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Individual Members



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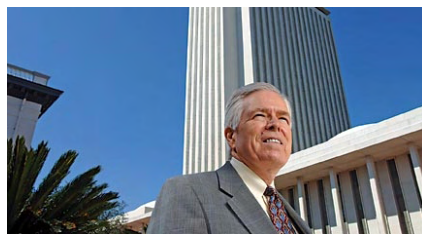
## DRIs: Know when to hold em; know when to fold em

During the 2009 legislative session, two pieces of legislation affecting Florida's Growth Management Laws were passed - SB 360 known as the Community Redevelopment Act and HB 1021 which has impacts on the way traffic studies will be conducted.

Holders of DRI Development Orders in areas defined by SB 360 as Dense Urban Land Areas (or "DULA") instantly have choices created by SB 360. This article is about those choices.

There has been much confusion over what SB 360 does and what it allows to be done. Things that many supporters and proponents of the legislation thought SB 360 did were filtered through the lens of DCA Secretary Tom Pelham, who has issued statements as to what the Department believes SB 360 does and allows local government to do. Secretary Pelham was quick to point out at the 2009 Department's Growth Management Implementation Workshop in late June that SB

360 was his agency's to implement and the agency's interpretation of the act would be given "great deference" by the courts.



Ted Pelham. Image source: Florida Trend

Notwithstanding alternative interpretations or possible legal challenges to interpretations made by the DCA Secretary, issues with regard to SB 360's effect on DRI review are somewhat less confusing, and under almost any interpretation offers DRI developers alternatives worth exploring.

DULAs were designated by the Department and will be areas within 8 of the most urbanized counties in Florida (Dade, Broward, Duval, Hillsborough, Orange, Pinellas, Palm Beach and Seminole) as well as over 200 municipalities.

New Transportation Concurrency Exemption Areas ("TCEAs") are created by the legislation, the immediate effect of which is the removal of state mandated concurrency requirements. Although there are arguments to the contrary, the consensus is that policies establishing transportation concurrency requirements found within local comprehensive plans live on until those policies are changed by the local government. In other words, nothing happens to transportation concurrency until it happens by action of those local governments that qualify for the new TCEAs.

With few exceptions, DRIs within DULAs may be kept by developers, modified or relinquished. DRIs that are under review may be withdrawn from the DRI process and DRI sized projects yet to apply in DULAs need not apply to go through the DRI process - they are exempt. For DRI developers, struggling with the cold reality of these

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## ICSC's Florida Conference offers glimpse into retail industry's future

The International Council of Shopping Centers (ICSC) held it's annual Florida Conference at the Gaylord Palms Resort and Convention Center in Orlando on August 16-18. The conference

The ICSC currently has 60,000 members. Most of which are either brokers, developers, retailers, bankers, or investors. This year's conference boasted about 3,500 attendees.

The ICSC conferences usually host representatives from the area's retail developers, broker's, tenants, and others involved in retail commercial real estate.



Gaylord Palms Resort

On Monday, August 17, five retail experts sat on a panel to present their views on the state of the marketplace.

Moderated by John Crossman of Orlando-based Crossman and Company the panel had much to discuss.

Manny De Zarraga, executive managing director of Holliday Fenoglio Fowler LP of Orlando, observed that while credit remains frozen largely to banks' reluctance or inability to fund deals, other lending sources are stepping forward. They are offering loan to value ratios as high as 75 percent.

Kim Lopdrup, President of the Red Lobster division Darden Restaurants said that retailers need to open locations in realistic developments, that stand a chance against being completed.

Seth Layton, Vice President of Asset Management with

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## Nye Commercial Advisors featured listings

Nye Commercial Advisors full properties list is also available at: [www.nyecommercial.com](http://www.nyecommercial.com)

Page 3 of this journal lists the Nye Commercial Advisor's contact information.



