

TENNESSEE HomeBuilder

Nov./Dec. 2007

Official Magazine of the Tennessee Home Builders Association



*Inside this edition –
Congressman*

David Davis

“The Father of Open Government”

2007 YEAR IN REVIEW



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TENNESSEE HomeBuilder

November/December 2007



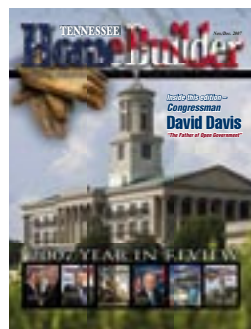
WHO WE ARE

The Home Builders Association of Tennessee (HBAT) is a not-for-profit trade association comprised of professional builders, developers and associated firms engaged directly or indirectly in home building, remodeling and light commercial construction.

MISSION STATEMENT

The Home Builders Association of Tennessee represents over 6,500 member firms as the Voice of the Housing Industry. We advocate housing affordability and availability through:

- Legislation
- Communication
- Education



In this edition of the Tennessee Home Builder, meet Congressman David Davis and learn more about important builder news and legislative issues.

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TN HomeBuilder is the official publication for the Home Builders Association of Tennessee.

Annual subscription rate for members of the association is included in the association dues.

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Send address changes to:
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Nashville, TN 37219

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tnbuilder@comcast.net or

TN HOME BUILDER
P.O. Box 1916
Columbia, TN 38402
www.tnhomebuilder.com

TN HomeBuilder is published bi-monthly by Woods & Associates, P.O. Box 1916, Columbia, TN 38402. All rights reserved. All editorial/advertorial submissions are used at the discretion of the publisher and may be edited for purposes of clarity and space. Although all efforts have been made to ensure accuracy of content submitted by advertisers and writers, TN HomeBuilder, its principals and associates are not held liable for errors or omissions. Reproduction in whole or part prohibited without written consent. ©2007 by Woods & Associates.

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PASSING THE TORCH OF SUCCESS

President's Perspective

It is very hard to believe – but this will be my last article as the President of your association. From the perspective of the 2007 President, I can look back and reflect upon a year of great success and serious challenges. At the beginning of the year, I pointed out my hope of developing a unified vision with our strategic plans and goals for the future. I have done my best to listen and to lead this year with this thought in mind. But I would like to continue to stress the importance of unity and a common vision throughout our association. Since this is a representative body, we must continually be capable of growth and adaptation in regards to changing political and economic environments. I believe it is also important to be mindful of a system of checks and balances, not to police the efforts and actions of the association, but simply to make sure that we are all moving forward with the same game plan. Unity is the strength of any successful group of likeminded individuals.

From a membership perspective, we have all had the challenge of retaining the incredible results of our Membership Drives in a roller coaster economy. In an earlier article I talked about Isaac Newton and his law that states: “For every action there is an equal and opposite reaction.” The National Association of Home Builders recently stated that “Turmoil in the mortgage finance system in August led to an 8.3 percent drop in sales of new single-family homes for the month, according to figures released by the U.S. Commerce Department. The seasonally adjusted annual rate of 795,000 units was 21.2 percent below a year earlier.” So common sense will tell you that when times are difficult, you are probably going to get that “equal and opposite reaction” of losing a few members.

However, I think every member needs to be dedicated to staying in the game, even when we're down a few points in

the fourth quarter. This is not the time to quit the team. When things get a little tough, it is time to get really serious about strengthening team moral, and making sure you have a winning attitude and effective strategy. This association has seen a lot of winning seasons and can take pride in the victories that have protected, improved and enhanced the homebuilding industry and provided greater opportunities for homebuyers throughout Tennessee.

Here is the evidence for 2007:

- We can now point to the beautiful new office facility located strategically just a block away from Legislative Plaza.
- We can take pride in our successful efforts regarding changes in the International Residential Code, which ultimately defeated the “fire sprinkler” legislation. This was a close one folks, and should be motivation enough for everyone to take a hard look at the advantages of having a united Home Builders Association in Tennessee.
- We have made our voices heard on issues such as Storm Water Runoff and Immigration. These are still serious considerations that have to be continually monitored. Thank goodness for a talented staff and experienced individuals ready to go to bat in the legislative arena.
- Another great success story is the recent Expanding American Homeownership Act of 2007, which was approved by a strong bipartisan margin of 348 to 72. NAHB President, Brian Catalde, made the following comment: “This bill is an important step forward to address problems in the sub-prime mortgage market and helps creditworthy borrowers obtain home loans at prices and terms they can



HBAT President David Parsons

afford...” As President of the HBAT, I believe this is a very serious step toward recovery and a reason to be optimistic about continued success in the Tennessee homebuilding industry.

One of the hardest things I have faced as your president is the loss of Denzel Carbine. Denzel would have been an extraordinary president, and I would be remiss without once again extending my sympathies to his friends and family. James Carbine is standing in for his brother as president, and I can tell you that James has a proven record of success in both his business ventures and his leadership within our association. I know Denzel would be proud of the fact that his brother has so unselfishly stepped up to the plate and taken on the responsibilities of this important office.

Finally, I would like to sincerely thank each member for allowing me the honor of serving as your 2007 president. I now pass the torch to a talented and capable leader who will continue our legacy of success. It has been a privilege to serve in the highest office of the Home Builders Association of Tennessee.

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The Value of Your Association

Arguably the most critical and difficult first step in developing a successful association is to clearly define what it is that the association must do to add value to the members investment of time and money. The days are past where professionals and business owners would simply belong to their association for “networking” opportunities. Today, it is crucial for members to understand the importance of belonging to the Home Builders Association of Tennessee, and why the association truly belongs to the members.

