



DIMENSIONS

The Monthly Newsletter of the New Jersey Builders Association

SEPTEMBER IS ASSOCIATES APPRECIATION MONTH

It takes more than builders to construct, sell, remodel and finance a home...it takes the effort and expertise of subcontractors, suppliers, manufacturers, mortgage bankers, utilities, title companies, architects, engineers, attorneys, realtors, and a host of other industry-related professionals.

Likewise, it takes more than builders to make our association strong and to advocate for the home building industry in New Jersey...it takes the hard work and dedication, the financial support and loyalty of the associate members who are actively involved in NJBA.



Throughout the month of September, NJBA will be honoring our associate members – on our website, at the board meeting, and in our publications Weekender and Dimensions. In fact, the September issue of Dimensions will feature the articles highlighting the efforts of NJBA's hardworking associate members.

Throughout the month of September, <http://www.njba.org> will feature 29 different associate members who have contributed their time and talent for the betterment of NJBA.

As part of this celebration, we encourage you to thank our associate members for their:

- contributions to the home building industry, NJBA, and our community
- sponsorship of NJBA events to ensure their success
- service on many committees, and for supporting those efforts
- voice – representing NJBA in their companies, throughout their communities, and across the state
- support of our legislative initiatives and generous contributions to BPAC, and
- time, commitment, energy, spirit and talent – all for the benefit of the home building industry in New Jersey.

Furthermore, NJBA members – especially in tough economic times – should continue to support one another and conduct business with one another whenever possible.



RISING COST OF REGULATORY CHANGES

By Michael J. Gross and Steven M. Dalton, Esquires, Giordano, Halleran & Ciesla, P.C.

“Change” has been a hot topic of discussion during the 2008 Presidential election process, but over the past several years, change has been prevalent with respect to the State’s environmental policy. Builders and developers have experienced a dizzying amount of activity by the New Jersey Department of Environmental Protection (DEP). DEP has proposed and implemented

significant changes to many of its regulatory programs. These actions and proposals have had – and will continue to have – far-reaching consequences on the building industry that are both immediate and long-term.

This article outlines several major regulatory proposals covering the full range of land use programs that have been adopted or proposed over the past several years. These

programs will dramatically alter future development throughout New Jersey.

2004 Stormwater Rules

DEP established the first of its 300 foot buffer provisions associated with Category One (C-1) waters through adoption of its Stormwater Management rules, effective February 2, 2004. These rules also implemented extensive changes in the requirements for stormwater management, establishing stringent development design and performance standards.

Introduction and Expanded Use and Reliance on Landscape Maps

DEP introduced its Landscape Project mapping in the regulatory context in connection with amendments to the Freshwater Wetlands Protection Act rules adopted in 2002. The amendments allowed DEP to rely on statewide Landscape Maps in classifying wetlands as exceptional resource value. The mapping goes far beyond DEP’s prior practice of designating habitat based on the probable “home range” of a previous specifically-documented threatened

or endangered species, and maps areas as “habitat” notwithstanding the lack of evidence of present or past use of the wetlands by a specific documented, threatened or endangered species. DEP has since expanded the use of its Landscape Project

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more detailed and extensive investigation and reporting at preliminary stages of archaeological surveys.

Other Initiatives

Currently awaiting formal proposal are the Endangered and Threatened Species rules. Implementation of an upland endangered and threatened species regulatory program would significantly expand environmental restrictions and restrict development opportunities for vast areas of the state. Additionally, DEP is developing a State Water Supply Master Plan expected to be released by the end of 2008. This plan will define current water supply status and sustainable resource capacity, identify areas that are in deficit/surplus, and project future demand. DEP intends to examine not only water supply but also water quality issues in this context.

Impacts on Building Industry

The overall combined impact of these new and amended rules will be to lengthen the permitting process and increase the cost of development. The addition of new regulations and the enhancement of existing regulatory programs will further complicate an already difficult regulatory process. Enhancement of public participation requirements will lengthen an already long and complex approval process. New and expanded regulatory requirements will increase the due diligence burden on developers in the land purchase context. Engaging environmental consultants and counsel in the due diligence and permitting processes will be critical to ensure compliance with the expanded scope of DEP's regulations.

The expanded scope of DEP regulatory requirements will also increase construction costs. Developments will need to be designed and built in compliance with more limiting development standards. Developers have already incurred increased costs in connection with compliance with the substantive requirements of the Stormwater Management and Flood Hazard rules. Compliance costs will continue to rise as newly adopted and proposed regulations are implemented.

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A study of costs of regulation in new housing development in New Jersey published in 2000 by the Center for Urban Policy Research and entitled "Red Tape and Housing Costs: How Regulation Affects New Residential Development" by Michael I. Luger and Kenneth Temkin, concluded that the estimated "direct cost of excessive regulations to the developer" is approximately \$10,000 to \$20,000 per new housing unit on average. These costs are likely passed along to home buyers in the form of higher housing prices, or result in lower profits for developers, or are shifted back to landowners. For costs passed along to home buyers during a robust market, the authors estimate a multiplier of 4.0, which means that "excessive regulation could add as much as \$40,000 to \$80,000 to the final cost of a house". Being that this was published prior to the addition of all these DEP regulatory initiatives, the added costs are now even greater.

The expanded scope of DEP's regulatory authority will likely have secondary economic impacts on the ability to develop as

well. For instance, delays in the permitting process will have negative consequences with respect to financing. Additionally, the expansion of regulated areas will reduce the yield of developments, which will likely impact land values, housing prices and developers' profits. Moreover, housing starts in June 2008 fell to the slowest pace in 17 years, and the relationship between the decline in the national economy and the prolonged housing slump has been widely reported. When the economy does improve, it remains to be seen whether these new and expanded regulatory programs will inhibit recovery of the housing industry.

The State Legislature recently recognized the economic crisis facing the State's development industry through its overwhelming approval of the Permit Extension Act. This Act, which at publication awaits the Governor's signature, will afford some relief to builders and developers. However, it is both limited in its scope and temporary, and further evaluation of the State's environmental policies and programs should be undertaken to establish a more balanced relationship between environmental and economic considerations, allowing for a healthy and robust development industry.

Mr. Gross is the managing partner and Mr. Dalton is a partner of Giordano, Halleran & Ciesla, P.C. with offices in Middletown and Trenton, NJ. Giordano Halleran & Ciesla, P.C. is an Associate Member and Master Sponsor organization of NJBA; the firm serves as the association's environmental counsel.



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Archived copies of *Dimensions* are available at www.njba.org/dimensions. Questions or comments may be sent to Amy Whilldin, Director of Communications, at awhilldin@njba.org.

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