**Nyecor Center.**  
Sale or lease, \$13 per square foot. Located within a Publix center. Zephyrhills, Florida.



**Hunter's Green building.** Excellent location for medical, dental, or other office. Motivated owner. Sale or lease.



**Downtown Zephyrhills bank building.** About 10,000 SF available for lease, \$12 NNN. Top floor is fully leased.



**Hay Rd. and 54.** High growth area in Wesley Chapel. Great for church or school; 24 acres. Sale.

**Nye Commercial Advisor's currently has three CCIMs, four ICSC members, one ALC, and one ALC candidate.**

## Commercial real estate designations explained

CCIM, ICSC, ALC, SIOR; an alphabet soup that looks official but what does it mean? In any industry, there are affiliations and designations that assist the consumer in identifying the professionals who dedicated themselves to experiences, education, and market knowledge in their field. It's comforting to see the CPA on the tail end of an Accountant's name or the MD associated with a Physician. Commercial Real Estate is no different and it makes sense to align with professionals who have committed to obtain the highest level of knowledge, ethical standards, and access to the latest tools in the industry.

For example, a Tenant looking for retail space should seek a local representative who is a member of the International

Council of Shopping Centers (ICSC). ICSC provides a network of owners, landlords, and tenants who meet multiple times a year throughout the country to make deals and share information. Landlords and shopping center owners also should be sure to hire Leasing Representatives who are affiliated with ICSC.

For a land seller, investor, or developer, it is a good idea to work with a Broker who is an Accredited Land Consultant (ALC). ALC is the designation approved by the Realtors Land Institute for professionals who have met certain requirements, including \$5 Million dollars in transaction volume. The Institute also ensures that the ALC's have demonstrated competency in tax savings and 1031 exchange strategies.

Said to be equivalent to a Masters Degree in Commercial Real Estate, the CCIM (Certified Commercial Investment Member, [www.ccim.com](http://www.ccim.com)) designation is the most coveted throughout all segments in the industry. In fact, only 6% of Commercial real estate professionals have obtained the designation. Also, CCIM designees have access to state of the art demographic models, traffic counts, and mapping systems that provide accurate information to aid in making critical business decisions and comparing alternatives.

Please contact Nye Commercial Advisors with any questions you may have regarding Commercial Real Estate. Our office currently has three CCIM's, four members of ICSC, one ALC and one ALC candidate.

**Important logos to look for when dealing with a commercial real estate agent or broker:**



Certified Commercial Investment Member



Urban Land Institute



International Council of Shopping Centers



Accredited Land Consultant



Florida Gulfcoast Commercial Association of Realtors, Inc.



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Lutz, FL 33559  
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A full service commercial real estate brokerage firm.

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[www.nyecommercial.com](http://www.nyecommercial.com)

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Rose Layton, *Property Management and Leasing*

Bill Nye, CCIM, CRS, *Broker*

Tom "Mobile Home" Parks, *Income Properties*

Shannon Shafer, *Sales and Marketing Coordinator*

Beth Shaw, *Leasing Specialist*

## Nye Commercial Advisors successfully leases John Deere building; recent transactions

Nye Commercial Advisors is proud to announce the recent lease of the former John Deere building located at 10205 US Highway 301 in Dade City. The 5,000 square foot facility was leased for three years to Metal Structures, LLC. Owners Joe McDede and Bill Vanlaarhoven will use the facility to manufacture and sell custom, environmental friendly all steel buildings.

Another lease completed by Nye Commercial Advisors during this quarter was

1,200 SF leased to children's shoe store Little Feet in the Seven Oaks shopping plaza,

Located on State Road 56 in Wesley Chapel. Scott Hileman, CCIM, ALC, and Beth Shaw of Nye Commercial Advisors represented the landlord in this transaction.

Scott Hileman, CCIM, ALC and Beth Shaw of Nye Commercial Advisors leased 2000 SF in Seven Oaks Plaza to

Insight.

Scott Hileman, CCIM, ALC represented the owner in leasing approximately 1,500 SF in a Hunter's green building to Gigante Productions, a photography studio.

