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SCANNEWS ★★★★★
THE LATEST NEWS IN GOVERNMENT AFFAIRS
FROM THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS

STRATEGIC LEADERSHIP SUMMIT

Make plans now to attend the 2006 Strategic Leadership Summit in Washington, DC on March 28-29. This is the meeting to attend if you want to make your voice heard in Congress regarding issues that are important to the shopping center industry. For more information, please contact Judy Laniak in the Government Relations office at (202) 626-1401 or by email at jlaniak@icsc.org.

ARIZONA

Legislative Update

ICSC sent a strong letter to all State legislators supporting the power of eminent domain for the State Department of Transportation and municipal governments for necessary public infrastructure items such as roads, streets, water and sewer. Several bills addressing eminent domain have already found early success in the legislature this session. Several bills primarily sponsored by Representative Chuck Gray (R), Chair of the House General Mandates Committee, have already passed through the Committee and some have been passed on to the Senate. These measures include two proposed constitutional amendments.

Retail tax incentives continue to work through the Legislature. There are only two bills left concerning this issue and both are being worked to make them acceptable to industry.

CALIFORNIA

CBPA Board Votes to Oppose Proposition 82

At its February Board of Directors meeting, California Business Properties Association (CBPA) voted to oppose Proposition 82 – the Universal Preschool initiative spearheaded by Actor/Director Rob Reiner. Proposition 82

seeks to change California's constitution to create a new \$2.4 billion government program for universal preschool, funded by a new increase in personal income taxes on some Californians and California small businesses. Many industry members believe that while expanding preschool opportunities is a laudable goal, California has many other pressing priorities to address before raising taxes to create a new government-run preschool program. As it stands today, 80 percent of California businesses pay taxes under the personal income tax – primarily small business owners (including Sub S Corporations). This initiative would increase the tax they pay and harm small business owners.

Another Split Roll Attempt

The issue of commercial property taxes may have resurfaced after the failed attempt at passing S.B. 17. S.B. 397 was recently amended to be a majority vote bill that can automatically trigger a property tax reassessment of all corporate property if a taxpayer fails to respond to a written request of the assessor - regardless of whether there was actually a change of ownership. In addition, regarding escape assessments, a change of ownership statement must be filed 45 days from the date of a written request by the Board. Failure to file timely can result in a reassessment. The real dilemma for taxpayers is trying to accurately answer an ambiguous

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yes or no question on Schedule Q of the corporate income tax return. If the question is answered affirmatively, a change of ownership statement is required. However, the question is far broader than the legal definition of "change of ownership." Specifically, question J, on Schedule Q of the corporate income tax return asks: Did this corporation or its subsidiary (ies) have a change in control or ownership, or acquire ownership or control of any other legal entity this year? The instructions state that you must answer this question and you must answer "yes" if cumulatively more than 50 percent of the total outstanding shares of this corporation have transferred, changed ownership or control during the year. This language appears to include stock churning - which is outside the scope of reassessment under current law.

Favorable DIR Prevailing Wage Ruling

In an October 4, 2005 judgment, the Ventura County Superior Court ruled that a privately owned shopping center was not a public work under former Section 1720 of the California Prevailing Wage Law, Labor Code § 1720 et seq. ("PWL"). The case, M&H Realty Partners IV L.P., et al. v. Department of Industrial Relations, involved an agreement between developer M&H and the Oxnard Redevelopment Agency. M&H agreed to build the shopping center and maintain it as a first-class shopping area for an extended period after construction was complete. In return, the agency would rebate 75 percent of the increased tax revenue from the project up to a maximum of \$1.7 million, as determined by an ongoing present-value calculation. In late 2001, the Department of Industrial Relations ("DIR") determined that the project was a public work under the PWL and later affirmed its decision on appeal. The court disagreed, holding that the property-tax rebates were not payments for construction or

other work covered by former Section 1720 of the PWL. The court issued a writ of mandate vacating DIR's initial determination and appellate ruling. The immediate relevance of the decision is limited to public-works determinations made under former Section 1720 prior to its amendment in 2001. The 2001 amendments greatly expanded the PWL's definition of "public works." The court in M&H was able to decide the case on the basis of former Section 1720's narrower definition of "public works" and thus did not reach several significant legal issues that remain to be decided in regard to the current PWL. These questions include whether the Legislature intended the PWL to apply to privately owned construction projects and if so, whether the PWL is preempted by federal labor laws requiring wages and benefits to be set through collective bargaining. Many thanks to Michael F. Wright with the law firm of Case, Knowlson, Jordan & Wright LLP, for this update.

MARYLAND

Legislature Considers Shopping Center Legislation

The 2006 Maryland legislative session has seen the introduction of several pieces of legislation that would impact the retail real estate industry.

