



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.
1245 FARMINGTON AVENUE, 2nd Floor, WEST HARTFORD, CT 06107
Tel: 860-521-1905 Fax: 860-521-3107 Web: www.hbact.org

*Your
Home Is
Our
Business*

January 26, 2010

To: Senator Joan Hartley, Co-Chair
Representative T.R. Rowe, Co-Chair
Members of the Regulations Review Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: Invitational Forum on State Agency Regulations

Thank you very much for the opportunity to address the Regulations Review Committee regarding a number of state agency regulations affecting our industry.

The Home Builders Association of Connecticut, Inc. (HBACT) represents approximately 1,100 member companies throughout the state, employing tens of thousands of CT's citizens, who work in all aspects of residential development, new home construction and remodeling. We estimate that our members build 70% to 80% of all new single-family and multifamily housing units across CT.

New home building and home remodeling firms are virtually all small businesses, most employing just 2-10 employees who do not have the capacity to fight or withstand regulatory roadblocks. We have identified over fifty (50) possible regulatory steps to build a home in CT. Most occur on the local level, a few on the federal level, but there are significant steps at the state agency level. State agencies regulate the business of residential construction; as well as land use and environmental approvals required to build new homes. This testimony summarizes those issues on which we receive the most complaints from our members and are not necessarily in order of priority.

Department of Consumer Protection: DCP regulates the businesses of "new home construction" and "home improvement" contractors through respective registration programs. While we support strong enforcement of these laws, despite some disagreement in how they are structured and the legislature's raiding of our registration and guaranty fund fees, we have had serious concerns with the agency's consumer complaint handling processes. We don't know what regulation, if any, controls this process, and while we have a good working relationship with DCP, we're proposing this year a legislative clarification on how complaints should be handled, logged by the agency and displayed to the public to create a more fair and reasonable system for registered contractors as well as to provide better information to consumers. To highlight just one example, if a consumer files a complaint against a registered contractor, a notice is placed on the web site that a contractor has complaints against it, regardless of the validity or reasonableness of the complaint. The kicker is if a complaint is filed against an unregistered contractor (i.e., one who is operating illegally), no web site notice of the complaint is posted because DCP tracks in its online database only registered contractors. There needs to be a more complete complaint tracking system.

State Traffic Commission: Under STC regulations, RCSA, Sec. 14-312-1 (under the authority of C.G.S. sec. 14-311 and 14-311a), any development generating “large volumes of traffic” must seek a certificate of operation from the STC. This regulation has not been updated since April, 1984. It applies to any development, even if not on a state road. A development generating a large volume of traffic is defined as one providing 200 or more parking spaces, or a gross floor area of 100,000 sq. ft. For a new residential community, the STC threshold of 100,000 sq. ft. is determined by adding the gross sq. ft. of all the proposed homes in the new development. That means a subdivision of 25 homes at 4,000 sq. ft. each, or 50 homes at 2,000 sq. ft. each, or any other combination totaling 100,000 sq. ft. is treated the same as a 100,000 sq. foot office building, retail complex or industrial facility. It makes no sense from a traffic generation perspective. We have sought and been denied a regulatory change that would create a specific, more reasonable threshold for residential developments.

Beyond the threshold issue, STC’s demands on home builders are encountered on a recurring basis and do not follow any regulations we can surmise. For example, the STC has required drainage analysis of storm systems and watercourses downstream of a proposed development well beyond what is required of local, DEP or Army Corps of Engineers approval processes. It is not uncommon to design a project where the builder proves there is no increase in runoff at the project boundary and yet STC requires the downstream analysis thousands of feet if not miles away, which costs developers thousands to tens of thousands of dollars and months to produce. We remain unsure if these specific requirements are based on regulations or just the reviewer’s prerogative.

Another example: a new community of 66 active adult homes off of a state highway and across from an existing signalized intersection was deemed as necessary for STC review and permits, even though traffic engineers proved that the new traffic generation was equal to or less than 20,000 sq. ft. of commercial type use. The state made the developer redo the entire signal (which had been constructed only a few years before) at a cost of over \$120K. They also required the homeowners association in the new project to pay the entire cost of monthly electricity to operate the signal, even though it services a large shopping center across the street. While not large, these monthly payments will go on forever. It took about six months for STC review. The STC will also not do its final review until you prove the project has been approved by the town, thereby lengthening the entire approval process.

