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TOP STORY

Responding to the Credit Crisis

Since passage of the Emergency Economic Stabilization Act of 2008, ICSC has been working with major real estate groups to encourage the Department of the Treasury, the Federal Reserve, the Securities and Exchange Commission (SEC) and Congress to consider commercial real estate concerns as they work to address market volatility. Specifically, ICSC supports the Treasury's urging of banks participating in the Troubled Asset Relief Program to extend performing commercial loans. ICSC also believes the Treasury should consider changes to the regulations to allow Real Estate Mortgage Investment Conduits (REMICs) to modify terms of commercial mortgages, including extending maturity dates and related changes to interest rates, covenants or even principal amounts. Additionally, ICSC has asked the Treasury, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve to consider using the authorization for a Term Asset-Backed Securities Loan Facility (TALF) to improve conditions for the commercial mortgage-backed securities (CMBS) market.

Sales Tax Fairness Efforts Continue

With state and local governments and community-based businesses feeling the impact of the economic downturn, increasing attention is being focused on the loss of sales tax revenue from Internet purchases. For more than a decade, ICSC has been advocating Internet Sales Tax Fairness and expanded state adoption of the Streamlined Sales and Use Tax Agreement (SSTUA) to level the playing field for online retailers and "brick-and-mortar" retailers. ICSC is further increasing its efforts on this issue at the state and federal levels and is cosponsoring an update to the 2001 landmark University of Tennessee study regarding the loss of Internet sales taxes to communities.

Continuing Concern Over Green Building Mandates

During the 2008 GreenBuild Conference, ICSC met with staff from the host U.S. Green Building Council to present concerns over the growing trend to impose "Leadership in Energy and Environmental Design" (LEED) building standards at the state and local level. Although created as a voluntary program for improving sustainable practices in construction and building operations, numerous state and local governments are mandating LEED in some form. This approach often ignores the need for local involvement in designing building codes and the significant gaps in LEED coverage. For more information visit http://www.icsc.org/srch/government/briefs/200810_leedtalking.pdf.

Recently, the Virginia Governor's Commission on Climate Change began considering a recommendation that the state require all commercial buildings – regardless of size – to meet LEED (or equivalent) standards. The commission noted that Virginia policy should match that of neighboring jurisdictions such as Washington, DC – yet another example of the state-to-state consideration of LEED standards throughout the country. Several ICSC members are scheduled to testify at a public hearing on the issue later this month.

ICSC Submits Comments on EPA Clean Air Act Proposal

ICSC recently presented comments on an Environmental Protection Agency (EPA) document known as an "Advance Notice of Proposed Rulemaking." Following a Supreme Court decision in the case Massachusetts v. EPA that dealt with potential federal regulations to control tailpipe emissions from motor vehicles, the EPA issued hundreds of pages of documents and analysis seeking public comments on the possibility of using the existing Clean Air Act's provisions to regulate carbon dioxide (and other greenhouse gas emissions) from all segments of the US economy – not just cars and trucks (directly covered by Section 202 of the Clean Air Act) but also airplanes, ships, power plants, industrial facilities and commercial property – including retail and restaurant properties.

This breathtakingly ambitious proposal was presented as the first step in a process that could eventually impose regulations to reduce the amount of greenhouse gases emitted by up to one million commercial properties in America. ICSC responded to some concerns that are specific to retail real estate but also presented objections to having any federal Agency leap so far ahead of what elected officials intended when they passed the Clean Air Act and its subsequent amendments.

ICSC Defends Bankruptcy Provisions Protecting Retail Landlords

In September, a key Congressional Subcommittee held a hearing to examine an important provision in the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) that ICSC spent seven years negotiating. Although ICSC was not invited to testify during the hearing, Joyce Kuhns, Esq., partner at Saul Ewing LLP and member of ICSC's Bankruptcy Task Force, provided written testimony on behalf of ICSC that was submitted into the record.

Under BAPCPA, landlords have more control over how leases are handled during the bankruptcy process. ICSC remains concerned that any revisions to the Bankruptcy Code will include efforts to undo the provisions that preserve the appropriate balance between the interests of nonresidential lessees and lessors in Chapter 11 reorganizations. The ICSC Bankruptcy Task Force examined the potential threat to the provisions at the Government Relations Leadership meeting in Chicago last month and discussed strategies for protecting the hard fought provisions, including educating Judiciary Committee members through meetings with local shopping center owners in their Congressional districts.

