maddin hauser
Maddin Hauser Wartell Roth & Heller PC
attorneys and counselors

Real e-State

April 2007
Vol. 4 Issue 2

An electronic newsletter for real estate professionals

From the desk of:

The Real e-ditor

Climate change. Global warming. Kyoto Protocol. Sustainable growth. Green solutions. Environmentalism. These words may frighten you; or inflame you; or inspire you; or leave you dazed and confused. But consider another angle. These words may present an opportunity for us, right here in Southeast Michigan. If only our political and industrial leaders would have the foresight to recognize and embrace it.

Clearly the rhetoric about global warming has gone main stream. Since President Bush publicly acknowledged "the serious challenge of global climate change" in his 2007 State of the Union Address to Congress last January, not to mention Al Gore's Academy Award for his documentary movie on the subject, *An Inconvenient Truth*, not a day goes by that we don't hear *at least* one story about the politics, science or predicted effects of global climate change. The American automobile industry is at the very epicenter of this controversy. And Detroit, weakened by decades of eroding market share to European and Asian automakers, still clings to its position as the epicenter of the automobile industry.

The handwriting for sweeping auto industry change is on the wall. And in this case, with things going as poorly as has been the case for the American auto industry in recent years, change could be just the prescription for what ails us here in Detroit. Imagine what could be if Ford, GM and/or Chrysler could be the first to embrace the opportunity that climate change presents, and exploit systemic automobile industry change – think whole new fleets of hybrid, electric, natural gas, and low emission vehicles. I'll bet that that the world's consumers would flock to American car dealerships "to do their part" to stave off the global catastrophe that some claim is imminent. If we can deliver the goods.

And where better to lead this technological revolution of the auto industry than in its birthplace? We have the skilled labor force, the engineering force, the R&D capacity, nearby university and academic facilities and, Lord knows, we have plenty of now-idle office and industrial capacity to meet this challenge right here in Southeast Michigan.

So the next time you find yourself pondering the effects of global climate change, think too about the commercial opportunities for our area that could come to fruition if our political and industrial leaders would embrace the need for, and do not resist this change. Detroit could once again truly be The Motor City.

Steven D. Sallen
Editor-in-Chief

New Law Lets Some Property Owners Skip the Board of Review

BY: MICHAEL K. HAUSER

Property owners who believe that the value of their property has been overassessed by the local assessor may contest the valuation in an attempt to reduce their property taxes. Similarly, property owners who feel their property is tax-exempt, but have been denied an exemption by the assessor, may appeal that decision. (This could happen where, for example, a charity owns real estate but there is a question of whether the charity actually uses the real estate in its charitable mission).

Until 2006, all property tax appeals had to begin locally with the Board of Review (and in some municipalities, with a conference with the assessor even before going to the Board of Review). However, new legislation effective January 1, 2007 permits owners of commercial, industrial and developmental properties to skip the Board of Review altogether and appeal directly to the Michigan Tax Tribunal. Formerly, owners of these types of properties had to go through the local appeal process as a prerequisite to initiating an appeal to the Tax Tribunal. Now, property owners may choose to go through the more informal Board of Review process or may elect to go straight to the Tax Tribunal. The intent of this new law is to prevent commercial property owners from needlessly having to go through the Board of Review process when their claim will likely be appealed to the Tax Tribunal anyway.

> **...new legislation permits owners of commercial properties to skip the Board of Review and appeal direction to the Michigan Tax Tribunal.**

Commercial property includes wholesale, retail or service properties, golf courses, boating and ski areas, and apartment buildings with more than 4 units. Indus-

See **TAX** Page 3

Expanded Commercial Rehabilitation Act Offers Redevelopment Incentive

BY: REBECCA M. TURNER

The Commercial Rehabilitation Act (Act 210 of 2005; MCL 207.841 et. seq.), enacted on November 17, 2005, ("Act"), was created initially to assist in the redevelopment of the Summit Place Mall in Oakland County as a mixed use development of residential and retail through certain reductions in standard property taxes. On February 12, 2007, the Act was revised to expand the eligibility requirements for commercial property to obtain this reduction in standard property taxes.

As revised, the Act permits qualified local governmental units to establish commercial rehabilitation districts comprising an area of no less than three acres. However, the area requirement may be reduced if the district lies within a downtown or business area.

Within a commercial rehabilitation district, a "qualified facility" may apply for a commercial rehabilitation exemption certificate. A qualified facility is a building or group of contiguous buildings which are commercial in nature and a minimum of 15 years old. Professional sports stadiums and gaming casinos (and their affiliated facilities) are excluded from eligibility.

To apply for an exemption certificate, the owner of a qualified facility must intend to restore or modify the facility to an economically efficient condition. Additionally, the rehabilitation must not have commenced more than six months prior to the application; completion must be likely to increase commercial activity, increase residents in the community or create or retain employment; the owner must not be delinquent on any taxes related to the qualified facility; and the owner must state that the rehabilitation would not have been undertaken without the exemption certificate.

Once an exemption certificate is effec-

See **ACT** Page 2

What to Expect from the MDEQ in 2007

An Interview With Steven Chester, Director of the MDEQ

by: Lindsay A. Jerabek

On March 12, 2007, Steven E. Chester, the Director for the Michigan Department of Environmental Quality (MDEQ), spoke with Maddin Hauser about what real estate owners and developers can expect this year from the MDEQ.

MH: What will the MDEQ be focusing on in 2007 that may impact the real estate community?

SC: In our **wetlands program**, which directly affects developers, we have put in place a number of reforms that we think are going to prove to be very beneficial in the issuance of permits on a timely basis. We are using what are referred to as **general permits** in that program.