Department of Transportation: A development on a state road must receive DOT approval. I do not have a specific citation to its regulatory authority. One example of the problem developers face: a developer converted an existing apartment complex into a townhome community with 25% fewer units, thereby reducing the daily traffic from and to the site. He eliminated curb cuts and better aligned the entrance with the existing state road. Drainage was added where none existed before and easements were given to the state and town to allow for simpler replacement of an offsite bridge in the future. DOT required the road surface be widened to allow for a bypass lane so traffic could flow around a car waiting to take a left turn into the site. While only 3 additional feet, it required relocation of utilities and storm drainage structures. And, the bypass lane works only if no cars were parked on the street yet on-street parking has and continues to be allowed in the area. DOT

also asked for a metal guardrail on 1 approach to the offsite bridge. The developer could not receive from DOT how these improvements were determined to be required. Upon disagreeing with the requirements, DOT told the developer there is no appeals process to their decision. The developer reports, "I cannot fight this issue as I have other projects that require DOT approval and do not wish to create an adversarial relationship."

Department of Environmental Protection: Four examples of different DEP regulatory hurdles are outlined here. The biggest bottleneck creating huge uncertainty for home builders is **DEP's stormwater regulations**, both in its current form and its pending new stormwater "general permit." We have filed comments with the agency questioning its proposed stormwater general permit for construction activities. Our comments are too detailed for today's purposes. Nonetheless, the "general permit" is in name only. Contrary to an individual permit, a general permit is a regulatory system where for certain common activities a permit applicant files required paperwork to document that a project is designed a certain way or certain controls will be in place. It also puts the agency and the public on notice the applicant is undertaking an activity. While an individual permit application undergoes detailed review by an agency, under a general permit, once the paperwork (activity registration) is filed, the applicant is allowed to proceed with the activity, assuming all other permits and approvals are obtained of course. However, DEP's stormwater "general" permit undergoes a lengthy agency review before the applicant can proceed. We believe that the engineering of stormwater controls for residential developments are common activities that should fall under a true general permit (i.e., no waiting once the engineering and paperwork is filed).

The larger problem under the stormwater general permit for construction activities is that the DEP refers stormwater permit applications for **historic preservation and archeological reviews** (by an outside agency) and to its own wildlife group for **endangered species review**. The archeological reviews can require the developer to dig transit trenches across their site to look for Indian artifacts or other items of archeological significance, which takes time and money. The historic review has resulted in letters sent to developers demanding a \$10,000 payment to cover a historic investigation that the state would undertake; this financial assault comes on top of already significant fees paid to DEP with the stormwater permit application.

The endangered species review is, in our opinion, wholly illegal and contrary to the state's endangered species act, which is supposed to be applicable only to state projects. Somewhere along the line of administratively pushing out its regulatory reach, DEP took the position that its action of issuing a stormwater permit for a private project meets the requirement of a state project. We would refer you to an article written by Greg Sharp, an attorney with Murtha Cullina, for a more detailed legal explanation of how DEP has abused its authority in this regard. But, as currently practiced, these reviews add significant time and dollars (e.g., developers need to hire wildlife and other experts to conduct surveys or peer review someone else's work). Moreover, state level endangered species laws make absolutely no sense from a biological perspective, adding scientific insult to financial injury.

Another example is DEP's **misuse of the state plan of conservation and development** (POCD), written by OPM, to control land uses and economic and housing development by threatening municipalities with denial of clean water action funds to improve sewer systems. The Planning & Development Committee is well aware of this issue and we remain hopeful that the legislature will address these misuses of the state POCD soon.

