



# WEINBERG LAND USE FORUM

# NEWS

www.hf-law.com

## WINTER 2009

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*This publication may describe some of the legal matters that the attorneys of Hirschler Fleischer have worked on in the past. Of course, case results depend upon a variety of factors unique to each case and case results do not guarantee or predict a similar result in any future case undertaken by a Hirschler Fleischer attorney.*

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## General Assembly Update

BY: M. SETH GINTHER, ESQ.

The Virginia General Assembly reconvened in Richmond on Wednesday January 14, 2008 for a "short" 45-day session. Front and center on the legislature's agenda this session will be tackling the approximately \$3 billion budget deficit. In addition to budget-related negotiations, the following land use related bills will be on legislators' radar screens:

**HB2408 Community development authorities.** Makes comprehensive changes to provisions related to the creation and operation of community development authorities (CDA). Changes include codification of the current practice of altering the boundaries of a CDA under certain circumstances and clarification of the process for creating a CDA if it is located wholly or partly within a town (sponsored by Delegate Frank Hall (D)).

**SB 1064 Posting of comprehensive plans.** Provides that a local planning commission shall post a comprehensive plan or part thereof that is being considered for recommendation or that is approved by the commission on a website maintained by the local planning commission and available to the public. This bill further provides that a governing body shall post any comprehensive plan or part thereof that is certified to the governing body or approved by a governing body on a website maintained by the governing body and available to the public (sponsored by Senator Toddy Puller (D)).

**SB 768 Conditional zoning; impact fees.** Replaces the current cash proffer system with a system of impact fees. This bill was continued to the 2009 Session of the General Assembly (sponsored by Senator John Watkins (R)).

**HB 648 Lease of development rights program.** Tasks the Office of Farmland Preservation to create a lease of development rights program. Under such program, properties of 20 acres and larger and that are enrolled in "land use" taxation programs, would be eligible to participate in a lease of development rights program whereby the property owner relinquishes "by right" development for at least seven years in exchange for a contractually agreed upon lease amount (sponsored by Delegate R. Lee Ware (R)).

**HB 2332 Enterprise zone economic incentive grants.** Increases from \$50,000 to \$100,000 the minimum amount of investment required to be made in the rehabilitation or expansion of a building in order to be eligible for an enterprise zone incentive grant, and increases from \$250,000 to \$500,000 the minimum amount of investment required to be made for new construction in order to be eligible for an enterprise zone incentive grant. The bill would provide that any investor making \$5 million or less in qualified real property investment in a building would be allowed a maximum of \$100,000 in enterprise zone incentive grants within any five-year period for such building (the current maximum is \$125,000). The bill would provide that any investor making more than \$5 million in qualified real property investment in a building would be allowed a maximum of \$200,000 in enterprise zone incentive grants within any five-year period for such building (the current maximum is \$250,000). The bill also makes technical changes (sponsored by Delegate Clarence Phillips (D)).

Continued on page 6

# What to Expect

# WHEN YOUR COMMERCIAL

**H**irschler Fleischer has significant experience in representing commercial landlords in large-scale bankruptcy cases, including the recent Circuit City, Inc. and Movie Gallery, Inc. cases. The current economic slump has resulted in increased bankruptcy filings by companies and individuals nationwide. In fact, approximately 1.04 million bankruptcies were filed during the fiscal year ending September 30, 2008, reflecting a more than 30% increase in bankruptcies since the fiscal year 2007.<sup>1</sup> With the number of bankruptcies on the rise and showing no signs of abating, many commercial landlords will likely experience a bankrupt tenant within the next several years. This article provides a general overview of some of the issues that a commercial landlord may face when a tenant files for bankruptcy.

## Is there an Existing, Unexpired Lease?

A commercial landlord should first consider whether its nonresidential real property lease with the debtor-tenant was in effect on the date that the tenant filed its bankruptcy petition (a.k.a., the "Petition Date"). If the lease in question expired by its own terms or was otherwise terminated *before* the Petition Date, the debtor-tenant has no further rights in that lease. Thus, despite the tenant's pending bankruptcy, the landlord is allowed to take the necessary steps to retake possession of the leased space and re-let the same to a new tenant. Caution: simply because a debtor-tenant has defaulted on the lease does not mean that the lease has been terminated. Prior to the Petition Date, the landlord must have followed the procedure for terminating the lease pursuant to its default provisions.

