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One stop shopping and if you need a pine tree air freshener, that's okay too

ek Ellen Kresback



Sutton Land
Title Agency

Over the past several months, Sutton Land Title Agency, a Sutton Alliance company, has underwritten and closed on more than a half dozen Walgreens and Advanced Auto Parts sites for owner/developer Louis Silverman, as represented by Richard Liebman of Herzfeld & Ruben P.C. Some of these transactions were acquisitions with simultaneous financing, while others were financings of recently acquired sites. The transactions were all similar in nature, and therefore presented Sutton with similar issues.

A retailer that is not space sharing in a strip mall with a traditional anchor, such as a supermarket, utilizes different tools when assessing the adequacy of the placement of a site. Since other retailers or occupants which may attract or

repel potential shoppers are not a concern, analyzing of market saturation, proximity to competitors, lease terms, percentages, TOC, or CAM charges are all factors scrutinized by both prospective acquirers and lenders engaged in assessing the relative merits of stand-alone retail sites.

Being situated on the corner lot of a main thoroughfare that is not a divided highway, but a four-way intersection is preferred. The adequacy of the site's parking, as well as access, ingress and egress to and from the site, are key elements to positive income streams, particularly for stand-alone retailers. Simply put, if the consumer cannot find the entrance to the site or has trouble accessing the lot, and once in the lot can't find a parking space, the consumer is lost to another retailer.

Lending officers and owner/operators analyze traffic attenuation, zoning and parking. What a seasoned title representative does on behalf of its clients is anticipate the need for zoning and parking coverage for this type of transaction, and is pro-

active in obtaining municipal letters, surveys or PZR's that meet the standards for risk review. The title company can and should facilitate the issuance of this important coverage to both the acquirer and the lender, where legally allowable, by defining early in the process for its clients what is needed, and to provide it where appropriate, so the client can focus on the transaction.

The affirmative assurance that is issued by title companies is known as a zoning 3.1 with parking endorsement. This endorsement, which is considered a special risk endorsement, provides both owners and lenders with comfort that the site meets the local zoning requirements to operate for its intended purpose, as well as to provide assurance that the parking is adequate as defined in the zoning ordinances.

How do insurers underwrite this risk? Practices differ from jurisdiction to jurisdiction, but there are accepted standards. The title representative is to be provided with a survey that meets the standards necessary to underwrite the risk. Delimiting the striping of the park-

ing spots and curb cuts are two of the criteria for a survey. A current municipal letter that meets acceptable standards is also required in the absence of a CO. We sometimes require zoning opinion letters issued by independent counsel. At other times, we may instead rely upon PZR's (planning and zoning reports) issued by independent companies who collect the zoning and parking data and compile it into a report and certify it as to accuracy.

If the buyer, lender and title underwriter have all performed their duties in a coordinated manner, we can be relatively confident that the consumer will not only find the entrance to the site, but will find a parking spot too—and can easily buy a pine tree air freshener, get a prescription filled or make that impulse purchase that only a satisfied, happy consumer is likely to make.

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