



**TESTIMONY OF THE LONG ISLAND BUILDERS INSTITUTE
DRAFT SUBWATERSHEDS WASTEWATER PLAN**

September 6, 2019

Brentwood, NY

The Long Island Builders Institute, the largest residential and multi family trade association in New York State, wishes to express its deepest appreciation to County Executive Steve Bellone and the Suffolk County Department of Health Services for allowing us to participate in the Reclaim our Water proceedings and the Article Six committee relating to modifications to county ordinances and rules relating to the protection of our groundwater and surface water. In addition, we welcome the opportunity to comment upon the Draft Sub watersheds Wastewater Plan, which provides a significant analysis of the state of our water in Suffolk County and provides a series of draft recommendations relating to the need to find meaningful solutions to the infusion of nitrogen and other particulates into our water.

The Long Island Builders Institute strongly supports many of the initiatives included within the report with the following comments:

1. We strongly support the statement on page ES-7 which clearly indicates that “the source of nitrogen from onsite wastewater systems originates from the estimated 365,000 residential on-site wastewater disposal systems (OSDS) and the estimated 18,700 commercial on site systems that are not designed to remove nitrogen. The existing sewer districts throughout Suffolk County have been very effective in reducing groundwater contamination within their respective district boundaries... Thus, it is clear to us that the most effective means of reducing nitrogen into our groundwater is to first increase the number of parcels in our county which are connected into either a sewer district itself or a sewage treatment plant. This is where we should spend our very precious resources to get the largest benefit for our water, an increase in the areas which are served by sewer systems and an increase in the areas which are connected to either private or public sewage treatment plants. LIBI would suggest the following methods to accomplish these very important goals:

- a. We strongly support using any resources from any funding source first for the expansion of sewer districts throughout the county. This should be accomplished by the creation of a countywide sewer district which can take into account all of the priority areas listed in this report. Coming on the recent votes to move forward sewer construction in Mastic Beach and the Carlls River Watershed and recent state legislative passage of necessary legislation in Kings Park and Smithtown, now is the time to prioritize many other areas of the county for such sewer expansion. Sewer development is the best way to reduce nitrogen flow into our groundwater, provides significant economic benefits to the local community and takes into account climate change impacts upon our local water bodies.
- b. LIBI fully understands that a new funding source is necessary within the county, both for sewer construction as well as a subsidy program for the installation of new IA systems. We firmly believe that since everyone in the county will benefit from the reduction in nitrogen going into our groundwater, that everyone should pay the new revenue source, no exceptions and that it cannot and should not solely be put on the responsibility of our homeowners, both present and future ones. In addition, such a revenue source for a subsidy program for the installation of new IA systems should include new home construction and condominiums and town houses, so that everyone who wants to or is required to put in a new system has the ability to use the subsidy program to alleviate the new costs involved.
- c. We strongly support the increase from 15,000 to 30,000 gallons for the use of so-called attachment A systems which can provide significant environmental benefits at a fraction of

the cost. The increase in the gallonages and the reduction of the setbacks which come with the system in many areas, especially in downtown areas, will allow such systems to provide meaningful benefits at densities that are very important in downtown areas and other parts of the county without a specific sewer system. The reduction in setback requirements is an essential component of this approval as many downtown areas do not have the separation necessary from other properties. It is essential that the county make the use of such systems at a higher gallonage easy, efficient and timely as we move forward. The faster such systems are allowed at a higher gallonage, the faster the water quality in those areas will benefit. One of the most important planning priorities of the development of our substantial rental housing needs is recommended by the county to go into downtown areas and this provision is essential to make that happen.

- d. In many areas of the county, an existing sewage treatment plant, either public or privately operated, is now working to reduce nitrogen flow. However, such systems are not being allowed to be used at the most efficient manner possible. Many of these public or private systems are being operated at only 40-60% capacity, meaning that thousands of gallons that could be treated through such systems which already exist are going into our groundwater because of archaic gallonage flow computations required by current county rules. Think of the thousands and thousands of gallons of wastewater that could today be treated by such systems which are being denied solely because of artificial gallonage computations that are assumed to occur but have no relation at all to the actual flows being received and treated by such plants. All across Suffolk County exist such plants, waiting to be allowed to connect parcels in the immediate vicinity which are on onsite wastewater systems which were never designed to take into account nitrogen flow and are the worst purveyors of such nitrogen. Now is the time for a more efficient gallonage flow system to be created, with real numbers for flows from various types of development and to allow such plants now to connect outside parcels and remove thousands of septic systems from our community. It requires no new funding, no new construction and no new environmental studies, but only the revising of the density formulas to reflect the real-life amount of sanitary density required for both existing and future plants. This will have the added advantage of allowing properties that could not otherwise benefit from connecting to sewage treatment plants the opportunity to do so. This will reduce nitrogen loading throughout the County and allow for new development and re-development in areas where they are currently prohibited. Open up our sewage treatment plants so that they can accomplish in a more efficient manner what they were designed to do, namely to reduce nitrogen flow.
1. 2. LIBI continues to recommend that any requirement for the use of new IA systems in new construction focus on the priority areas first rather than imposing an across the board requirement. We do so for a variety of reasons. First, the county has not made available to anyone who is purchasing a new home, even an affordable home purchased by someone on a fixed income, subsidies to reduce or eliminate the \$20,000 to \$25,000 cost of installation of such systems. It is totally unfair to subsidize someone who has contaminated the groundwater in their community for many years and not subsidize someone who is purchasing a new home in our county and is now required to spend upwards of \$25,000 more for the purchase of such home. Without a subsidy, the cost either falls to the buyer in the form of higher prices in good times or upon the developer in bad times. Any new home now is required to install a much more efficient system under current