## The Automatic Stay

Assuming that the lease is still in effect

<sup>1</sup> *Administrative Office of the U.S. Courts, Bankruptcy Filings Over One Million for Fiscal Year 2008* (Dec. 15, 2008), at [http://www.uscourts.gov/Press\\_Releases/2008/BankruptcyFilingsDec2008.cfm](http://www.uscourts.gov/Press_Releases/2008/BankruptcyFilingsDec2008.cfm)

as of the Petition Date, the debtor-tenant is entitled to the immediate protection of the "automatic stay" provisions of the Bankruptcy Code. The automatic stay prohibits a landlord from: (1) taking action against the debtor-tenant to collect unpaid rent or other obligations that accrued pre-petition; (2) declaring a debtor-tenant in default; and/or (3) initiating eviction proceedings or retaking possession of the leased space. Once a tenant has filed for bankruptcy, a landlord must file a motion with the bankruptcy court in order to get relief from the automatic stay.

## Assumption or Rejection of a Lease

**Timing.** The debtor-tenant is entitled to assume (i.e., continue as tenant) or reject a lease based on its business judgment that continuing or terminating a lease is in the debtor-tenant's best interests. The Bankruptcy Code gives the debtor-tenant 120 days to decide whether to assume or reject the lease. During this period, the tenant can request a 90-day extension to decide what to do with the lease. Courts typically grant these extensions if sufficient cause exists. Any additional extension requires the landlord's consent. If the debtor-tenant does not notify the bankruptcy court of its intent to assume the lease within the applicable time period, the unexpired lease is deemed rejected.

**Rejection of a lease.** If an unexpired, nonresidential real property lease is deemed rejected, the Bankruptcy Code requires the debtor-tenant to immediately surrender the leased premises to the landlord. If the debtor-tenant fails to do so, the landlord must file appropriate motions with the bankruptcy court to recover the leased premises.

**Assumption of a lease.** On the other hand, if the debtor-tenant decides to assume an unexpired lease, it

must satisfy several requirements of the Bankruptcy Code. First, prior to assuming a lease, the debtor-tenant must cure any default that occurred under the lease, or provide "adequate assurance" that the default will be promptly cured. For example, a debtor-tenant is typically required to pay any delinquent rent owed to the landlord in order to "cure" an existing payment default. The Bankruptcy Code does not define "adequate assurance," but usually requires a debtor-tenant to provide evidence that the tenant will be able to promptly cure a default. Second, the debtor-tenant must compensate or provide adequate assurance that the tenant will be able to promptly compensate the landlord for any pecuniary loss resulting from a default under the lease. This type of money loss could consist of attorney's fees, depending on the lease's provisions. Third, the debtor/tenant must provide adequate assurance of future performance under the lease.<sup>2</sup>

The Bankruptcy Code also requires that a debtor-tenant timely perform all of its obligations under the lease after it has filed its bankruptcy petition. Tenants in bankruptcy must continue to pay rent and perform other lease obligations going forward if they intend to continue to possess the leased premises. Failure to do so gives landlords grounds for requesting and receiving relief from the automatic stay to evict a debtor/tenant and retake possession of the leased premises. A landlord may also have an administrative claim in the bankruptcy case for any unpaid post-petition obligations.

## Assignment of an assumed lease.

Once a debtor-tenant assumes an

<sup>2</sup> *These requirements do not apply to a default under the lease relating to (1) insolvency or financial condition of the debtor-tenant; (2) the debtor-tenant's filing of the bankruptcy action; (3) the court's appointment of a trustee or custodian of the debtor-tenant's property/estate; or (4) the satisfaction of any penalty rate or provision relating to a default arising from any failure by the debtor to perform non-monetary obligations under the lease.*

# TENANT GOES BANKRUPT

BY: SHEILA DE LA CRUZ, ESQ. AND MIKE FALZONE, ESQ.

unexpired lease, the tenant may continue to occupy and use the leased space pursuant to the terms of the lease. However, the debtor-tenant can also assign an assumed lease to a third party. The Bankruptcy Code generally allows a debtor-tenant to assign an assumed lease even if the lease itself prohibits assignments.

Before a debtor can assign its lease, the assignee must provide adequate assurance that it will be able to perform its obligations under the lease. If an assignee does not provide such adequate assurance, the landlord may file an objection to the proposed assignment.