First and foremost, just as individuals elect officials to represent their interests from a governmental standpoint, the HBAT is the representative body that continually tracks and protects your interests in the state legislature. We also try to assist local associations that need help with legislative and regulatory issues in their local communities. Thousands of bills come through the legislature each year, and educating both representatives and

the membership is important because of the potential effects on the entire homebuilding industry of Tennessee. Knowledge and information must be one of the top priorities when it comes to serving your interests.

Communications systems have advanced rapidly over the past several decades, and processing information quickly throughout our association is faster and more efficient than ever before. Within a matter of hours, we can mobilize the efforts of concerned homebuilders and associates, giving them the information they need to contact their representatives and voice their concerns.

New technologies have also allowed us to produce our bi-monthly magazine and administer our website much more cost effectively than ever before, while increasing the value of the content and ease of accessibility. For instance, you can now securely register online for meetings, golf tournaments and sponsorships with just a few clicks of a mouse. We are constantly on the lookout



*Susan Ritter, HBAT
Executive Vice President*

for ways to make membership events and services more efficient and convenient.

Within the value column of being a member of the Home Builders Association of Tennessee you will find insurance programs, member advantage discounts through the National Association of Home Builders, a member rebate program, educational opportunities, governmental and legislative representation, communications programs, industry publications and much, much more. Plus, we are constantly striving to provide you with new and innovative programs to add even more value to your investment.

Today, we have the leadership, the resources and the abilities to grow the Home Builders Association of Tennessee into the greatest force of information, education and proactive legislative influence in our history. There is strength in numbers, and the HBAT is dedicated to its mission of being the voice of the homebuilding industry of Tennessee, while working hard to create better and higher quality benefits. We must recognize that there has never been a more important time to get involved and be an active member of the team. This is your association, and the entire staff of the HBAT is proud to support and serve you.

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MEET CONGRESSMAN DAVID DAVIS

Lime Stone Cove - East Tennessee



DAVID DAVIS (R) 1ST DISTRICT

Born: November 6, 1959

Family: Married to former Joyce Engle

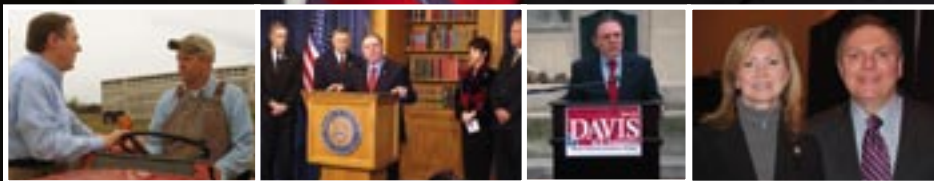
Children: Matthew and Rachel

Occupation: President, Shared Health Services, Inc.

Education: B.S. Organizational Management - 1991, Milligan College A.A.S., Respiratory Therapy - 1983, California College Certification, Respiratory Therapy - 1979, East Tennessee State University

Congressman David Davis grew up in the Lime Stone Cove area of east Tennessee and shares a deep sense of heritage in the mountain culture of faith and hard work. Lime Stone Cove is in Unicoi County, a community in the Unaka Mountain belt. It has an area of about 480 square miles. Lime Stone Cove is one of the most beautiful and fertile spots in the State, with an abundance of mineral and timber resources.

Many of you may remember Congressman Davis for his earlier service in the Tennessee House of Representatives, where he served the Johnson City area from 1998-2006. Davis is known as the "Father of Open Government" in Tennessee. He sponsored legislation to raise accountability standards in government. His political experience has a broad and exten-



sive scope, serving on the Tennessee State House Transportation Committee, House Government Operations Committee, House Public Safety and Rural Transportation Sub-Committee and the Commerce, Labor and Transportation Sub-Committee. A critic of unnecessary growth in government, Davis was a leader against the state income tax in Tennessee.

Davis was elected as a congressman in November of 2006. He is the U.S. Representative for Tennessee's 1st congressional district. This district is located in northeast Tennessee, including all of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sevier, Sullivan, Unicoi, and Washington counties and part of Jefferson County. Cities and towns represented within the district include Bristol, Butler, Elizabethton, Erwin, Greeneville, Johnson City, Jefferson City, Kingsport, Morristown, Mountain City, Roan Mountain and Sevierville.



As a historical note, Andrew Jackson (1796-1797) was elected as the first U.S. Representative of the Tennessee First Congressional District.

Congressman Davis was kind enough to take time out of his busy schedule to answer the following questions for the Tennessee HomeBuilder magazine:

1 David Parsons, the President of the Home Builders Association of Tennessee, recently expressed his gratitude for your support of the Expanding American Homeownership Act of 2007, H.R. 1852. Could you explain to our readers your reasons for supporting this legislation?

My vote on H.R. 1852, the Expanding American Homeownership Act of 2007,

was important for our continued economic growth. This legislation will bring stability to an increasingly volatile market by encouraging low to middle-income homebuyers to participate through FHA by offering affordable mortgage alternatives. Also, this legislation increases the loan limit. Consumers need to see that purchasing a home is within their financial grasp. As more consumers realize homeownership is possible the demand for new homes to be built will exist.

2 How do you view regulations that create economic roadblocks for small business owners?

As a small business owner for most of my adult life, I understand the challenges that face small businesses. Long days, employee management, and the search for more business all comprise the small business owners' work. The last thing we need to do as a federal government is slow the growth of business by over regulating it. Nothing will bring a fast growing business to a grinding halt faster than the government stepping in with a new tax or unnecessary regulation.

