

COVENANTS, CO-TENANCY CLAUSES AND MORE

Hartman Simons' partner, [Jeremy Cohen](#), catches up with GlobeSt.com at ICSC's RECon event to discuss three key factors at play when developing a center from a retail standpoint.



Hartman Simons & Wood LLP held their party last month at the Chateau nightclub at the Paris Hotel and GlobeSt.com caught up with firm attorney [Jeremy Cohen](#) to discuss three key factors at play when developing a center from a retail standpoint.

"The first is use covenants," he tells GlobeSt.com. "If you operate a Hobby Lobby that sells crafts, you want to be the only craft store in a development. However, what if T.J. Maxx, a retailer that sells some similar items, wants to come in? While a certain retailer wants to be the only one of its kind, there's also the issue of filling up space which is becoming harder and harder since retailers are going away. Basically, you need to find a way to get everyone to place nicely together in the sandbox."

He pointed out that the second factor is co-tenancy clauses. How do you fill up a center when more and more retailers are filing for bankruptcy and the number of big box stores is shrinking? "You must ensure you have a center that draws traffic. In the case of MidCity, a new \$350-million mixed-use project in Huntsville, Alabama, they haven't seen a lot of co-tenancy clauses because they are bringing in retailers that stand on their own." Also, he adds, "retail centers need to be more creative and unique and incorporate entertainment options such as Topgolf and Dave & Buster's."

The final factor is negotiating prohibitive use provisions, according to Cohen. "Years ago, retail centers didn't want medical offices, health clubs or movie theaters—you just couldn't add them. But today, it's OK. The more prohibitive uses, the harder it is to get customers to a center. Those old retail pariahs are now actually the businesses that are drawing customers to centers."

About Hartman Simons & Wood LLP

Based in Atlanta, Hartman Simons & Wood LLP, one of the nation's leading commercial real estate law firm, is respected for its integrity, experience and value-driven results. Businesses of all sizes count on its team of attorneys and paralegals for sound, practical and effective legal solutions.

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