Another example from DEP is its **regulatory system for permitting advanced wastewater treatment (AT) systems**. These AT systems are small systems that service the sewage and wastewater from a particular development or building. They have been used for schools, other facilities and residential subdivisions where sewers are not available and traditional septic systems are not feasible. The science and engineering is well known and they've been used extensively around the world. However, since they allow development outside of sewer areas, NIMBYs, environmental and smart growth advocates oppose them as contrary to their concepts of smart land uses. To improve the AT system permit process, the legislature adopted a law a few years ago that bifurcates the permitting authority, leaving larger systems (over 5,000 gallons per day, or gpd) with DEP and sending 5,000 gpd or smaller systems to the Dept. of Public Health for review (DPH already handles septic system regulations; see below). However, DPH has refused to write regulations to implement its new small AT system authority, leaving all AT systems at DEP, and DEP takes years to approve one of these systems. One of our developers reported that it takes 6 to 9 months just to get a response to an inquiry. And, often a letter approval from DEP is not a clear approval but a conceptual approval. In other words, you have to essentially build the AT system and then prove it works before you can hope for final approval. This is substantial risk that drives investment capital out of the state. DPH needs to draft its regulations for smaller systems to improve the process at both agencies.

Finally, another example of DEP's willingness to stretch its regulatory authority is the agency's recent proposed **stream flow regulations**. We filed before DEP on Jan. 21, 2010, comments opposing these regulations. Many other business organizations and water companies are also opposing these regulations. They are a good example of how far DEP is willing to go to regulate business and economic growth in the state for questionable environmental gain.

Department of Public Health & Department of Public Utility Control: These two agencies have regulatory control over water supplies. We are told by engineers that the water supply section at DPH is a crapshoot. You need DPH approval to own and operate a small private water company to supply water to a new development (which you need to do where other water supplies are not available and private wells don't make sense or are not feasible). The process for obtaining approval can be daunting and take up to two years, and it varies greatly depending on which staff reviewer you are lucky or unlucky to get assigned to your application. It shouldn't be that way. These water supply regulations and process also make it very difficult to develop higher density multifamily housing in areas that are not served by public water supplies. Where existing water supplies are not available for multifamily housing, some developers in attempts to avoid having to go through the DPH regulatory nightmare (which can take 2 years) have jerry-rigged the creation of small private "lots" where individual private wells can be drilled and legally

“attaching” them to individual multifamily units. This ends up being wasteful, poor use of land and unnecessary, but is the only solution to inflexible DPH regulations that don’t easily allow community wells to service a building. We have been unsuccessful in breaking through the bureaucracy to address these issues.

As for DPUC, for simple things like extending public water across a private lot to provide water to an adjoining lot, DPUC’s process needs to be greatly simplified. Their processes, designed to approve and regulate public water companies, are too complex for simple connections to certain lots.

Finally, we were also asked to report on state agency regulations that work well and we offer two examples:

Department of Public Health: Unlike the water supply section, the wastewater section that governs septic system regulations seems to work well in most cases. Septic system regulations are developed by the agency with input from a volunteer wastewater advisory group made up of public health officials, engineers, home builders and contractors who build septic systems. The HBA has two representatives on this advisory committee. The regulations are enforced through local and regional health directors who inspect and permit septic system installations. That said, we have received some complaints of delays and unreasonable or inconsistent placement restrictions from time to time in different health districts.

Department of Public Safety & Codes & Standards Committee (CSC): The State Building Code is written by the CSC and State Building Inspector, both within the Department of Public Safety. While we have had disagreements on occasion with specific provisions of the building code and with varying degrees of implementation and enforcement at the local level by some municipal building officials, the process of adopting the code is generally a very good one compared to most agency regulations. The CSC is a statutory body of 18 volunteers from various areas or expertise as well as public members. The HBA has one seat on the 18-member body.

Two common threads of these generally positive state regulations include the public’s and regulated community’s input provided by the wastewater advisory group at DPH and the Codes & Standards Committee at DPS. They are models of input, cooperation and regulatory drafting that should be more widely adopted by the legislature for other agency regulations. The other common thread in these two positive examples is the attitude of the staff working there. They know their jobs, work to protect the public’s health and safety but do not try to stretch the envelope of their regulatory authority. They also seem to have a better understanding of the needs of the business community and maintain a customer service mentality. If every other agency department worked like that, along with hundreds at the local level, CT would be rolling in investment capital and growth.

We hope this outline explains clearly some of the state agency regulatory issues home builders face. And we thank you again for the opportunity to express our views on these important issues.