3 The immigration debate seems to be at the forefront of every political discussion. What are your thoughts on the current immigration issue and the continuing challenges that homebuilders face when it comes meeting their labor needs?

Illegal means illegal. Amnesty is not an option. We must enforce the laws that are already on the books. That being said, there is another side of the coin, which is the perspective of the employer. We must work on our immigration system to allow for temporary workers that are necessary to certain industries. Also, we have to look at those employers that are attempting to do the right thing and hire citizens. There is a fine line between confirming citizenship and overstepping bounds of personal information. This must be addressed to protect the employer and the economy.

4 The health care issue seems to be a hot topic in the political arena. Most homebuilders have to provide their own health insurance, and larger builders are faced with the challenge of providing healthcare alternatives for their employees. What are your thoughts on the healthcare issue for small businesses, and what impact do you think a national healthcare system would have on the economy?

I have over 25 years in the healthcare industry. I started working my way through college as an orderly, then on to manage hospital departments and on to start my own healthcare business. Healthcare has changed drastically over the years. I do not support nationalized healthcare, because (as we have seen in Tennessee) expanded healthcare coverage from the government will not work in the long run. Most Americans will not accept the conditions of waiting months for urgent surgeries. There are alternatives. I support the proposal of President Bush to enact a tax credit for those who are purchasing their health insurance. Also, I favor Association Health Plans, which would allow multiple small businesses to band together to receive lower insurance rates. Healthcare is something that is on the minds of everyone. It must be resolved with common sense, leaving politics behind.

5 Are there any final thoughts you would like to leave with the members of the Home Builders Association of Tennessee?

Homebuilding is one indicator of the strength of our economy. The job that each of you do is critical to the success of our State and our nation's financial well-being. I am proud of the work you do and encourage you *keep up the good work*.

The Home Builders Association of Tennessee would like to thank Congressman David Davis and his staff for their cooperation and assistance in producing this article.





2007 Non-Smoker Protection Act

As many of you may know, the Tennessee General Assembly passed the “Non-Smoker Protection Act” this past legislative session. The new law went in to effect on October 1, 2007. This law prohibits smoking in any enclosed public area. The bill also prohibits any public or private employer from allowing smoking in any place of employment subject to a few exceptions.

*T.C.A. 39-17-1803 (a) Smoking is prohibited in all **enclosed public places** within the State of Tennessee including, but not limited to, the following places...*(the bill then lists various public places such as restaurants, daycare facilities, convention centers, shopping malls, elevators, retail stores, etc.)

Places of employment are considered public places. See T.C.A. 39-17-1802(10) defines “public place” as *an enclosed area to which the public is invited including but not limited to...places of employment....*

*(5) “Enclosed area” means all space between a floor and ceiling that is **enclosed on all sides by solid walls or windows**, exclusive of doorways, which extend from floor to ceiling;*

It is my opinion that a home builder could reasonably argue that they do not have to comply with the non-smoking law in a home that is under construction until such time as all the walls are enclosed and windows are installed. While a home under construction would likely be considered to be a place of employment under the law, if the home were not enclosed then it would not be an “enclosed public place” to which the law would apply.

This interpretation is consistent with the conversation that Susan Ritter had regarding the new law as it applies to new construction work sites with Commissioner Neely and his staff. (Dept. of Labor and Workforce Development)

Once the work place (the home under construction) becomes enclosed, the employer (builder) would be required to post

no-smoking signs at each entrance of the place of employment and must notify all employees that they cannot smoke at the work place.

*T.C.A. 39-17-1803(b) states that **the prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application of employment.***

T.C.A. 39-17-1805 which requires “No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited by this part by the owner, operator, manager, or other person in control of that place.

Further, T.C.A. 39-17-1806 (e) requires *an owner, manager, operator, or employee of an establishment regulated by this part shall inform persons violating this law of the provisions of the law.*

The law will be enforced by the Department of Health and the Department of Labor and Workforce Development. Violations of the law will be reported in two ways: 1) a person may register a complaint with the Department of Health or the Department of Labor and Workforce Development or, both, and, 2) the Department of Health and the Department of Labor shall inspect for compliance while an establishment is undergoing otherwise mandated inspections. Apparently, the departments will not be performing inspections solely for the purpose of enforcement of the no smoking law.

Penalties for violations of the new law are as follows:

*T.C.A. 39-17-1807 (a) **A person who knowingly smokes in an area where smoking is prohibited by the provisions of this***



Doug Collins, Chair
Governmental Affairs Committee

part shall be subject only to a civil penalty of fifty dollars (\$50).

*(b) **A person who owns, manages, operates or otherwise controls any public place where smoking is prohibited pursuant to the provisions of this part and who knowingly fails to comply with any provision of this part shall be subject to the following:***

*(1) **For a first violation in any twelve-month period, a written warning from the Department of Health or Department of Labor and Workforce Development, as appropriate;***

*(2) **For a second violation in any twelve-month period, a civil penalty of one hundred dollars (\$100); and***

*(3) **For a third or subsequent violation in any twelve-month period, a civil penalty of five hundred dollars (\$500).***

*(c) **Each day on which a knowing violation of this part occurs shall be considered a separate and distinct violation.***

We hope this information will assist you and your members in complying with this new law.

Curb Appeal, Mail Delivery, & USPS Regulations



For over 18 years, Imperial Mailbox Systems (an Associate Member of HBAT) has provided solutions for mail delivery and curb appeal resulting in a higher awareness and demand for quality products and service.

In today's competitive landscape, this is an issue that every developer faces. What mode of mail delivery will be utilized within our development? Single curbside mailbox systems? Central delivery systems? Or perhaps a combination of delivery receptacles?

