



nerej

Environmental and land use legislation changes for developers & licensed environmental professionals

September 18, 2007 - Connecticut

Connecticut is projecting nearly \$1 billion in state budget surplus for fiscal year 2007. In June's special session state legislators agreed with Governor Rell on a \$36 billion, two-year budget. The legislative session created a new task force with new terms like "responsible growth" and extended the free services of an existing task force to study brownfields development challenges. There are some other legislative changes for property developers and licensed environmental professionals in Connecticut which will modify how they manage brownfields development, historic property rehabilitation, projects with eminent domain issues.

Tax Incentives

Public Act 07-1 has state budget provisions and initiatives to encourage developers to create housing that is more affordable for low and moderate-income earners. It creates an Incentive Housing Development Incentive in areas where transit opportunities and economic development exist. This act also creates "Blue Ribbon" Commission to assess short and long-term housing and economic development needs and the impact of more affordable housing on attracting economic development.

Public Act 07-250 (SB-1450) establishes a business tax credit for up to \$50 million per three-year cycle for the rehabilitation of historic properties. The properties can be developed for commercial or residential uses. The tax credit equals 25% of the eligible rehabilitation expenses or 30% if portions of the development include affordable housing. The maximum any single development project can receive is 10% of the three-year tax credit allocation or an estimate. There are several qualifications to meet to be eligible, but if historic property recycling is in your future, this bill deserves a closer review.

Environment and Land Use

A bill sponsored by the Connecticut Business and Industry Association - Environmental Policies Council to help make state environmental regulations consistent with federal regulatory guidelines was passed as Public Act 07-045. The DEP is required to indicate how new regulations match up with the federal rules and identify in the notice for at public hearings why any variations are deemed necessary.

Public Act 07-81 (SB-1224) expands the authority of the licensed environmental professional (LEP) board and the types of penalties imposed on LEPs who violate laws or engage in professional misconduct. LEPs are also given additional responsibilities for submitting site investigation documentation under the Transfer Act to the DEP when an investigation is completed. LEPs must also give notice to abutting property owners before initiating a cleanup activities. These changes are effective October 1, 2007.

Public Act 07-233 effective July 1, 2007 authorizes the Brownfields Task Force to continue to study

issues such as liability protection in 2008. The act also expands the Office of Brownfields Redevelopment and authorizes the Department of Economic and Community Development to offer new financing programs. Unfortunately there is a need for funding programs, which was summarized in NEREJ Connecticut issue of March, 16-27, 2007, but no new funding programs were approved. This result despite the Brownfields Task Force calling for them earlier this year in the amount of \$200 million over five years. In the mean time, white knight developers will need to wait in the wings for a more persuasive argument for funding from the task force in 2008 or strengthen their armor before battling the brownfields dragon.

Public Act 07-141 revises the eminent domain process while not going so far as some of the public wanted the use of eminent domain prohibited. If you are working with a municipality on a deal involving eminent domain, be prepared for a mandatory public hearing. An approval by at least two-thirds of the municipality's legislative body or board of selectman is needed to see that the project meets the legal intent of the approval criteria in this act. You will need lawyers to read through this act for the new legal protections for property owners added to see if there is the will to press on.

Responsible Growth and Regional Realities

Last but certainly not least you will be introduced to responsible growth in Public Act 07-239 once the new Responsible Growth Task Force identifies the criteria for responsible growth. Let's hope they act responsibly and on time which means the report will be issued to the governor on or before February 15, 2008. Among other things the act establishes a regional performance incentive program. This leads me to the conclusion that you should attend the International Council of Shopping Centers Alliance Program on November 1, 2007 which will encourage a public-private alliance dialog on regional realities in Connecticut. It is a neutral environment to openly discuss the challenges ahead with home rule and 169 municipalities governing local land use decisions in Connecticut. Check out www.icsc.org for more on this event or contact the author for more information.

Wayne Cobleigh is manager of project development at GZA GeoEnvironmental, Inc. in Bloomfield, Conn.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540