**Heightened protections for shopping center landlords.** A debtor-tenant to a shopping center lease must meet several requirements under the Bankruptcy Code before it can assume or assign the lease. The debtor-tenant assuming the lease or a party to whom the lease is being assigned must provide adequate assurance:

- (1) of the source of rent and other consideration due under the lease and the debtor-tenant's or the assignee's ability to pay rent;
- (2) that any percentage rent due under the lease will not decline substantially;
- (3) that the assumption or assignment of the lease is subject to the lease's provisions, including radius, location, use or exclusivity provisions in the lease and will not breach the provisions of any lease, financing agreement, mater agreement relating to shopping center, etc.; and
- (4) that the assumption or assignment of the lease will not disrupt the current tenant mix.

These Bankruptcy Code requirements increase the likelihood that the terms and intent of shopping center leases are satisfied. The heightened protections for shopping center leases also increase the likelihood that landlords will receive

payment under the leases. Interestingly, when amending the Bankruptcy Code, Congress chose not to define what constitutes a "shopping center." Instead, courts must decide on a case-by-case basis after considering the facts presented.

## Landlord's Possible Claims Against Debtor-Tenant

**Pre-petition debts.** If the debtor-tenant failed to pay rent or other monetary obligations owed under the lease before the Petition Date, the landlord may file a claim for that pre-petition debt with the bankruptcy court. Generally, a pre-petition claim falls into the class of unsecured debts, which are paid after all secured debts and priority claims have been satisfied. Thus, it is often the case that the landlord will not receive payment in full by the debtor-tenant for its pre-petition claim.

## Post-petition, administrative expenses.

If the debtor-tenant incurs rent or other monetary obligations after the Petition Date and fails to pay those debts, the landlord may file a motion to compel payment of these obligations. A landlord claim arising from a debtor-tenant's initial assumption of a lease and subsequent rejection of the same lease is also considered an administrative expense claim. Generally, the debtor-tenant must pay administrative expenses before paying unsecured claims.

**Lease rejection damages.** If the debtor-tenant rejects an unexpired, nonresidential real property lease, the landlord may file a lease rejection claim. Most rejection claims also fall in the unsecured claims category. In addition, the Bankruptcy Code caps lease rejection damages to include only unpaid rent generally due as of the Petition Date, plus the greater of: (1) one-year's worth of rent; or (2) an amount constituting 15% of the remainder of the lease, which remainder cannot exceed three years.

# HOLD THE DATE!

## ANNOUNCEMENT OF NEXT WLUF:

### The Bankrupt Tenant – Now What?!

Join us for a discussion regarding creditor rights issues in commercial leasing.

Monday, March 2, 2009  
at 5:15 p.m.

Westwood Club  
6200 West Club Lane

Cocktails and hors d'oeuvres to follow

## Conclusion

Commercial landlords face potential complications when dealing with a bankrupt tenant. Landlords can best protect themselves in such a situation by consulting with their attorneys early on in the bankruptcy and by closely monitoring the debtor-tenant's bankruptcy process. By doing so, landlords have the best chance of receiving rent and other payments owed to them by the debtor-tenant and invoking the protections of the Bankruptcy Code when needed.

# Appealing YOUR REAL ESTATE TAXES

## Navigating The Process And Avoiding Traps For The Unwary

**R**eal estate taxes are important to both property owners and the localities in which their properties sit. For owners, real estate taxes occupy a major line item on their expense ledgers. For localities, real estate taxes are a primary source of revenue. In these challenging economic times, property owners are trying to limit expenses, whereas localities are searching to find revenues wherever they can.

Virginia law does, however, provide property owners with a number of rights in regard to their property assessments, as well as a variety of mechanisms for enforcing those rights. Now, more than ever, property owners should critically examine their property assessments and participate in the available appeal processes in an effort to bring the assessed values of their properties in line with market realities. Hirschler Fleischer has experience in all aspects of the tax appeal process, from negotiating informally with the Assessor's Office to trying tax appeal petitions before the Circuit Court. Our lawyers are available to advise and advocate on your behalf at every step along the way.