Vision of the community and service to the customer are the primary elements that factor into the decision. Developments with large custom or estate homes endeavor to increase property values through various means of curb appeal, including mailboxes, often coordinating the design with the community's street signage and lamp posts. Other developments with smaller homes or lots, wishing to employ the same curb appeal efforts, may group mailbox systems together, through twin or other multiple mailbox arrangements.

Still other developers envision a central point for mail delivery, often in connection with a community center; that may include a park or small businesses. New urbanized developments such as these seek to establish a greater sense of community between future residents, envisioning the creation of cohesive centers, such as coffee shops, eateries or other boutiques.

The first step in deciding which mode of delivery is best suited for a development is an understanding of what is authorized by the United States Postal Service (USPS) for the area. Two documents exist within the Federal Registry that pertain to this issue: the USPS STD 7b (7b), and the Postal Operations Manual (POM).

The 7b governs the manufacture of curbside mailboxes. The central benefit of the 7b is to provide the customer with a quality mailbox that will protect their mail from the elements, and will not pose any

hazard to drivers or pedestrians. For example, mailbox posts must be able to break away if struck by a vehicle. Many products available, including brick or stone assemblies and posts constructed of iron or steel remain unapproved due to this regulation. If a developer uses one of these systems within a community, liability is placed upon the future homeowners should someone become injured while striking the mailbox.

Chapter 6 of the POM defines the types of service available (City and Rural delivery), as well as the modes of delivery for each service. As consumers engage in conversation with Postmasters, or USPS Growth Management Coordinators, it cannot be overstated that a generous knowledge of the regulations is essential. For example, should the development in question fall within a previously recognized City Delivery Route, the Postmaster may enforce the "50% Rule", located within the POM, stating that 50% of the homes within a development must be complete and ready to receive mail before curbside mailboxes can be utilized, requiring the developer to use central delivery methods until the requirements are met. However, the 50% Rule does not apply to Rural Delivery Routes, therefore the Postmaster may not mandate central delivery methods on a development located within a Rural Delivery Route.

Another consideration is that customers must not be required to travel further than one block to a central delivery system to obtain their mail. In addition, if a home is sold, the Postmaster cannot arbitrarily change the mode of delivery because the customer has changed.

For more information and resources regarding mail delivery methods or curb appeal solutions, visit www.imperialmailboxsystems.com, or feel free to contact Imperial Mailbox Systems at (800) 647-0777. ♦



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Nashville, TN – October 25-28, 2007

2007 FALL MEETING

of the Membership and Board of Directors Meeting

This year's exciting 2007 Annual Fall Meeting of the Membership and Board of Directors Meeting was held in Nashville, Tennessee. HBAT Members enjoyed the elegant accommodations of the Hilton Suites Downtown Nashville and the excitement of the Music City nightlife.

The festivities began on Thursday, October 25th, with the Denzel



Carbine Memorial HIPAC Golf Tournament. The tournament was held

at Indian Hills Golf Club in Murfreesboro, Tennessee. A very special thanks goes out to all of our "almost-professional" participants who enjoyed the highly competitive tournament. We would also like to express our sincere appreciation to the generous sponsors of the event.

The Fall Meeting began on Friday with committee meetings throughout the day. Educational programs included informative sessions for builders covering topics on surviving a downturn market and environmental issues. Guest speakers included Bill Penny, an Environmental Attorney with Stites and Harbinson and Berry Rutenberg of Berry Rutenberg Homes.

Friday evening included the most exciting event for the HBAT ever!!! Members were introduced to the new HBAT offices in downtown Nashville, near Legislative Plaza. Grand Opening attendees enjoyed a night of delicious culinary delicacies and the melodic sounds of a Belmont University string trio. The feature event of the evening was the unveiling of an oil portrait of Denzel Carbine in the Carbine Board Room. Look for a special update of all the sponsors, contributors and recognition for everyone who made the new HBAT offices possible in the next edition of the HomeBuilder magazine.

Saturday began another day of committee meetings and informative educational programs on year-end tax planning with Bob Bellenfant of the Bellenfant & Miles Accounting Firm. Everyone enjoyed an informative session on tax preparation and planning.

In the afternoon, the Board of Directors meeting was held and Chairpersons gave reports on various committee business. The 2008 Senior officers were installed and the past officers were recognized for their services. The new Senior Officers include:

- **President** – James Carbine
- **Vice President/Treasurer** – Ed Zarb
- **Vice President/Secretary** – Phil Chamberlain
- **Associate Vice President** – Billy Allred
- **Immediate Past President** – David Parsons

In the evening, members gathered to honor the newest inductees of the Building Industry of Tennessee Hall of Fame – Congressman Lincoln Davis and Homebuilder Tonya Jones. Master of Ceremonies, 2007 HBAT President David Parsons described the significant contributions of these well deserving individuals. The 2007 Hall of Fame Banquet was held at the beautiful Schermerhorn Symphony Center, and was enjoyed by all the members and honored guests.

Select pictures of the 2007 Annual Fall Meeting of the Membership will be available on the Home Builders Association of Tennessee website (www.hbat.org) and featured in the 2008 January/February issue of the Tennessee HomeBuilder magazine.