Gaining Ground in the Fight Against "Card Check" Legislation

As the New Year approaches, ICSC is continuing efforts to defeat the Employee Free Choice Act (EFCA) in the Senate. This proposed legislation would dramatically shift U.S. labor law by removing the private ballot process from union-organizing campaigns (replacing it with "card check") and initiating mandatory government contract arbitration. During the 2008 election cycle, the Coalition for a Democratic Workplace (of which ICSC is a founding member) placed television ads in key Senate race areas to educate voters about the issue. In addition, the Coalition recently released an open letter to President-elect Barack Obama regarding the importance of the secret ballot during his successful election, as well as print ads describing the economic impact of the anti-worker EFCA. These efforts appear to be working as many Democrats seem increasingly uncomfortable with EFCA and have begun asking for compromise legislation. It remains critical, however, that we remain focused on defeating this ill-conceived legislation.

New Jersey Members Lobby for Tax Reform and Economic Development Incentives

ICSC members in New Jersey are continuing to partner with civic, business, economic, smart growth, planning, labor and redevelopment organizations to proactively advance a legislative package aimed at improving the state's business climate, creating jobs and encouraging smart growth development. The legislation, under consideration by the State Senate, would expand the Urban Transit Hub Tax Credit (S 2379), increase availability of redevelopment funds and authorize special assessments for environmental clean-up (S 2299). Two additional ICSC priorities awaiting final legislative approval include a tax reform bill that would bring New Jersey in full compliance with the Streamlined Sales and Use Tax Agreement (SSUTA) and a bill to establish a state retail theft task force (which includes ICSC as a participating member). Both measures are expected to be approved by the Senate and Assembly before the December 15 recess.

County-Mandated Security Camera Ordinance Deferred In Florida

A sweeping security camera mandate in Broward County, Florida, aimed at retail parking lots was recently deferred by the county commission. The proposal would have required that parking areas in all county retail establishments be monitored 24/7 by security camera video systems and that video systems be capable of retaining images for a minimum of 30 days. ICSC was part of the county commission task force reviewing the measure and represented the concerns of the shopping center industry on proposed compromise language. ICSC believes the issue may re-emerge in Broward County and other jurisdictions in 2009.

California Study Finds Improved Energy Efficiency in Commercial Buildings

ICSC continues to work with the California Business Properties Association (CBPA) and other organizations to ensure that regulations developed to enforce California's landmark greenhouse gas law (AB 32) reflect realistic retail practices. Passed in 2006, AB 32 requires all businesses operating in the state to greatly reduce the emission of greenhouse gases (primarily carbon dioxide released from burning coal, oil or natural gas) over the next few decades. ICSC was one of the sponsors of a study to help the state accurately model and identify appropriate energy consumption baselines. The study concluded that California's commercial, industrial and retail builders have greatly reduced their environmental impact by increasing energy efficiency and lowering greenhouse gas emissions. According to the study, the average commercial building has increased energy efficiency by 43% since 1978 when the first energy standards were adopted in California. The study, which tested California properties across six climate zones, also found that retail properties are 17% more energy efficient than those constructed in 1990 and 35% more energy efficient than those built in 1978.

Alliance Advisory Task Force Addresses Importance of Retail Development

In response to the growing number of cities cutting funding for retail economic development, the Alliance Advisory Task Force and ICSC Research Scholar David Wallace (former mayor of Sugar Land, Texas) recently developed an editorial piece for distribution to the media and government organizations. "Retail Economic Development Should Not Be A Day Trading Philosophy" details the critical role that retail plays in the collection of sales tax revenue, which ultimately funds public services such as fire, police, street repairs, etc. For more information, visit http://www.icsc.org/srch/government/briefs/200812_economicdevelopment.pdf

Government Relations Leadership Meeting

In November, ICSC members convened in Chicago for the annual Government Relations Leadership Meeting. Approximately 150 members attended the event, which featured updates on new and ongoing legislation and the impact of the recent elections on the shopping center industry. The next annual Government Relations event will be the **2009 Strategic Leadership Summit on March 17-18** in Washington, DC. The summit serves ICSC's "Day at the Capitol" event and gives members the unique opportunity to visit Congress to lobby on behalf of the industry.