The Virginia Constitution requires that all assessments of real property must be at fair market value. The Constitution further commands that all assessments be uniform in their application with respect to the same class of subjects within the jurisdiction. Localities often point to the uniformity provision of the Constitution in an effort to justify their assessment of a particular property. The Virginia Supreme Court, however, has made clear that, while the standard of uniformity set forth in the Virginia Constitution may entitle a taxpayer to a reduction in an assessment below fair market value if that is how properties are uniformly assessed in the jurisdiction, uniformity will never justify an assessment greater than fair market value.

Although many jurisdictions have different assessment cycles, in the City of Richmond and the Counties of Chesterfield, Hanover, and Henrico, property is assessed each year, as of January 1. By law, if there is a change in a property's assessment, the locality must provide notice to the property owner. If the owner feels that its assessment is greater than market value or that the property has been assessed out of line with neighboring parcels, there are three basic options for contesting the assessment. The first, and least expensive, step is an appeal directly to the Assessor's Office. The second step is an appeal to the local Board of Review or Board of Equalization. The third and final option is a petition to the Circuit Court for the jurisdiction in which the property is located. The appeal process is not uniform, but instead varies from jurisdiction to jurisdiction. Therefore, it is important to be familiar with the appeal procedures in the jurisdictions in which you own property, as there are many traps for the unwary that can jeopardize your ability to appeal your assessment successfully.

### The "Office Review"

The first, and least formal, means of challenging an assessment is to file an appeal directly with the Assessor's Office. While our firm often assists clients at this stage, it is not required that the property owner have counsel in order to participate. The "Office Review" stage generally begins with the submission of a short appeal form to the Assessor with a statement of why the property owner believes the assessment is wrong. There is no formal hearing at this stage, but rather an informal dialogue between the property owner and the Assessor's Office. The Assessor will consider income and expense data, comparable sales, or other information submitted by the property owner, and may also inspect the property. As initial assessments are typically the product of a "mass appraisal" in which

the unique characteristics of a particular property may be overlooked, the Office Review is a good opportunity to provide the Assessor with specific information about your property.

### The Board of Review/Equalization

The Board is comprised of at least three citizens of the jurisdiction. By statute, at least one-third of its membership must be real estate professionals, who must be present for all commercial appeals. As with the Office Review, the process begins with the filing of a short appeal form, along with supporting documentation, with the Board. The Board typically convenes for a set period and conducts hearings only in regard to properties for which appeal forms were timely filed. Board hearings are not as formal as a court proceeding, and counsel is not required. It is often advisable, however, for a property owner to be accompanied by an appraiser, counsel, or both, and we appear frequently before Boards of Review and Equalization on behalf of our clients. As the Board is an extension of the Circuit Court, its proceedings are under oath, and all participants are sworn in at the outset of the hearing.

### The Circuit Court Petition

Section 58.1-3984 of the Code of Virginia provides that "[a]ny person assessed with local taxes, aggrieved by any such assessment, may . . . apply for relief to the circuit court of the county or city wherein such assessment was made." The case is heard by the court, without a jury, and the parties have the opportunity to conduct written discovery and take depositions to support their cases. For corporate property owners, representation by counsel is required, and such representation is recommended for all parties to a Circuit Court petition. It is also essential at the court stage to engage an appraiser to testify as an expert witness concerning

# X ASSESSMENT:

BY: JOHN R. WALK, ESQ. AND ANDREW P. SHERROD, ESQ.

the value of the property and any flaws in the assessment. Such testimony is vital because the law provides that the burden of proof is on the taxpayer to show that the property is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal. Thus, in court, it is important to have counsel who understands the legal standards, as well as an expert appraiser to testify as to the value of the property. If the court reduces the assessment, it can order a refund of any taxes erroneously paid, along with interest at the rate the locality charges for delinquent taxes (typically 10%). Hirschler Fleischer has tried many of these cases and has several set for trial in 2009.

At each level of the tax appeal process, pitfalls await in the form of administrative deadlines, statutes of limitations, and other requirements. It is essential to be aware of the procedures in your jurisdiction and to follow them closely.

## Know and Meet Administrative Deadlines

At both the Office Review and Board of Review/Equalization stages, it is important to lodge your appeal in a timely manner in order to gain access to the process. Deadlines for Office Reviews and Board Appeals are typically established by ordinance and thus vary from jurisdiction to jurisdiction.