standards, which will provide new safety measures, especially in non-priority areas as set out in the report. Second, all such emphasis must be placed on the thousands of such homes and commercial establishments which continue to discharge such nitrogen directly into our ground. Let us stop this first, going priority area to priority area and treat such new homes in the same fashion. Of the approximately 365,000 on-site sewage disposal systems on Long Island, approximately 252,530 pre-date the requirement for septic tanks. (Defined as cesspools, which do not work as well as the current septic systems.) This plan mandates I/A OWTS on all newly constructed homes on Long Island during the Phase I – Program Ramp-up while not addressing the real cause of water pollution from wastewater. The focus should be on existing homes with cesspools and failed systems. Based on the 208 study, newly constructed homes with septic systems that comply with the zoning and density requirements of Article 6 will not adversely affect nitrogen loading to ground water and our drinking water. For example, a one-acre lot in the middle of the Island with good soil conditions that has average total nitrogen impact to groundwater of 4, when the drinking water standard is 10. The additional cost and expense required to further reduce nitrogen loading for new construction can only be justified in these sensitive surface water areas and groundwater priority #1 areas that deserve further protection. The plan should be amended to allow for priority areas of current groundwater contamination to be used first for both sewer or sewage treatment plant construction and any new home construction mandate should follow the modifications of each priority area.

Phase in of new construction mandate is needed to allow time to incrementally increase the health department staff. The increase in staff and the funding for same is needed to review applications and to register, monitor and enforce the operation and maintenance of all these new systems. Additional health department staff will be required to comply with the requirements, powers and responsibilities of the Plan. The Department responsibilities include but are not limited to approval and registration of each system, overseeing the installation, maintenance and operation of all I/A OWTS, receive and maintain information and reports, may inspect I/A OWTS and sample discharges as often as deemed necessary by the Department to determine compliance upon reasonable notice to property owner, maintain a list of approved I/A OWTS technologies and to promulgate procedures, protocols and standards as necessary for implementation and enforcement in order to ensure the long term operation, maintenance and management of all I/A OWTS. Necessary and proper staffing should be in place prior to implementation to avoid delays in the approval and in the closing of title for new homeowners. This is especially true when the homeowner needs to close on time in a rising interest rate environment.

Phase in new construction mandate is needed to avoid a lack of qualified licensed installers and a shortage in the availability and supply of these systems on long island. This will allow for increased competition among manufacturers and licensed installers for each system. Avoiding a possible shortage and allowing more time to have additional Installers licensed will increase competition and mitigate the significant economic impact that this legislation will have on the new home construction industry on Long Island.

Phase in is needed in order to further evaluate the effectiveness of these new systems and allow additional time to further study, modify and improve the operation and efficiency of these new systems. It is important to consider that the homeowner must actively manage these new systems. This plan is imposing financial and legal requirements on the home owner and residents of Suffolk County to actively maintain and operate these systems. The proposed plan lacks the required notice and disclosure that outlines the owner's responsibility for the operation and maintenance for the proposed systems and the fact that the owner may be subject to civil action and additional civil penalties for their failure to

do so. These new systems will increase the cost of homeownership on Long Island because they require the active maintenance and upkeep by the Owner. (Estimated to be \$200 to \$500 per year) Unless the I/A OWTS is phased in there will be a lack of qualified maintenance providers across Long Island. This will only increase the cost because each Home Owner is required to have a maintenance provider contract is the burden and responsibility left up to the Builder? What parts need to be replaced under the system? What is the expected budget for repairs and replacement? What warranty does the Manufacturer provide? Which parts and how long is the warranty good for? Under what conditions is the warranty null and void? What warranty does the Installer provide? How long? Is the burden and responsibility to provide this information left up to the Builder?