Tonya Jones, Hall of Fame



Congressman Lincoln Davis, Hall of Fame



John Floyd, Builder of the Year



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Court Says: Water Quality Control Board was Wrong on Waters of the State Determination – Developer Wins

By William L. Penny



Recently the Chancery Court of Davidson County ruled in favor of Babelay Farm, a home development in Knoxville, and reversed the Water Quality Control Board's decision to revoke its aquatic resource alteration permit (ARAP). In so doing, the Court held in favor of the Knoxville development known as Babelay Farm on nearly all counts. The Board's decision was strongly opposed by the Home Builders Association of Tennessee (HBAT) and others in the development community. The decision by the Water Quality Control Board sent out shockwaves statewide because the breadth of decision contributed to the Tennessee Department of Environment and Conservation's (TDEC) increased or at least a perceived increase in overzealousness with respect to stream determinations. Hopefully, this opinion, rendered by Davidson County Chancellor Ellen Lyle, will allow TDEC to make stream determinations on a scientific basis rather than calling something a stream for fear of being reversed.

This case started out as a permit appeal by a neighboring landowner, James McMillan. He alleged a multitude of mistakes had been made in issuing the ARAP to Babelay Farm. For example he argued that the public notice was inadequate, the mitigation was inadequate for the stream for which the ARAP was requested, and that the permit did not address restrictions, mitigation or notice for construction activities in the area of the property he believed contained a stream. This "phantom" stream became a central focus of the Board's decision.

After several days of hearings before the Water Quality Control Board, the Board, contrary to all TDEC witnesses and the Corps of Engineers, rendered an incredulous decision that a stream existed on a pasture that was not part of the ARAP.

Even though the area in question had no flowing water, no real evidence of aquatic life, no defined bed and bank, the Board somehow determined that this area was a stream. The Board also rejected TDEC's recommended mitigation measures because, in part, TDEC did not follow the stream mitigation guidelines. Finally, the Board determined that the public notice was inadequate because they believed that the notice did not properly identify all possible streams and watercourses on the property, even though streams and wetlands properly identified by both parties were not going to be disturbed. As a result the Board revoked the ARAP for Babelay Farm.

Babelay Farm appealed the decision to the Chancery Court of Davidson County, as is required for permit appeals. The Attorney General was left with a difficult decision of either appealing the decision along with Babelay Farm or supporting the Board's decision. Both Babelay Farm and TDEC requested the Board to reconsider their opinion in light of what they believed was an erroneous decision, but the Board refused. TDEC did not appeal the decision, but as counsel to the Board, the Attorney General advised the Court, in an unprecedented but meritorious position, that the Board had committed error in the manner in which it rendered its decision. The State requested the case be sent back to the Board for proper deliberation. Babelay Farm agreed that the Board failed to follow proper procedure, but requested the Court to reverse the decision in full and not waste time going back to the Board.

The Court made a number of key rulings that will hopefully help quell the concern on stream determinations as well as other key permit appeal issues. First, the Chancellor determined that if an agreed upon jurisdictional water was not going to be impacted, then it would be "moot" for a person to appeal anything with regard to that water. Second, Chancellor Lyle threw out the Board's determination on the phan-

tom stream saying that the Board did not rely on proper findings of fact. Third, she stated that McMillan had no standing to appeal the inadequacy of the public notice, since he had actual knowledge of the development and how it would effect the features he complained about. Finally, she ruled that the Board had no authority to revoke the permit and reversed the revocation.

While ruling for Babelay on almost all counts, the Chancellor agreed with the Board's determination that the mitigation for the stream for which the ARAP was sought was inadequate, and that for the permit to be valid, additional mitigation would be required. Remarkably, TDEC had recommended and agreed with the selected the mitigation option mainly to satisfy Mr. McMillan's concern over post construction stormwater quality. He apparently tossed the baby out with the bathwater by appealing the mitigation, and now the mitigation may revert to the standard formula without the extra effort at accommodating his extraordinary stormwater concerns. When the mitigation is revised the permit will be rehabilitated.

This decision concludes in a positive manner for the development community, what can only be seen as one of the most controversial if not more questionable decisions the Board has ever rendered. Fortunately, the case will not go back to the Board for them to "fix" it, as the Court was able to find and fix the errors as a matter of law. Hopefully, the decision will provide some assistance to regulators in making wet weather conveyance determinations, to the Board in educating them on procedural matters, and to the regulators who should not be suckered into trying to accommodate persons whose intent may be directed more at stopping a development rather than improving environmental conditions. Ultimately, this favorable decision will also assist the development community in preventing needless permit challenges and speed up the permit issuance process. ♦

ATTENTION:

HBAT Members!

Have you been the victim of copper theft?



*By Hope Jackson
Director of Legislative Affairs*

The inaugural meeting of the Special Joint Committee to Study the Theft of Precious Metals (“the Committee”) was held on Capitol Hill in Nashville on September 25 and 26, 2007. HBAT’s presentation went extremely well and immediate Past President Tim Neal did an excellent job of explaining our position and the problems we are having with copper theft on our job sites. Committee membership includes members of both the House and the Senate and various industry representatives. They are: Sen. Jim Kyle (Chair), Sen. Dwayne Bunch, Sen. Steve Southerland, Rep. John DeBerry, Rep. Jon Lundberg, Rep. Mike McDonald, and industry members, Mr. Dom Marchitto, of Metal Management, representing the metal/scrap recycling industry, Lt. Frank Andello of the Memphis Police Department representing law enforcement, Mr.

William Whitesell, District Attorney General, Mr. David Callis, with the Tennessee Electric Cooperative Association, representing electric cooperatives and our own Mr. Doug Collins, of Sovereign Homes, representing the home building/real estate industry.

