

Testimony of the Long Island Builders Institute

Before the New York State Senate
Construction Regulatory Reform Forum

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Long Island Builders Institute

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LONG ISLAND
BUILDERS INSTITUTE

Advocating Responsible Building & Remodeling

TESTIMONY OF THE LONG ISLAND BUILDERS INSTITUTE BEFORE THE NEW YORK STATE SENATE
CONSTRUCTION REGULATORY REFORM FORUM SEPTEMBER 25, 2013

MY NAME IS MITCHELL PALLY AND I AM THE CHIEF EXECUTIVE OFFICER OF THE LONG ISLAND BUILDERS INSTITUTE, THE LARGEST RESIDENTIAL BUILDING TRADE ASSOCIATION IN THE STATE. IT IS A PLEASURE TO BE WITH YOU TODAY TO DISCUSS REGULATORY ISSUES WHICH ARE HINDERING THE ABILITY OF THE RESIDENTIAL REAL ESTATE INDUSTRY TO CREATE ECONOMIC ACTIVITY WITHIN NEW YORK STATE.

FIRST AND FOREMOST IS OUR DEEP CONCERN OVER THE SCAFFOLD LAW, SECTIONS 240 AND 241 OF THE LABOR LAW, WHICH SIGNIFICANTLY INCREASES THE COST OF DOING BUSINESS. ON YOUR LIST OF SPEAKERS IS ARTIE CIPOLETTI, THE CURRENT VICE PRESIDENT OF LIBI AND THE PRESIDENT OF DAVINCI CONSTRUCTION WHO WILL TESTIFY REGARDING THE SPECIFIC COST ISSUES WHICH MUST BE TAKEN INTO ACCOUNT BY CONSTRUCTION COMPANIES. I WILL LEAVE THE DRAMATICS TO HIM.

SECOND, IN MANY CASES, DEVELOPMENT PROJECTS RECEIVE THE NECESSARY STATE AND LOCAL PERMITS FROM THE APPROPRIATE AGENCIES AND ARE READY TO START TO BUILD AND CREATE HUNDREDS OF JOBS, ONLY TO BE STOPPED BY LAWSUITS UNDER ARTICLE 78 OF THE CPLR. IN THESE CASES, WHICH OFTEN TAKE FROM ONE YEAR TO EIGHTEEN MONTHS, IT IS ALMOST IMPOSSIBLE TO GET FINANCING FOR THE PROJECT BECAUSE OF THE POSSIBLE UNCERTAINTY OF THE OUTCOME OF THE LAWSUIT. EVEN IF THE MUNICIPALITY WINS AND THE DEVELOPMENT PROJECT MOVES FORWARD, THERE ARE NO PENALTIES IMPOSED UPON THE LOSING SIDE, NOTWITHSTANDING THE FACT THAT THE DEVELOPER HAS BEEN DELAYED OVER EIGHTEEN MONTHS AND MAY HAVE MISSED THE MARKET FOR HIS PRODUCT AND THE FACT THAT THE CONSTRUCTION INDUSTRY HAS LOST EIGHTEEN MONTHS OF JOBS AND TAX REVENUES. LEGISLATION SPONSORED BY STATE SENATOR JACK MARTINS WOULD REQUIRE A BOND TO BE POSTED BEFORE AN APPEAL CAN TAKE PLACE ON THESE ACTIVITIES, SUCH LEGISLATION PASSED THE STATE SENATE IN JUNE AND WE ARE HOPEFUL THAT THE ENTIRE STATE LEGISLATURE AND THE GOVERNOR WILL SEE THE NEED TO PROTECT PERMITTED DEVELOPMENT PROJECTS FROM UNNECESSARY DELAYS AND EXPENSES BY PASSING THIS LEGISLATION NEXT YEAR.

THIRD, THERE ARE TWO SPECIFIC REQUIREMENTS WITHIN THE STATE BUILDING CODE WHICH CREATE SIGNIFICANT ADDITIONAL COSTS TO BUILDERS WITHOUT PROVIDING SUBSTANTIAL ADDITIONAL PROTECTIONS. FIRST, THE REQUIREMENT THAT ALL BUILDINGS IN THE STATE, REGARDLESS OF LOCATION, CONDUCT SEISMIC EVALUATIONS AND CONSTRUCTION LEVELS, EVEN HERE ON LONG ISLAND, CAN ADD UP TO 20-25% OF THE COST OF THE BUILDING. SECOND, THE REQUIREMENT THAT AIR MODIFICATIONS BE CONTINUALLY EVALUATED AND EXCHANGED, EVEN IN BUILDINGS IN WHICH FEW PEOPLE WORK, SUCH AS WAREHOUSING FACILITIES, ADDS SUBSTANTIALLY TO THE COST OF THE DEVELOPMENT OF SUCH BUILDINGS. WE WOULD URGE A REVIEW OF BOTH OF THESE REQUIREMENTS.

FOURTH, THE PROTECTION OF STORM WATER RUNOFF HAS BECOME A MAJOR ISSUE IN MANY PLACES, WITH SIGNIFICANT REQUIREMENTS BEING IMPOSED, EVEN IN PLACES WHERE SUCH RUNOFF DOES NOT TAKE PLACE. WHILE DEC HAS CLEARLY BECOME MORE FLEXIBLE IN THIS REGARD, AND IN FACT CHANGED TWO OF THEIR REGULATIONS AS A RESULT OF THE EFFORTS OF LIBI, WE CONTINUE TO TRY AND FASHION A SYSTEM WHICH WILL ALLOW FOR THE CONTROL OF SUCH RUN OFF IN WAYS WHICH DO NOT SIGNIFICANTLY INCREASE THE COST OF DEVELOPMENT.