Warranty and legal liability of new systems is being placed on the builder. Simply stating that the Installer will hold the builder harmless does not alleviate the Builders legal obligation under the Warranty Law in New York State. In fact, if the installer has no money, the hold harmless provision is worthless. Under the NYS Housing Merchant Implied Warranty Law plumbing systems needs to be free from defects for two (2) years from the date of purchase. Plumbing systems are defined to include waste and vent pipes and their fittings; septic tanks and their drain fields; sewer service piping, and sewage disposal systems, all to the extent that they are installed in the home. It is the Builder who winds up being sued and forced to defend the action in court. We want to be indemnified and held harmless by Suffolk County in the event these new systems are not properly designed and installed. In addition, the Plan should expressly state that the Builder is not responsible for the failure of the system to meet Suffolk County monitoring standards due to the lack of maintenance and upkeep of the system by the Home Owner or the private maintenance system provider hired by the home owner. Furthermore, we hereby request a complete update on all the data for all of the proposed systems including but not limited to the name of each manufacturer, the warranty terms provided for each part, the name of the installer, the warranty and/or guarantee provided, the budget for the repair and replacement for each system for the first ten years of operation, soil conditions of each site, end point sampling location, etc. Who was the maintenance provider for each system? Cost of services for each system? Any additional services provided that would have been charged to the Home Owner? Who handled any punch list items or problems that developed after installation? State the number of times the manufacturer or installer had to come back to the site to correct any problem? State what the problem was and the cost to correct it? How long does it take for each system to reach a steady state in order to begin monitoring the system? Does the maintenance service provider or installer charge extra for startup services? Provide a complete cost of the system including leaching fields. Who installed each leaching field and were there any coordination issues between the installation of the leaching fields and installation of the system? How long does it take to install a complete system?

Implementation of this plan should not be done until funding options for the installation of I/A OWTS are considered and fully explored for both new and existing homes. Affordability is an issue for both new and existing homes on Long Island. Both affordable and moderate price homes are adversely impacted by this legislation. The cost of the home will increase \$15,000 to \$20,000 and the maintenance costs will range from \$200 to \$500 per year. (Note: A clear 5/10 year budget for the cost of repairs and replacements parts and operation and maintenance for each system has not been provided.) This additional financial burden makes it more difficult to qualify for a mortgage. Even on an average cost of a single-family home on Long Island of \$400,000, this one piece of legislation represents a 5% increase in the cost of housing. The increased cost of the home because of the mandated installation of such a system will require an increase in mortgage funding without a subsidy which will reduce or eliminate the ability of many of our residents to purchase a new home . Funding or incentives must be provided for affordable and middle-income Home Buyers in Suffolk County with the price

threshold being 120% of the average price of a house on Long Island. In addition septic systems that comply with the zoning and density requirements of Article 6 will not adversely affect nitrogen loading to ground water and our drinking water. For example, a one-acre lot in the middle of the Island with good soil conditions that has average total nitrogen impact to groundwater of 4, when the drinking water standard is 10. The additional cost and expense required to further reduce nitrogen loading for new construction can only be justified in these sensitive surface water areas and groundwater priority #1 areas that deserve further protection.

4. The report does not take into account the need to ensure that the variety of Transfer of Development Rights programs in the county actually work and take into account the need to determine usage in both sensitive and non-sensitive areas of the county. The use of Pine Barrens Credits must be made easier and more appropriate and such usage should be uniform throughout the county. Will such credits be restricted in their usage to only certain areas or will the program and the set of rules incorporated within the program be allowed to continue? In addition, the use of such credits for double density or less should be considered a minor variance under the new health department standard, thus reducing or eliminating the need to go through the lengthy Board of Review process. This will save the County resources by reducing the number of hearings before the Board and expedite approval of building permits and the issuance of Certificates of Occupancy, both of which add to county and town revenue streams.

5. LIBI is particularly concerned with the recommendation to move from 600 gallons to 300 gallons for commercial uses on the East End will have unintended consequences and may substantially reduce the ability of such systems to actually improve the groundwater. The East End has many tourist-related businesses such as restaurants which may already be over density. Reducing the gallons per day from 600 to 300 will have the consequence of making those uses non-conforming and may make it impossible for them to meet the proposed sanitary standards. Thus, many of those businesses may find themselves in a position where they cannot further improve their property and even have the option of adding an IA system because they are over double density. Thus, reducing the gallonage maximum may substantially reduce the ability of such businesses to actually improve the groundwater by adding such much-improved sanitary systems. We would recommend a “grandfathering” of current uses and a system to allow them to improve their nitrogen flow systems through upgrades of current systems when making other substantial improvements to their property.

6. As this series of initiatives will be both controversial and lengthy, we would strongly recommend that the sub watershed maps be updated on a periodic basis to ensure that the best information and analysis is being used at all times.

7. Upzoning provisions on Page ES-88 would eliminate many or all single and separate lot provisions. This will substantially impact a variety of residential and commercial lots, significantly reducing or eliminating their value and reduce the opportunity for development in those areas.

The Draft Sub Watersheds Management Plan currently being considered is one of the most important actions taken by Suffolk County to create a new system of wastewater treatment to reduce

nitrogen flow, an action supported by all. The SWP adoptive management and monitoring plan as outlined on Page ES-84 will discuss a variety of other issues, such as SPDES permits over 1000 gallons and the use of large capacity cesspools. LIBI is very hopeful that our comments and suggestions will assist in the development of a series of real initiatives which will move our county forward and we urge continued meetings of all stakeholders. Thank you very much for your consideration of our views.