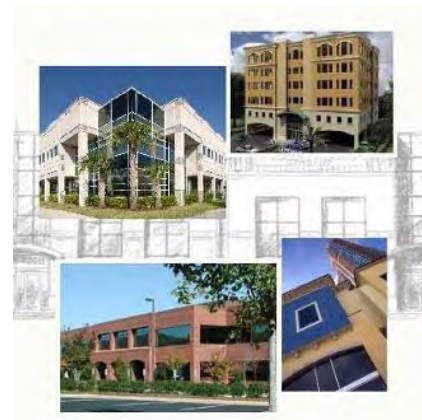
For more information on how to lease or sell your commercial property contact Nye Commercial Advisors at the number listed above. We look forward to working with you!

## Options for commercial property owners; make a plan

A commercial property owner falling behind on loan payments has a few options when making decisions on how to move forward with their investment. Whether the underlying asset is an office condo, a retail strip center, apartment complex, or any other commercial property, there are available techniques that may make life easier for "upside down" property owners.

Under today's stricter guidelines that many lenders are enforcing, most property owners are in a difficult situation with under performing assets. There is approximately \$155 Billion of commercial debt coming due by 2012, and over 60% will not qualify for refinancing. Although much of this debt has been attributed to the Commercial Mortgage Backed Securities brought into the system in the last five years, much lies in bank portfolio loans. The banks were forced to get into riskier deals as they couldn't necessarily attract the prime properties when competing with the

CMBS market. However, most banks have chosen to look to workouts or restructuring loans as opposed to immediate foreclosure.



From a borrower's perspective, the information is important when analyzing the available options. Most banks have a few critical objectives when it comes to their portfolio loans. First of all, the bank will

look to full recovery of principal and interest. If the loan is currently "performing", typically defined as less than 60 days delinquent, the lender will be more amicable to a proposed restructuring, as it is important for the lenders to keep the loans classified as performing. The borrower may obtain restructuring which can include forbearance, an extension, or re-amortization. The critical elements are that the borrower has an open line of communication with their lender and comes to the bank with a plan. Keep in mind it is in the bank's best interest to have the loan classified as performing. A key phrase to include in written correspondence to the lender is that the loan is in "imminent default". The legal term is a trigger that will often illicit a response.

Sitting on a non performing commercial property is not a position anyone would like to be in. However, current market conditions are forcing all parties to work together. There are solutions, but get informed on the market and make a plan.

# DRIs: Know when to hold em; know when to fold em

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For DRI developers, struggling with the cold reality of these economic times, these options should be carefully evaluated. It may be worth the time and expense to reanalyze existing transportation mitigation requirements, either within the DRI regulatory framework or outside the burdens of that framework.

The legislature provided one more tool to factor into these evaluations – HB 1021. HB 1021 is a bill which traveled well below the radar screen which was lit up with controversy over SB 360. HB 1021 deals with, among other issues, the scale of transportation mitigation that can be properly assessed to development.

Among the provisions of HB 1021 that need to be closely scrutinized for their effects on transportation mitigation costs are the new, clear definitions of what a backlogged facility is. It has long been law that a DRI is only responsible for its “proportionate share” of the improvements required to the transportation system, not for the additional cost of reducing or eliminating backlogs.” Now we have a clear expression by the legislature as to what a “backlog” is: “backlog means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing trips, plus additional projected

background trips from any source other than the development project under review that are forecast by established traffic standards, including traffic modeling...”

What does this new definition mean? Potentially, expensive costs assessed to a project as part of its proportionate share to expand backlogged facilities may be reduced or in some cases eliminated. How does this work? Here’s an example.

XYZ DRI has 20% of its traffic distributed on ABC highway, a four lane divided arterial which is operating below its desired level of services. Current methodology causes an improvement to ABC highway to be triggered, adding a 5<sup>th</sup> and 6<sup>th</sup> lane to accommodate XYZ’s traffic at the desired level of service. XYZ is charged a share of that fix as part of that proportionate share calculation.