H.B. 914 would limit the amount of Common Area Maintenance (CAM) costs landlords can charge tenants. The bill was introduced at the request of the Maryland Retailers Association, but the sponsor and co-sponsors did not fully understand what they were signing onto and are now beginning to back down. So far, no one in the Senate has been willing to sponsor a companion bill. ICSC MD Government Relations Chair Kap Kapastin was scheduled to testify on H.B. 914 at a hearing in the

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House Environmental Matters Committee last week.

Delegate Marvin Holmes (D) of Prince George's County introduced H.B. 1027 that would mandate shopping centers of 100,000 square feet or larger in Prince George's County to provide "mobile security" during business hours. Del. Holmes considered it the starting point for a discussion on shopping center security and ICSC worked with him to amend the bill. The amendment (scheduled to be introduced this week) removes the mandate and provides a 30 percent tax credit up to \$150,000 for ongoing security costs and enhancements.

Senator Lisa Gladden (D) introduced S. 581 that would require retail establishments of 55,000 square feet or larger to provide a minimum of three motorized shopping carts. There is no companion bill in the House and the bill was referred to the Senate Finance Committee.

MICHIGAN

Pro-Development Package on Horizon

The "Economic Incentives Package" was recently introduced by Representative John Pastor (R). The lead bill H.B. 5330 would amend the Commercial Rehabilitation Act. H.B. 5330 is one of 5 bills to be introduced affecting our industry.

The Commercial Rehabilitation Act intended to provide tax incentives to obsolete malls. However, it failed to allow for any malls to meet the strict requirements set forth. H.B. 5330 will not only deal with their issue, Representative Pastor intends to strip the bill of virtually all criteria so that every mall no matter size or condition can comply.

Rep. Pastor believes these incentives will be a revenue generator in the long run by stimulating development and aiding the overall economy.

The other bills in the package, which have yet to be introduced, follow the same pattern with the Brownfield Act and the Neighborhood Enterprise Zone Act.

Governor Makes Executive Budget Recommendations

Earlier this month Governor Jennifer Granholm (D) released her executive budget recommendations for Fiscal Year 2007. State Budget Director Mary Lannoye presented a detailed outline of the executive budget recommendations before a joint meeting of the House and Senate Appropriations Committees. The recommendations were focused around a series of goals to sustain and create business investment, improve student achievement, enhance the quality of Michigan's natural environment, make citizens healthier and families stronger, protect citizens and make communities safer, and finally, make government more cost effective and efficient.

The proposed 2006-07 budget, when federal and restricted funds are included, totals \$42.6 billion, \$1.4 billion, or 3.3 percent higher than the proposed budget she presented in February 2005. The general fund portion of the budget would total slightly less than \$9.3 billion, even though January's Revenue Estimating Conference only put anticipated general fund tax revenues at \$8.4 billion.

Consistent with the Governor's priorities outlined during her State of the State Address, the executive budget recommendations call for additional dollars to be spent in several key areas, including education, health care, higher ed, and capital outlay.

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In order to balance the Governor's 2006-07 budget and fund many of its priorities, she calls for the closure of \$110 million in perceived tax loopholes, an increase in liquor license fees to the tune of \$23 million, a freeze in state shared revenue payments made to local units of government (saving \$600 million), implementation of a hospital bed tax to help fund Medicaid, \$28 million in land sales and \$15 million in interest on securitized tobacco funds.

Of concern to ICSC, one of the closures of tax loopholes deal with commercial rental property taxation. Removing commercial rental property from the General Property Tax Act and creating a new specific tax would generate 2007 savings of \$1.5 million.

NEW JERSEY

Legislative Update

Several pieces of legislation of interest to ICSC have been introduced in the early stages of this new legislative session.

S.B. 426, introduced by Senator Robert Singer (R), would prohibit a landlord of a shopping center from inducing a tenant to enter or renew a lease of space in a shopping center by using any unconscionable commercial practice, deception, fraud, misrepresentation or through knowing concealment, suppression or omission of any material fact with intent that the tenant rely upon the concealment, suppression or omission. This legislation was considered by the Senate Commerce Committee on Feb. 9 and released with committee amendments. The committee amendments add identical language that pertains to a tenant inducing a landlord in renewing a lease or space in a shopping center. The bill also has an amendment

requested by ICSC last year, to discourage frivolous lawsuits by allowing Judges to make the loser pay. Assemblyman Ronald Dancer (R) has introduced identical legislation in the Assembly, as A.B. 1152.

Assemblywoman Linda Greenstein (D) has introduced A.B. 2146, legislation that would create a Land Use Court as a court of limited jurisdiction very similar to the current Tax Court. The Land Use Court would have jurisdiction with respect to any land use decision of a county or municipal government, authority or other instrumentality thereof or a department of State government or agency or instrumentality thereof including, but not limited to, any land use approval which is required as a prerequisite for the issuance of a construction permit pursuant to section 12 of P.L. 1975, c217, any dispute regarding the adoption or implementation of a county or municipal master plan or development regulation or the State Development and Redevelopment Plan, and such other land use disputes as provided by the Rules of the Supreme Court.