The first meeting focused on explaining the extent of the problem from the various perspectives. In addition to the HBAT presentation, committee members also heard testimony from law enforcement agencies, the Tennessee Association of Realtors, the Tennessee Malt Beverage Association, the Tennessee Electrical Cooperative Association, the scrap metal industry and others. The second meeting of the Committee was held on October 17 and 18, 2007. At this meeting, an initial draft of metal theft legislation was unveiled and a discussion began on the individual legislative proposals contained in the draft. It is important to note that the draft is merely a means of initiating discussion on various proposals

and that the legislation that ultimately results from the meetings of this Committee will likely be changed a great deal before it is filed with the legislature in January. In fact, at this time, the draft legislation contains mainly those items which are generally agreed upon by the committee members. The more, possibly contentious, legislative proposals have been set aside to be discussed at the next meeting of the committee which is planned for early December. Examples of these proposals include the tag and hold of copper and catalytic converters sold to scrap dealers, the forfeiture of vehicles and tools used in scrap metal theft, restrictions on the sale of HVAC coils and condensers and the preemption by the state of local regulation of scrap metal. Once a bill is approved by the committee, it will be filed with the General Assembly when session starts in mid-January. Other changes will very likely be made as the legislation works its way through the legislative process to passage by the General Assembly and approval of the Governor. HBAT staff will keep you informed as we work diligently on our members’ behalf to get some sort of relief from the escalating copper theft problem.

Thank you to everyone who sent us information for use in the presentation to the Special Joint Committee to Study Theft of Precious Metals. ❖





**In this issue of the
Tennessee Home-
Builder magazine,
we presented the
following question
to Sen. Bill Ketron
and Sen. Tommy
Kilby:**

What is your position on Senate Bill 1748, which would no longer allow exemptions and would require sole proprietors and partners in the construction industry to carry workers' compensation insurance on themselves, regardless of their number of employees?



**Response
from Senator
Bill Ketron**

"We have a real problem in Tennessee in that our construction laborers are not receiving workers' compensation coverage that we declared they should receive over ten years ago. This is happening every day on construction sites across the state. Senate Bill 1748 is about clarifying who should be covered by workers' compensation and will keep contractors from avoiding paying for workers' compensation for their workers by subcontracting the work out to "independent contractors".

Several years ago it was decided that the construction industry was different because of seasonal and economic cycles. Because of this, the construction industry has more problems in deciding who is an employee and who should be covered by the contractor. To make the situation more difficult, construction workers do not enter an office everyday at a set time, have close supervision, or leave at a predetermined time. However, they are often told what to do and when to do it. It was impossible to tell who should be covered and therefore, we tried to fix the problem by enacting TCA 50-6-113.

However, we have created a situation where contractors try to determine when a person is a sole proprietor rather than an employee. Both are engaged in selling their labor. If an individual starts a roofing company and hires even one employee, he is required to purchase workers' compensation on that individual. Further, if an individual sub-contracts the job to twelve other sole proprietors or at least individuals who are willing to say that they are sole proprietors, such individuals believe that they are not required to purchase worker's compensation insurance on any of the twelve.

This is a real situation occurring everyday in Tennessee and creates an uneven playing field. Contractors who follow the spirit of the law and treat their worker's fairly are at a disadvantage to competitors who subcontract the work to avoid providing workers' compensation. Senate Bill 1748 seeks to level that playing field. By subcontracting out the work, contractors are trying to take away state mandated



**Response
from Senator
Tommy Kilby**

Small business people accept taking risks as simply being a part of doing business. Of course, they take steps to minimize those risks, but taking a risk is part of a small business person's life.

During the last session of the General Assembly, Senator Bill Ketron, a colleague for whom I have a great deal of respect, brought a bill to require small business people in the construction business to carry workers compensation insurance on themselves, regardless of the number of employees they may have. As much as I respect Sen. Ketron, I simply cannot go along with him on this proposal because I believe it will put an undue financial burden on small business people that are already burdened almost to the breaking point.

First, let's be clear what we're talking about here. There are many sole proprietors in the construction business running single-person operations. Many others have only one or two employees. These businesses are likely struggling to make ends meet as it is. They simply cannot afford to pay ever-increasing premiums for workers' comp insurance.

Furthermore, I don't think they should have to. If they want to accept the risk of having to cover their own medical bills if they are hurt on the job, then so be it. Many elected officials think it is the business of government to come up with rules and regulations that will shield our constituents from risk. I'm not one of those elected officials. More often than not, when government tries to take the risk out of any endeavor, it simply winds up creating endless piles of red tape and increasing the cost of doing business.

Sole proprietors are not wealthy companies. The men and women that run sole proprietorships are on the job sites every day with their employees. They carry workers comp insurance on those employees—as they should—but government should not increase the financial burden on them by requiring them to carry workers comp insurance on themselves. For once, let's give the little guy a break. After all,



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Cont. Response from Senator Bill Ketron



benefits from those Tennesseans who are not in a position to be able to negotiate a better situation. Workers who are told they are not employees and therefore do not have any workers' compensation still have injuries. Those injured workers are either covered by the general contractor's insurance, or left to fend for themselves. This bill will assure that more Tennessee workers are covered by workers' compensation.

There have been valid concerns expressed regarding a true sole proprietor who is hired to do a job. The bill was amended to allow a true sole proprietor to opt out and not purchase workers' compensation insurance on himself/herself. The bill would still require that when that individual either hires or subcontracts the work both he/she and the individual must be covered by workers' compensation. By hiring or subcontracting, that individual has become a business and will be held to the same standard as other construction businesses just like requiring them to have a business license and auto tags. The bill was changed to effectively take care of the "little guy" who truly works by himself/herself and contracts directly with his/her customers.