In the City of Richmond, Section 98-49 of the City Code requires the assessor to hold hearings as often as may be necessary between January 15 and March 15 each year for the purpose of receiving evidence from taxpayers with respect to the inequality of the assessments made of their real estate. The City Assessor's Office will, however, set a cut off for submitting Office Review applications, which may be earlier than March 15. For example, the deadline for Office Review appeal submission for the 2008 tax year was February 29, 2008. The deadline for Office Reviews for the 2009 tax year has not yet been established, but should be set forth on

the assessment notices for 2009, which will be mailed soon if they have not been mailed already. The Assessor will also post a schedule on its website. The deadline for submitting a Board of Review appeal is June 30, 2009. In the City of Richmond, there is no requirement of a prior appeal to the Assessor. A property owner is free to appeal directly to the Board.

In the County of Chesterfield, March 15 is the deadline for filing written protest to the Assessor. If the property owner wishes to pursue a request for relief with the Board of Equalization, the deadline for doing so is April 15. In Chesterfield, filing an appeal with the assessor is a prerequisite to pursuing a Board of Equalization appeal. Furthermore, the Chesterfield County Code makes review by the Board of Equalization a *prerequisite* to filing a Circuit Court petition. Thus, in Chesterfield, it is critically important that the administrative deadlines be met.

In Hanover County, the Office Review stage is rather informal. According to the Assessor's website, during the assessment review period in January, any property owner can contact the Assessor's Office to discuss their proposed assessment, at which time the property will be re-evaluated. According to Section 22-43 of the Hanover County Code, property owners must file applications for relief from reassessment with the Board of Equalization no later than March 15 of the applicable tax year. As March 15 falls on a Sunday this year, however, the Assessor's website notes the deadline as March 13.

In Henrico County, which has adopted the County Manager Form of Government, the key deadline is April 1, which is the date by which appeals to the Board of Real Estate Review and Equalization must be filed pursuant to Va. Code § 15.2-619. According to the Department of Finance--Real Estate Assessment Division's website, prior to filing a Board appeal, a property owner may request that the Assessor's Office complete a review of the assessment and a property inspection. No specific deadlines are stated,

and it is our experience that the process is an informal one that may be undertaken any time prior to the Board deadline of April 1. Significantly, the statute implies that in Henrico County, due to its unique form of local government, filing a timely Board appeal is a prerequisite to pursuing further relief to the Circuit Court.

## Dot your "I's and Cross your "T's on Appeal Forms

The Office Review and Board of Review/Equalization processes are typically initiated by filing appeal forms created by their respective offices. The forms are available from the offices directly and can often be found on line. Be sure to fill out the forms completely, as incomplete applications may be rejected. Also, if your property encompasses multiple tax parcels, be sure to submit separate application forms for each parcel.

## Do Not Ignore Income-Expense Requests for Income Producing Properties

Localities have the authority under Section 58.1-3294 of the Virginia Code to require owners of income producing properties to submit income and expense data. Localities often use this authority to survey property owners for income and expense information. It is important that such surveys be completed accurately and submitted to the locality in a timely manner, for the Code provides that the failure to furnish a statement of income and expenses as required bars the owner from introducing into evidence, or using in any other manner, any of the required but not furnished income and expense information in any Circuit Court petition.

## File your Circuit Court Petition on Time

The general statute of limitations for filing a petition to the Circuit Court is set out

*Continued on page 8*

# Jurisdictional UPDATES

## THE TOWN OF Ashland

The Town's Comprehensive Plan update process continues. Urban Partners of Philadelphia has completed an Economic and Demographic Analysis as part of the Comprehensive Plan update process. The Town has engaged Renaissance Planning Group of Charlottesville to assist with the update process. At the suggestion of Renaissance Planning Group, the Town is now considering four different density scenarios for Comprehensive Plan recommended development. The different alternatives are being presented to existing neighborhoods within the

Town. The current update is anticipated to result in a major overhaul of the Town's Comprehensive Plan. It is anticipated to contain more in the nature of specific recommendations for land uses within the Town, followed by policy statements. If you have an interest in land in the Town of Ashland, you should be aware of how the Comprehensive Plan mapping could affect the future development potential of your property. Following adoption of the update, the Planning Department anticipates the adoption of Zoning Ordinance revisions to accomplish some of the adopted goals.