Assemblyman John Wisniewski (D) and Senator John Adler (D) introduced A.B. 2258/S.B. 1249. This legislation would incorporate prepaid bank cards, defined in the bill as a form of gift card, into the existing statutory provisions which would regulate the expiration dates and dormancy fees for gift cards and gift certificates. These prepaid bank cards would include mall gift cards issued by third party banks or other financial institutions which are usable at multiple, unaffiliated merchants within a particular shopping mall.

Senator Stephen Sweeney (D) introduced S.B. 473, which would provide for regional economic impact report and review by affected municipalities for certain proposed large scale retail developments. This bill would amend and supplement the "Municipal

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Land Use Law” to add new requirements for municipalities and developers when approving a development application for a large superstore retailer. In the bill, superstore retailer is defined to mean a store or stores being developed under a single project having greater than 130,000 square feet of gross buildable area at full build-out that will generate sales or use tax revenue under the “Sales and Use Tax Act” and that contains more than 25,000 stockkeeping units with more than 10 percent of the stockkeeping units being nontaxable merchandise.

Senator Loretta Weinberg (D) introduced S.B. 685, the “Raincheck Policy Disclosure Act.” This legislation would require any retail mercantile establishment that issues rainchecks for the sale of advertised merchandise not available throughout the advertised period to conspicuously post a sign informing customers of that policy in at least one of several specified locations. S.B. 685 was considered by the Senate Commerce Committee on Feb. 9 and was released by the committee unamended. The legislation now goes to the full Senate for consideration.

NEW YORK

Legislators Pushing Large Employers on Health Care Coverage

During the next few weeks a public campaign will be launched for a bill that would require large employers to offer health benefits to employees, such as chain restaurants, big retail establishments and construction companies. Supporters of this “Fair Share for Health Care Act,” argue that large companies make enough money to fund for its employees’ benefits, hence relieving heavy burdens on the local taxpayer and helping hospitals by decreasing the amount of emergency room patients. In addition,

advocates for this legislation argue that large retailers who make significant profits undermine smaller businesses that provide and fund their employee’s benefits. In contrast, the retailers argue that this type of legislation would have a negative impact on job creation and economic development.

Tax Increment Financing Budget Proposal

New York industry members are again lobbying the legislature to include in this year’s budget a proposal to allow tax increment financing (TIF) as a local economic development tool. Deputy Majority Leader Dean Skelos (R) is leading the effort in the Republican controlled Senate and upstate Democrat Assemblywoman RoAnn Destito has expressed an interest in advancing the proposal in the Assembly. Last year, the New York State Realtors Association and the New York Builders issued formal memos in support of the ICSC TIF proposal. In addition to typical infrastructure costs associated with development, amendments have been submitted to broaden the eligible uses to also include affordable housing projects and costs associated with stormwater management.

TEXAS

Special Election in House District 48

The Democrats picked up a seat in the Texas House of Representatives on Feb.14 when Donna Howard (D-Austin) won the special election to fill the unexpired term of Todd Baxter (R-Austin), who resigned late last year. Howard pulled a surprise upset over Republican Ben Bentzin (R-Austin), a retired Dell executive, who was the Republican Party’s handpicked candidate to replace Baxter. Howard got 58 percent of the vote to Bentzin’s 42 percent. The two candidates will face off again in the November general

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election to determine who will serve the full term that begins in January 2007.

Texas Tax Reform Commission

The Texas Tax Reform Commission, a 24-member committee appointed by Governor Rick Perry (R) to make a recommendation on ways to reform the business tax in Texas, continues its statewide tour of public hearings to gather input from Texans on how to modernize the tax structure and reduce property taxes. Upcoming hearings are in Nacogdoches on February 21; Midland on

February 28; and San Antonio on March 6. The Governor has outlined five key principles to guide the commission's deliberations on tax reforms. Perry said our new tax structure must be fair, broad-based, modern, understandable to taxpayers and competitive with other states "so that Texas can continue to attract jobs by maintaining the best business climate in America." The Governor is expected to call the Legislature into special session on public school finance/tax reform after the primary elections.

Upcoming Alliance Meetings

- West Michigan Alliance Program Grand Rapids, MI March 7

Day At The Capitol Events

Please contact ICSC Government Relations for more information.

- Annapolis, MD March 2
- Denver, CO March 20
- Lansing, MI March 22
- Springfield, IL March 23
- St. Paul, MN April 6

University of Shopping Centers

- March 6 – 8, 2006, The Wharton School of the Univ. of Pennsylvania, Philadelphia, PA
For more information visit <http://www.icsc.org/2006UV>

To submit items to SCANews, please contact Stephanie Spooner at sspooner@icsc.org.
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