

An Update with DEC by Bruce G. Boncke, P.E., President

I had an opportunity to meet with NYSDEC Commissioner Crotty and key members of her staff in October, as Chairperson of the Environmental Committee for the New York State Builders Association. I had last met with the Commissioner about three years ago, shortly after she was appointed to the position. That conversation was a bit limited to procedural and wetland issues. At our recent meeting, we again covered the challenges we have with wetlands regulation and the difficulty with all permit processing. We also had extensive discussions about the Phase 2 Stormwater Regulations, particularly issues regarding construction compliance and enforcement. There were also two significant differences between my earlier meeting and this one. The first is the number of times that the effects of regulations on affordable workforce housing came into our conversation; often initiated by DEC! The second is a plan for action and follow-up, suggested by DEC, on two of the most important issues; permit processing and Phase 2 Stormwater Permit Regulation.

The short version of the key points I presented to the Commissioner are as follows:

- Wetlands.
Over regulation of adjacent (buffer) areas, to the point where they are treated the same as if they were wetlands. One example I used is an increasing inability to locate stormwater management facilities in buffer areas, and the resulting additional loss of land for development.
- Permit Processing.
Cumbersome internal handling of permits that result in abuse of the Uniform Procedures Act timeframes, some loss of permit materials and lack of respect for the importance of timely response.
- Phase 2 Stormwater Regulations.
Numerous clarifications that are needed within the permit requirements and observations, from both sides, of the first full construction season under these new regulations.

The wetland issues I presented were well understood and received. However, there was no specific action plan and we will need follow-up with them on this issue. Since I had raised the issue of permit processing in our previous meeting, they had done some research and acknowledged they have some challenges in this area. I was pleased to hear that they are working on a plan to change how they process applications. While not finalized, I was also very pleased when they suggested that the Home Builders Association be included in a review of their recommended changes prior to implementation.

We spent a significant portion of our discussion on Phase 2 Stormwater Regulation issues. These are very frustrating regulations that have been imposed on the Building Industry, Municipalities and the NYSDEC, by EPA. In many ways, NYSDEC is struggling with the enforcement of the regulations as much as we are. They provided encouraging feedback that they felt our builders are generally doing a good job on the construction sites and reacting well when compliance requests are made. I also stressed that the cost of these regulations are well beyond expectation and are having a significant effect on affordable workforce housing. As a result of the discussion, they recommended that a taskforce be put together to review the permitting and construction compliance experience, to date. It is anticipated that this effort would include NYSDEC, development representatives and municipal representatives. I believe this will result in recommendations to improve the permitting and construction compliance. I was very encouraged with the potential for this action item and their intent to include us in it.

Lastly, we finished our meeting with a conversation about the Cityscape Project developed by members of the Rochester Home Builders Association. The Commissioner was familiar with the Brownfield site cleanup and was pleased to hear about the success of the housing project on the site and the partnership between the City of Rochester, the NYSDEC and the RHBA to make it happen.