Under the new backlog definition, ABC is a backlogged facility. Since, by law, XYZ DRI is not required to reduce or eliminate backlogs, two interpretations seem plausible. First, because the 5<sup>th</sup> and 6<sup>th</sup> lanes are already required to fix this backlogged facility, the DRI may not be required to pay a proportionate share for those improvements. A second plausible alternative interpretation could be XYZ DRI is only responsible for not making ABC Highway worse than its current backlog status, meaning XYZ DRI can propose capacity improvements to maintain the volume to capacity ratio (V/C ratio) rather than a share of the 5<sup>th</sup> and 6<sup>th</sup> lanes to “fix” ABC Highway and raise it to the desired

levels of service.

Putting dollars and cents to this equation, let’s assume the 5<sup>th</sup> and 6<sup>th</sup> lane improvement to ABC Highway costs \$80 million and XYZ’s share is 20% or \$16 million. Let’s also assume that by extending acceleration and deceleration lanes at the project and adding left turn lanes at two nearby intersections maintain the V/C ratio. The cost for these intersection and access improvements are \$6 million to allow no further degradation of the backlogged facility. 100% of the \$6 million is much less than 20% of \$80 million. The potential savings could be \$10 million of proportionate share dollars or \$16 million if no contribution to the backlogged facility is required.

SB360 and HB 1021 demand that a prudent DRI developer consult his legal counsel and transportation consultants to evaluate whether these new laws offer opportunities to reduce his project’s transportation mitigation requirements. This is especially true based on the current, substantially lower growth projections as compared to those that have been assumed in the past.

**Contributed by: Biff Craine, Bricklemyer Smolker & Bolves, P.A.**

## ICSC’s Florida Conference offers glimpse into retail industry’s future

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Sembler Company commented on a popular sentiment at the conference commenting that discount retailers are faring better than most during the recession. For example Beall’s Outlet, Dollar Tree, HH Gregg, and Nordstrom Rack are cautiously expanding.

Seth Layton of Sembler Co., commented, “You’re going to see people being more receptive to Wal-Mart.” This is in direct contrast to the previous protests amongst communities that Wal-Mart wanted to move in to.

Betsy Trobaugh, Director of the Miller School for Retailing at the University of Florida commented that indoor malls, once considered a dying breed, are making a comeback. She advised mall owners and operators to bring back the traditional feel of indoor malls by providing free wireless Internet service and enhanced seating. She also rec-

ommended bringing back fashion shows and working with local organizations.

Later at the conference ICSC’s CEO Michael Kercheval said the government must repair the capital credit markets. They must also improve liquidity for the

**“We have to get the capital markets working again.” Michael Kercheval, CEO, ICSC**

retail real estate industry to see improvement.

“The retail industry is experiencing one of the worst economic downturns in more than 50 years. If there’s no money, nothing else matters. We have to get the capital markets working again,” said Kercheval.

The ICSC is currently lobbying for changes to the federal tax code. This would allow issuers of commercial mortgage-back securities to extend commer-

cial real estate loans without facing a tax penalty. The ICSC is also urging state governments to relax the capital requirements that banks have to meet on performing commercial real estate loans.

Also during the conference ICSC released it’s report for Florida’s 2009 retail sector. According to this report the Florida retail industry will begin to see recovery once the broader economy recovers. That should be anywhere from 2011 to 2014.

Also at the conference, there were several break out discussions regarding retailers who are still expanding. Paul Ajdaharian of the Simon Property Group was the moderator. These retailers included Yum! Brands (KFC, Taco Bell, Pizza Hut, A & W, and Long John Silver’s), Pollo Campero, Big Lots, Aldi, McDonald’s, and Goodwill. As noted earlier all of these concepts offer deep discounts or lower prices to their customers.

Overall the industry’s professionals remain optimistic in the face of a very tough market.