## THE COUNTY OF Chesterfield

Chesterfield County is also undertaking a County-wide Comprehensive Plan amendment and is in the process of hiring a consultant to assist with the process. The County is in the early stages of providing the development community with the ability to file rezoning applications on-line. Testing will begin soon.

Chesterfield has deferred plans to implement a Level of Service policy for schools in considering new development. The concept will be considered as part of the Comprehensive Plan amendment process.

## THE COUNTY OF Henrico

The County's proposed 2026 Land Use Plan Update continues to work through the process. A public hearing was held on January 22 for the Planning Commission to take public comment. The Planning Commission will likely hold additional work sessions to address proposed changes before recommending a draft to the Board of Supervisors. It is believed that the Board may get the recommended plan sometime late Spring. It was reported that for the first time in

memory, no application for PODs were filed in January.

The Henrico County Board of Supervisors has delayed the implementation of higher water/sewer connection fees until 2010 in recognition of the economic downturn, which is much appreciated by the development community.

## THE CITY OF Richmond

Roy Benbow of the Planning Department reports that the City is working on amendments to the City's Zoning Ordinance to create more flexibility for the Board of Zoning Appeals to grant special exceptions for such matters as the non-residential floor area requirements for mixed use buildings in zoning districts where mixed uses are allowed and building setbacks for new construction. The Planning Department is moving forward with zoning ordinance amendments to incorporate some form-

based standards and perhaps require some active pedestrian uses other than parking at the street level, in the B-2 and B-6 Zoning Districts. Work continues on the update of the City's Master Plan. The City is also considering zoning ordinance amendments to its parking regulations for Carytown. The amendments are intended to recognize that Carytown functions like a spread-out shopping center. With the amendments, parking requirements will be more uniform within the Carytown area.

## THE COMMONWEALTH OF Virginia

A variety of legislation dealing with housing and development issues has been introduced at the General Assembly which is summarized herein. To find any state legislation, go to <http://legis.state.va.us>, click

on "Legislative Information System," then "2009 Session Bills & Resolutions."

## General Assembly Update

FROM PAGE 1

**HB 2125 Planning or zoning matters; notice by applicant.** Allows a locality to require, by ordinance, that a person applying to the local governing body, local planning commission or board of zoning appeals for a planning or zoning matter shall post a sign notifying the public of the place and time of the public hearing regarding his property, the cost of which may be paid by

the applicant. The locality shall specify any additional information to be on the sign, as well as the size and placement of the sign (Delegate Kathy Byron (R)).

**SB 1335 Conditional zoning; public hearing.** Provides that where an amendment to proffered conditions is requested by the profferrer, and where such amendment does not affect conditions of

use or density, a local governing body may waive the requirement for a public hearing (sponsored by Senator Richard Stuart (R)).

If you have questions or comments about the foregoing legislation, please feel free to contact M. Seth Ginther, Esq. who runs Hirschler Fleischer's lobbying subsidiary – Hirschler Fleischer Consulting LLC. He can be reached directly at (804) 771-9540.

# Pending ZONING CASES

THE COUNTY OF  
**Chesterfield**

**Jim Theobald** is representing the owner of the Boathouse Restaurant in Sunday Park at Brandermill with regard to parking and special event issues.

**Jim Theobald** was successful in rezoning a site for EWN Investments on Route 360 at Duckridge Road on the Swift Creek Reservoir for an upscale, retail development complimentary to EWN's Hancock Village development across Route 360.

THE CITY OF  
**Fredericksburg**

**Charlie Payne** continues to advocate on behalf of client Prince Edward Street, LLC, for a special exception before the city to rehabilitate the historical Pratt Clinic Building into four luxury condominium units.

**Gary Nuckols** is involved with Eagle Village Phase I which is the rezoning of a seven acre portion of the former Park & Shop shopping center in Fredericksburg, adjacent to the University of Mary Washington campus, acquired in December, 2007, by the University of Mary Washington Foundation for the purposes of redevelopment in to a mixed use, retail office, residential and UMW student housing development. Phase I will contain a 620 bed apartment style student housing complex, 30,000 sq. ft. of retail space, 36,000 sq feet of office space and a 500+ vehicle parking covered, secure parking deck. The re-zoning is proceeding under a new mixed use zoning ordinance, not yet adopted by the City of Fredericksburg. The firm is working with the City in the drafting of the ordinance.

