
- SDM opens 1st store for advanced seniors in Edmonton/care homes.
- Arson in Wal Marts related to mask use across Canada.
- Costco opening more business centres (next St. Catharines ON).
- Farm Boy opening more brick-and-mortar stores in GTA.
- MEC deal concluded last week (Kingswood).

Nov 16, 2020

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- 7500 square foot Under Armour store opens in Marche Central in Montreal. City of Montreal offering free parking to draw customers downtown.
- In Vancouver, continued office exodus from the downtown core. Police taskforce formed related to petty crime.
- In Edmonton lease transactions are very slow with landlords doing a lot of handholding with tenants.
- In Saskatoon hotels and restaurants promoting staycations.
- In Winnipeg new leasing activity driven by medical tenants, dollar stores and cannabis retailers.
- In Calgary, one of the largest private-sector employers are restaurants and uncertainty on future restrictions are impacting existing facilities and leasing activity for future food service locations across the City.
- In St. Johns NL, 5 Guys Burgers and Fries opened in the Avalon Mall to much fanfare.
- Enclosed mall sector in Canada sees:
 - shopping centres introducing experiential retailers like the new Avengers space at Yorkdale in Toronto to draw new customers and increase shopper dwell time at the malls.
 - Future of Hudson Bay is a concern at malls in the retail real estate industry.

We welcomed two special guests on the call this week to address the changes we are seeing in leasing practices and lease clauses because of COVID-19.

Peter Morris joined us on the line from Vancouver. Peter is the CEO of the Greenstead Consulting Group Inc., an international commercial real estate advisory firm that works with landlords, developers, and occupants.

Joining Peter to speak to the subject was lawyer Steve Messinger with Messinger Consulting Services in Toronto. Steve is an icon on the Canadian retail real estate law scene and is a former Senior Partner at Minden Gross LLP. Steve has volunteered with ICSC for over 50 years and it was an honour to have both Steve and Peter on the call.

Peter Morris advised:

- Shorter Terms with multiple renewal options & with that no incentives, or delayed incentives tied to exercising of the renewal(s)
- “Fair Market Rent” is hotly contested for near term renewals of older leases with long renewal terms
- Rent Assistance clauses are being written into LOIs and OTLs, tied to mandated shut downs and restrictions
- Either rent is adjusted to permitted occupancy (i.e.: 25% capacity = 25% base rent or a percentage of sales)
- Longer fixturing periods due to government shut downs and contractor availability
- Permit contingencies are now part of the commencement of fixturing periods
- More emphasis on tenant having extended business interruption insurance/Landlord having rental insurance [at landlord’s cost]
- General liability clauses. There is concern by both tenants and landlords on civil and criminal liability related to pandemics and epidemics
- Force Majeure clauses are including pandemics and epidemics
- Eminent Domain clauses are being negotiated by tenants to include regulatory takings either permanent or temporary
- “Go Dark” clauses are being inserted by tenants, resisted by landlords
- Co-tenancy clauses are getting a closer look by landlords and tenants
- Tenants are looking to get more meat into the Landlord control of Common Areas
- Landlords are fighting “First Class” shopping centre definition or narrowly defining what First Class means (also applies to non-retail uses replacing failed anchors, effectively asking the question: “When does a shopping centre cease being a shopping centre, if portions of it do not pertain to ‘shopping’?”)

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- Landlords are demanding full financial disclosures for many years. Tenants argue that Covid-19 is an income problem not a balance sheet issue. It raises the questions of Trust.
- Landlords demand that tenants seek full government assistance before going to the landlord and providing proof of same. Landlords are resisting similar requests from tenants.
- Landlords digging in heel on the need for well qualified guarantors, indemnifiers and co-covenantors.
- Some landlords are attempting to insert “No Defence” clauses in rent assistance documents, effectively attempting to contract around the law where possible, both today and in the future.
- These are wide-sweeping clauses, because they are so general in nature.