Construction is a dangerous occupation and workers' compensation insurance has been mandated for almost 90 years and has served us well. Senate Bill 1748 strengthens our existing law, provides uniform application in the construction industry and provides valuable coverage to more workers. The goal is to provide Tennessee Courts with guidance in applying the law consistently and to ensure that everyone working on a construction site for someone else be covered by workers' compensation." 

Cont. Response from Senator Tommy Kilby



large companies aren't required to carry workers compensation insurance on their owners.

Most of my colleagues in State government are well-meaning people, and I'm sure that Sen. Ketron brought this bill with the best of intentions. However, he needs to stop and think about the impact it would have on the smallest of our state's construction companies. It's tough enough for many of them to make ends meet. As admirable as our intentions may be, is it fair for us to add another bill to their monthly expenses?

I argue that it isn't. If a small business person wants to run the risk of having to cover his or her medical bills incurred as the result of a workplace injury, then so be it. Many a small business person will tell you that they are used to taking risks every day of the week. 

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Did You Know



November is designated as NAHB's Spike Appreciation Month



A month-long celebration dedicated to recognizing the year-long efforts of one of the most active and dedicated groups in our membership - Spikes. Designating November as Spike Appreciation Month is just one way of providing much-deserved visibility and recognition to the members who actively recruit and retain members.

While November is officially recognized as NAHB Spike Appreciation Month, some state and local associations choose to recognize Spikes throughout the year at their regularly scheduled events or at special events at other times of the year to accommodate their local schedules. Anytime is a good time to say thank you to Spikes for supporting our membership.

What are the goals of Spike Appreciation Month?

- To recognize, honor, and thank Spikes for their contributions to the association and the industry
- To increase appreciation among NAHB's general membership and leadership of the dedicated efforts of Spikes to the membership development of the association
- To encourage the development of active Spike Clubs throughout the federation

How can you participate in Spike Member Appreciation Month?

The NAHB Membership Team prepares materials each year to help state and local associations plan their own Spike Appreciation Month celebrations. But this is just the beginning! Take the ideas presented and develop them into your association's unique way of celebrating Spikes.

The following Spike Appreciation Month Resources are available at www.nahb.org:

- Spike Appreciation Ideas for State and Local HBA's
- Spike Club 101
- Spike Club Annual Competitions
- Spike Club logo
- Spike Ad 1-Have a Ball at the Spike Party
- Spike Ad 2 - Lincoln
- Spike Ad 3 - To Do List
- Spike Party Promotional Materials

For more information about this item, please contact Gabrielle Taylor at 800-368-5242 x8351 or via e-mail at gtaylor@nahb.com.

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Shedding Light on Green Building

New Lighting Technologies Help Curb Energy Bills

With today's concern over environmental issues, fossil fuel consumption and the need to conserve energy, it's surprising the amount of electricity that's wasted in a typical home. According to the United States Department of Energy, 50 percent or more of the energy used to light American homes is squandered due to obsolete equipment or inefficient use.

In fact, an average American household spends up to **19** percent of its energy budget on lighting, even though much of this expense is unnecessary. Technologies developed during the last decade can cut lighting costs by as much as 60 percent, while at the same time enhancing lighting quality and reducing environmental impact.

"Recent innovations in residential lighting not only help keep energy costs down, they are also environmentally friendly," said Peter Pfeiffer FAIA, an architect and green building pioneer from Austin, Texas. "Nearly 50 percent of the nation's energy is produced by coal fired power plants, which emit pollutants such as carbon dioxide, sulfur dioxide, and nitrous oxides, in addition to particulates and heavy metals such as mercury. I think it's important for each of us to recognize that we can make a difference—we can have a positive impact on the environment by something as simple as making our homes more energy efficient."

Recent advances in lighting are part of a larger trend toward green building, which includes practices and products used to construct homes that are energy-efficient, healthier, and more environmentally friendly.

For example, to improve energy efficiency in lighting, an increasing number of builders and homeowners are choosing to:

- **Incorporate fluorescent lighting.** Thanks to recent innovations, homeowners have a variety of options to choose from. For example, fluorescent tubes now come in ultra-thin sizes and offer superior lighting quality, while compact fluorescent bulbs work in regular lamps and fixtures. When compared to standard incandescent lights, fluorescents use up to 75 percent less energy and last as much as 15 times longer.
- **Maximize the use of daylight.** Daylighting, particularly high windows that don't dramatically increase the heat inside a home, can create substantial energy savings. According to the Department of Energy, modern buildings designed to take full advantage of daylighting use up to 60 percent less electricity for lighting.
- **Eliminate recessed cans, even those that use fluorescent lights.** Recessed cans puncture a structure's "thermal envelope" and should be used sparingly, if at all. Even cans that are marketed as air tight can create leaks which drain energy.

The National Association of Home Builders recently partnered with the Green Building Initiative™ to develop model green home building guidelines. The program is designed to make green building more accessible to local builders and homeowners.



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Ask the CPA—

YEAR-END TAX PLANNING?



Bob Bellenfant, CPA

It is very rare when someone tells me that they look forward to paying taxes or even filing their tax return. Most people look at the event with disdain. However, taxes are an

area in life where the opportunity exists to predict and manage the outcome to ones greatest advantage. Too few people take advantage of the opportunity to maximize tax planning and continue to be amazed at the amount of taxes they owe and the complexity involved in calculating their fair share.

I have accumulated what I feel are the top priorities for tax planning for homebuilders during the remaining months of 2007.