FIFTH, WE REMAIN CONCERNED WITH THE SUBJECTIVE NATURE OF MANY OF THE NEW QUESTIONS BEING REQUIRED AS PART OF THE ENVIRONMENTAL QUALITY REVIEW ACT FORMS WHICH WILL TAKE EFFECT NEXT MONTH. WHILE WE FULLY SUPPORT THE NEED TO UPDATE THE FORMS, IT CONTINUES TO BE OUR BELIEF THAT MANY OF THE NEW QUESTIONS ARE MORE SUBJECTIVE RATHER THAN OBJECTIVE, REQUIRING ASSUMPTIONS AND ESTIMATES ON MANY ANSWERS, WHICH COULD LEAD TO MORE AGGRESSIVE LITIGATION ON THESE ISSUES BECAUSE OF THE NATURE OF THE ANSWERS BEING PROVIDED.

SIXTH, THERE ARE MANY INSTANCES WHERE A DEVELOPER MUST NEGOTIATE WITH DEC ON SPECIFIC USES OF PART S OF THEIR PROPERTY WHICH WILL HAVE A DRAMATIC IMPACT ON THE ABILITY OF THE PROPERTY TO FULFILL THE ECONOMIC DEVELOPMENT NEEDS OF THE STATE. IN THESE CASES, SUCH AS THE RE-USE OF PROPERTY AT CALVERTON, WE BELIEVE IT IS ESSENTIAL THAT THE EMPIRE STATE DEVELOPMENT CORPORATION BE INCLUDED WITHIN SUCH DISCUSSIONS AND THE DECISION MAKING PROCESS SO THAT A BALANCE CAN BE ACHIEVED BETWEEN BOTH THE ENVIRONMENTAL AND ECONOMIC DEVELOPMENT NEEDS OF OUR COMMUNITY.

SEVENTH, THE NEED FOR AFFORDABLE HOUSING FOR OUR YOUNG PEOPLE IS AN EVER INCREASING NEED FOR OUR ECONOMIC DEVELOPMENT GOALS AND UNFORTUNATELY MOST OF THE MUNICIPALITIES ON LONG ISLAND DO NOT WANT SUCH HOUSING IN THEIR COMMUNITIES. THE NEED FOR RENTAL HOUSING ON LONG ISLAND IS FAR AND AWAY ONE OF THE MOST IMPORTANT ASPECTS OF KEEPING OUR YOUNG PEOPLE HERE AND THE INABILITY TO BUILD SUCH HOUSING IN ALL PARTS OF LONG ISLAND CONTINUES TO DAMPEN THE OPPORTUNITIES TO GROW OUR COMPANIES. OVER FORTY YEARS AGO, IN A SIMILAR SITUATION WITH REGARD TO HOUSING FOR OUR CITIZENS WITH DISABILITIES, THE NEW YORK STATE LEGISLATURE ENACTED THE PADAVAN LAW WHICH ALLOWED THE STATE TO IMPOSE A SPECIFIC PROCESS WITH REGARD TO THE DEVELOPMENT OF HOUSING FOR OUR CITIZENS BECAUSE THE MUNICIPALITIES REFUSED TO ALLOW SUCH DEVELOPMENT IN THE AMOUNT NECESSARY FOR THE NEEDS OF NEW YORK STATE. WE WOULD URGE YOU TO ONCE AGAIN LOOK AT THIS PROCESS AND INCLUDE AFFORDABLE HOUSING WITHIN THE LAW TO ENSURE THAT SUCH RENTAL HOUSING, WHICH IS IN DIRE NEED HERE, CAN BE DEVELOPED.

THE LONG ISLAND BUILDERS INSTITUTE THANKS THIS COMMITTEE FOR REVIEWING THESE REGULATORY AND LEGISLATIVE ISSUES WHICH ARE OF GREAT IMPORTANCE TO THE ABILITY OF OUR BUILDERS TO CONTINUE TO PROVIDE THE AMERICAN DREAM FOR OUR CITIZENS. YESTERDAY, LIBI AND ITS CHARITABLE ARM, LONG ISLAND HOME BUILDERS CARE DEVELOPMENT CORP, ANNOUNCED THE NAMES OF THE SIX US SERVICE VETERANS WHO WILL BE THE OCCUPANTS OF THE FIRST SUBDIVISION IN

THIS COUNTRY BUILT ESPECIALLY FOR RETURNING VETERANS. THE SIX HOUSES ARE BEING SOLD TO THESE AMERICAN HEROES FOR LESS THAN 50% OF THE COST OF THE HOUSE THROUGH THE DONATIONS AND WORK OR LIBI MEMBERS. WE WOULD VERY MUCH LIKE TO BE ABLE TO DO SO FOR ALL OF OUR CITIZENS WHO NEED HOUSING IN OUR COMMUNITIES AND WE ARE HOPEFUL THAT YOUR WORK WILL ALLOW US TO EXPEDITE THE BUILDING OF SUCH HOUSING NOW. THANK YOU VERY MUCH.