Peter went on to advise; “We are still seeing a lot of ‘old ways’ thinking from landlords, their lenders and investors, that doesn’t fit the ‘new normal’ business structure. Some landlords are pretending that

COVID-19 is a tenant only issue akin to a tenant distress prior to COVID-19, enacting penalties and using any approach by the tenant as an opportunity to shift more risk to the tenant. While not mentioned on the call, tenants should be very careful on how the recovery wording is drafted if they are expecting a full abatement, otherwise they could face a big bill in Q1 2021 when the reconciliations are done, and there is a true up between the expenses and the amounts paid on account. “

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Steve Messinger advised:

“The business relationship between Landlord and Tenant must change. I am guilty of working on the Landlord side; but the days of the landlord acting as a medieval Lord of the Land and the tenant being little more than a serf when the lease contract is written must end.

I treasure the comment by one of my landlord clients from years ago who said that I was fair in my dealings when representing their (landlord) interests. The one takeaway that I would add is generally speaking if there were ever a time for landlords and tenants to work together for the best interests of all concerned this is the time to park the egos at the door and be realistic and reasonable.

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Further discussion included....

“Dealings with a REIT in the USA over a rent abatement and deferment since April. We finally came to an agreement to MODIFY the rent structure. Their legal department then sent an 11-page agreement that started with the tenant being in default of the lease and went downhill from there.

That was not the intent of our agreement to mutually modify the lease. Here was part of my response to the asset manager: We can agree the pandemic is a completely disruptive and unanticipated factor in all business contracts. We laid out a simple solution to deal with adjusting the business relationship between the landlord and tenant in an atmosphere of mutual agreement. That agreement requires an adjustment to the rent, and the contract.

That agreement is one that provides what the tenant needs now and gives the landlord additional term. Pretty simple. The wording and structure of the document submitted to us by the legal department initially pretends that the pandemic is an exclusive issue of the tenant and ignores that mutual agreement. It places the tenant in default and then allows the landlord to magnanimously grant an accommodation; but with penalties as though the tenant was an unruly toddler getting a time-out.

Then it turns to move all current and future liability for COVID-19 (and a potential host of other issues) onto the shoulders of the tenant. As a lawyer said today relative to adjusting lease contracts in light of COVID-19; “There must be a recognition that ‘old school’ thinking - and ways of dealing with these types of issues - do not align with what is the ‘new normal’. It is a business partnership of mutual benefit, rather than the way business was conducted before”.

“Landlord leasing representatives must be creative...earn your money! The era of the order-taker leasing rep is over.”



Nov 30, 2020

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Hello fellow Canadian consumer real estate professionals, we hope you enjoyed the recent CREC update on Canadian consumer real estate market conditions. Here are the takeaways and trends from our call on Nov. 30, 2020, compiled by the call moderator Michael L. Kehoe...

- H & M opened stores in St. John's NL and Saskatoon SK
- City of Saskatoon has implemented a downtown passport marketing campaign to draw customers into the central business district.
- Strong push in Winnipeg to complete consumer real estate transactions before the holiday break.
- Lockdowns in many markets impacting the retail and restaurant sectors.
- Anticipated increased restrictions in Alberta that will affect retailers and food service businesses likely to become a reality.

We welcomed two special guests on the call to provide insight into the importance of consumer real estate leasing brokers in these challenging times. Also, to look at how performance based and short terms leases impact brokerage fees during the pandemic situation and how consumer real estate landlords are reacting.

Call moderator Michael Kehoe framed the discussion; that there is no doubt we are living in interesting and challenging times with history unfolding before our eyes every week. But one thing is constant in our industry and that is: "Nothing happens until you lease something" and if you want credible market info, ask a consumer real estate broker.

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The role of the broker is more relevant than ever in these crazy times. Brokers know their markets mall to mall, street to street, block to block and door to door and some of the best in Canada contribute on this call every two weeks. These deal-junkie blood hounds with their noses to the ground day in and day out know the pulse of their respective markets.

Our guests took a dive into the brokerage business and welcomed back to the call, Peter Morris who joined us on the line from Vancouver. Peter is the CEO of the Greenstead Consulting Group, an international commercial real estate advisory firm that works with landlords, developers, and occupants.

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