**Charlie Payne** and **John McManus** continue to work with the city to create a new planned development mixed-use ordinance, which is being established for purposes of encouraging new infill investment for the city.

**Charlie Payne** is assisting client Marion E. Hicks with a special use permit before the city to develop a work force affordable housing project.

THE COUNTY OF  
**Henrico**

**Jim Theobald** is representing Stefan Cametas in rezoning property immediately adjacent to the Pembroke Office Park on Fordson Road in order to expand the office park.

to permit a fuel center. The matter will be heard by the Board of Supervisors in February.

**Jim Theobald** is representing Car Pool on matters in Henrico. He was recently successful in amending the proffered conditions on the West Broad Street Car Pool to accommodate upgrading the building materials.

**Caroline Peters** was successful at the Planning Commission in her representation of Metromont Corporation in Varina. She is assisting Metromont rezone about 25 acres off of Darbytown Road from residential to industrial in order for Metromont to expand its support operations for its existing cement manufacturing plant. The matter will be heard by the Board of Supervisors in February.

**Jim Theobald** was successful at the Planning Commission in amending the zoning of the Kroger grocery store on Eastridge Road

THE CITY OF  
**Richmond**

**Jim Theobald** represents Highwoods Properties as master developer of property on the Boulevard which includes the Diamond, as well as with regard to various aspects of their proposed Shockoe Bottom development to include a new ballpark.

THE COUNTY OF  
**Spotsylvania**

**Charlie Payne** is assisting clients Stacy Development, LLC and HHHunt with a rezoning in Spotsylvania County to develop a 90 bed assisted living facility and age restricted independent housing component.

THE COUNTY OF  
**Stafford**

**Charlie Payne** and **John Walk** continue to advocate on behalf of firm client Silver Cos. regarding the county's decision to remove our client's Sherwood Farm project from the urban service area (e.g. access to public utilities).

**Charlie Payne** is assisting our clients Micah Ecumenical Ministries and Rappahannock Area Community Services Board to establish a cold winter homeless shelter in Stafford County, which will require a conditional use permit. The current shelter located in the City of Fredericksburg will not be available to homeless persons after April of 2009.



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## Appealing Your Real Estate Tax Assessment

FROM PAGE 5

in Section 58.1-3984 of the Virginia Code. That statute provides that suit must be filed “(a) *within three years from the last day of the tax year for which any such assessment is made*, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner’s final determination under § 58.1-3703.1 A 5 or § 58.1-3983.1 D, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later . . .” (emphasis added). Typically, it is the three-year statute of limitations set out in Subsection (a) that will apply. However, the limitations periods provided in Section 58.1-3984 do not govern if the statute of limitations is “otherwise specially provided by law.”

This exception is significant to appealing tax assessments in the City of Richmond because such challenges are governed by the statute of limitations set forth in Chapter 261 of the 1936 Acts of Assembly. According to Chapter 261 of the 1936 Acts of Assembly, as amended, any person “may apply for relief

to the circuit court of such city within one year from the thirty-first day of December of the year in which such assessment is made for assessments made prior to January 1, 2005; within two years from December 31 of the year in which the assessment is made for assessments made on and after January 1, 2005, but prior to January 1, 2007; and within the time frame as provided by general law pursuant to § 58.1-3984 of the Code of Virginia for assessments made on and after January 1, 2007.”

Of additional significance to appeals in the City of Richmond, the Acts of Assembly also provide that “[n]o person may make such application for a year other than the current year *unless such person has provided to the assessor, commissioner of the revenue, or the governing body, written notice of disagreement with the assessment, during the applicable tax year*” (emphasis added). Therefore, in the City of Richmond, to preserve the right to include multiple tax years in a Circuit Court petition, the property owner must provide

written notice of disagreement pursuant to the statute. Presumably, an Office Review, which is directed to the Assessor, would meet this requirement. If an Office Review was not pursued in a tax year for which the property owner may wish to pursue Circuit Court relief, the owner should file a letter with the Assessor before the end of the tax year providing notice of disagreement with the assessment.

To conclude, in this current market downturn, property owners should carefully monitor their real estate assessment notices, which should be in the mail soon if they have not already been issued, to determine if their assessments are in line with fair market value and should consider employing the mechanisms discussed herein to enforce their legal rights. Being aware of the deadlines and other requirements that are a part of the tax appeal process is a key component of success.