Let me explain what that is. Usually you have to come in and get an individual permit or a site-specific permit. You have to apply and then your specific operation is reviewed. If a permit is issued, it is issued typically with conditions that are specific to your site, your project. However, there are certain minor projects or other types of building projects that are so similar in nature so that rather than require the builder/developer to get an individual permit, we write a general permit. It's written, it goes through the public process, it has certain conditions, and what it essentially says is that if you meet these criteria, then you can seek coverage under the general permit. That takes care of your permit needs. It's a faster, more streamlined process.

I would say to developers and builders: if you believe you need a permit, one option you might want to look at is whether there is a general permit that's available. It's going to make your process a little more seamless. It's a good thing for developers because it will help them meet their development timelines. But you have to fit the criteria. One shouldn't apply for a general permit if they know their project is outside the scope of what's covered by the general permit. That's just going to result in an enforcement action.

MH: With regard to enforcement, is there going to be more of a push in 2007 for criminal enforcement rather than civil?

SC: No. I think the mix is about right. I mean, we're not anticipating any additional resources in our criminal investigations during 2007. We do expect to continue a fairly high level of compliance in enforcement in the State of Michigan - that would include both civil, and where appropriate, criminal.

When we talk civil enforcement, we're also talking administrative. We don't have to go to court initially and most often we don't. We try to enter into Administrative Consent Orders with violators. If we cannot work out the details of such an Administrative Consent Order or if the issues truly are significant in nature, then we go to circuit court.

If there's any newer emphasis . . . we are taking a harder look at multimedia cases. Multimedia cases are those cases where a facility may be violating both air and water requirements or waste management requirements as well. So when we find facilities like that, we may want to make those a priority because of the nature of the violations and of course the adverse impact on the environment.

ACT (Continued from Page 1)

tive, a qualified facility will be subject to the new commercial rehabilitation tax in lieu of standard ad valorem property taxes. The commercial rehabilitation tax will be based upon taxable value of the qualified facility prior to the rehabilitation. The land and personal property will continue to be taxed at the standard ad valorem property tax rates.

The exemption certificate can be granted for a period of one to ten years. If granted for less than ten years, the exemption certificate may be reviewed and extended by the qualified local governmental unit. New exemptions will not be granted after December 31, 2015, however exemption certificates then in effect will continue until their applicable expiration dates.

For more details on commercial rehabilitation exemption certificates, attend our annual Real Estate Symposium on April 25, 2007, or call your Maddin Hauser attorney.

maddin hauser
Maddin Hauser Wartell Roth & Heller PC
attorneys and counselors

www.maddinhauser.com
28400 Northwestern Highway
Third Floor, Essex Centre
Southfield, Michigan 48034

Phone: 248-827-1861
Fax: 248-359-6161

"We have enough people who tell it like it is—now we could use a few who tell it like it can be."

~ Robert Orben

TAX (Continued from Page 1)

trial properties includes those used for manufacturing and processing, utilities sites for generating plants, pumping stations, switches, substations, compressing stations, warehouses, rights-of-way, flowage land, and storage areas, and parcels used for removal or processing of gravel, stone, or mineral ores. Developmental property generally includes raw land over 5 acres or other farm land or open space land with a potential valuation significantly above its value as farmland (e.g. undeveloped land near a population center). MCLA 211.34c. Unless included in any of these categories, farm properties and residential properties with 4 units or less must still be appealed through the standard Board of Review process.

In general, property tax appeals to the Tax Tribunal must be made by May 31 for commercial, industrial, and developmental properties, while the deadline for other properties is July 31. However, for those property owners who begin their appeals locally, the appeals must be initiated by February or March (depending on the municipality), as the Boards of Review generally meet in early March.

. . . .Justice (and Amendments) For All!

BY: STUART M. DORF

Are your clients thinking about building their dream house? How about renovating an existing one? Does your client base also include contractors, subcontractors, suppliers or laborers? If so, this short bulletin is for you.

At the end of 2006, the Michigan legislature passed a series of amendments ("Amendments") to the **Michigan Construction Lien Act** ("Act") in an effort to give increased protections to homeowners as well as subcontractors, suppliers and laborers. For homeowners, Amendments to the Act increase consumer protections in two significant ways. First, the Department of Labor and Economic Growth ("DLEG") is now mandated to maintain a website of contractors whose failure to renew licenses or pay subcontractors, suppliers and/or laborers causes the Fund to make a payment. Secondly, homeowners can search such a database to avoid doing business with those contractors who are unreliable and to bring an action to discharge a lien previously recorded by a person who rendered services, but ***was not licensed*** as required by law. If the homeowner prevails in such a suit, the unlicensed person will be liable for damages, including costs and attorney fees that resulted from the recording and attempts to enforce the improper lien.

Subcontractors, suppliers and laborers are also benefiting from the Amendments. For example, the Amendments have increased the maximum recovery of a subcontractor, supplier and/or laborer under the Fund from $75,000.00 per residential structure to $100,000.00. Moreover, the legislature took additional steps to insure the Fund continues to remain solvent! Rather than providing for one-time assessments and fees *and* potential surprise assessments, the Amendments now require the payment of ongoing renewal fees until the Fund's balance reaches $6.0 million; once the $6.0 million dollar threshold is met, the renewal fees are suspended. However, the Amendments also provide for reinstatement of renewal fees when the Fund's balance falls below $4.0 million. The revisions of the fee structure shall create a more stable, predictable source of revenue for the fund.

So the next time your clients decide to work with contractors, subcontractors, suppliers or laborers, make sure they are aware of the new protections afforded to them by these Construction Lien Amendments. As the old adage states, "an ounce of prevention is worth a pound of cure"!