1. **Revenues and expenses** - Proper management of revenues and expenses as you approach December 31 will usually yield surprising results. In slow years, you can see what options are available for accelerating revenues. In peak years, you will want to determine how you can maximize expenses.
2. **Compensation of owners** - If your business is an LLC, partnership or subchapter S Corporation, planning of owner compensation is essential because the owners are responsible for their pro rata share of the business' earnings.
3. **Equipment purchases** - You may want to purchase additional equipment before the end of 2007 to take advantage of the \$112,000 expense limit allowed. Expense deductions for SUV's are limited to \$25,000.
4. **Use of automobiles** - This use of vehicles by a homebuilder is sometimes overlooked or minimized. Please review the use of vehicles in your busi-

ness with your tax advisor. The results of the review will most likely yield some additional benefits, especially where a vehicle has mixed business and personal use.

5. **Entity** - Determine the appropriate entity for operating your business. Each year, make certain that you make all required filings with the state(s) that you operate in to ensure that all legal requirements are met.
6. **Pension** - The proper use of a retirement plan will reduce your tax burden. Determine which plan is best for your business.
7. **Worker Classifications** - Review the classifications of all of your workers to determine that they are appropriately classified as an employee or a subcontractor.
8. **Management of Closings** - Speculative residential building revenue is normally recognized on the date of closing. As year-end approaches, management of closing dates by those spec built sales are important in determining tax liabilities.
9. **Domestic Production Deduction** - Many homebuilders will qualify for the domestic production deduction. You must have a taxable income and wages expense for employees (W-2). It is calculated as 6% of net income from domestic production activities limited by 50% of wages reported on Form W-2.
10. **Energy Credit** - An eligible contractor may qualify for a tax credit of up to \$2,000 for construction of

an energy efficient home. A tax credit reduces your taxes and is much better than a tax deduction which reduces your taxable income.

Diligent year-end tax planning should be beneficial to every business. The home building industry offers many unique planning opportunities that should be discussed with your CPA as an ongoing routine.

Bob Bellenfant is a certified public accountant with Bellenfant & Miles, P.C. CPA's in Brentwood, Tennessee. He has served homebuilders and other construction related businesses in Tennessee for over twenty years. You can reach him at (615) 370-8700, extension 12 or by e-mail at bob@bellenfantmiles.com.





LOCAL HAPPENINGS

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UPDATE



Greetings from MTSU! We wanted to send you an update on our programs here as we get the Fall semester underway. We are starting our second year with the Land Development / Residential Building concentration. We have almost tripled our student numbers since the new degree was approved in the summer of 2005. We graduated nine students during the June and August 2007 graduations. We are beginning to gear up for the National Home Builders Show competition in February in Orlando, Florida. We have that first place win from last year to live up to. We now have 2 full time faculty members, Dr. David Hatfield and Mr. Duane Vanhook, along with several other faculty members teaching various classes. We have just started advertising for the third full time faculty member. We also have a new technical clerk, Kathy Johnson, who is trying to help us all better meet the needs of the both students and industry.

We have the Electrical Construction Management concentration which began its first series of courses in the Fall of 2006. We have many students completing the 5 year NJATC component of the program in at least 43 states and two countries. We have several students that have begun to take the courses offered through MTSU and expect our first graduate in August 2008.

We are hoping to keep you all better informed about our programs so watch for future updates. If you would like more information about either of the programs, we would be happy to come and speak at your Home Builders Association meeting. Please call 615.898.2781 to set up an appointment.

MTSU RESIDENTIAL DEVELOPMENT PROGRAM RECEIVES \$61,000 FROM LOCAL HOME BUILDERS

MURFREESBORO, TN -- A group of Middle Tennessee home builders and related industries presented a check for more than \$61,000 to The Residential Home Building and Land Development (RHBLD) degree program at Middle Tennessee State University.

Middle Tennessee –area home builder Regent Homes, led by president David McGowan, assembled a group of Nashville-area home builders, subcontractors, and suppliers to build a home in the Blackman Farms community in Murfreesboro. The home recently sold, and Regent Homes donated the profits to the MTSU RHBLD degree program. The program offers a Bachelor of Science degree in Construction Management Technology that puts an emphasis on residential land development and residential home building.

"We were very fortunate to have a lot of great companies help out by donating materials and resources," said McGowan.

Platinum sponsors for the MTSU house include: Regent Homes, HK Construction/The James Hardie Company, Beazer Homes and Centex Homes.

Gold Sponsors are: Source 1 Cabinets, Centurion Stone, 84 Lumber, The L & L Company, Builders First Source, B & M Insulation Co., and Hermitage Lighting Gallery.

Silver Sponsors are: Moen, T & T Concrete, Kenco Distributors, Pinnacle Bank, Whirlpool Corporation, Sylvan Designs, and Dal Tile.

Proceeds from the sale of the home will help pay for the expenses of running the program until 2009 when the State Board of Regents will take over the program if the required number of students are enrolled. MTSU's Residential Home Building and Land Development Program

is the only one of its kind offered in the United States.

"We are very excited about this program," said the program's director, Dr. David Hatfield. "To my knowledge, MTSU is the only university in the country that is offering this emphasis in residential land development and home building. It will be a great asset to the strong residential construction industry in Middle Tennessee and in the Southeast as a whole."

The purpose of the degree program is to prepare students for careers in a variety of construction-related industries.

"We want to educate and train students to be able to work for themselves as custom builders, to work in small companies or to work in large corporations," Hatfield said. "The students will learn how to develop a subdivision, from creating the infrastructure to building the houses."

Middle Tennessee State University's Construction Management Technology team placed first in the nation at the Centex National Association of Homebuilders (NAHB) Student Competition held at the International Builders Show this past January. MTSU competed against 39 other universities from throughout the United States for the top honor.

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2008—

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March 9 - 11, 2008

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