

OnBoard with: Ted Zangari

an interview

Member, Sills Cummis Epstein & Gross

Over and above the troubling budget deficit, New Jersey has a lot on its legislative and regulatory table these days, and a brand-new governor to face these issues. Ted Zangari of the Newark-based law firm of Sills Cummis Epstein & Gross, a member of this magazine's Editorial Advisory Board, brings us up to date in that capacity:

RENJ: What specific legislation should we be keeping an eye on right now?

ZANGARI: Senate Bill 670 is particularly troublesome. It provides that if a site, by virtue of its location, planned density, intensity or land use, may have impacts beyond the boundaries of the municipality or county in which it's located, then the land use approval process regarding the site will be removed from the host municipality's planning board to an "intermunicipal review board."

Don't get me wrong, stepped-up regional planning may be worth looking at. But a knee-jerk attempt such as this legislation is not the way to go. If policy makers want to have a serious discussion about regionalization, then let's have a comprehensive public-private dialogue that addresses everything from consolidation of municipal services to, yes, regional planning and density.

RENJ: Are there any other legislative or regulatory issues that we should be aware of?

ZANGARI: There's no shortage of ideas in Trenton. One bill that's suddenly picking up steam, A-1280,

intends to discourage inner-city land speculation by permitting urban municipalities to impose a "vacant property fee" on such vacant properties. Municipalities would be allowed to progressively increase this tax each year a property remains vacant. Now, I just have one very basic question for the bill's supporters: Is a hefty tax going to make a property that's already not-yet-ripe-for-development more or less financially attractive to construction lenders?

Another bill, S-426, would prohibit a landlord of a shopping center from inducing a tenant to enter into a lease by using any "unconscionable commercial practice, deception, fraud or misrepresentation." The violating landlord would be liable to the tenant for actual unlimited damages. I have a question for supporters of this legislation, too: Since when are shopping center landlords more prone to "deception" than other parties to a lease, or any other sort of commercial agreement for that matter? Besides, don't current laws adequately address deceptive practices?

RENJ: Regarding our new governor, how's he doing so far in your opinion, and what's your prognosis regarding his impact on the economy and commercial real estate?

ZANGARI: To his credit, Gov. Corzine has been able to inspire many highly talented and successful professionals to take a break from the private sector and answer the call of public service. His cabinet members and policy advisors are incredibly bright and scrupulous. It's quite reminiscent of the sorts of leadership teams marshaled together by the likes of New York City Mayor John Lindsay, Sen. Bill Bradley and Gov. Brendan Byrne. It's been a bitter-

sweet experience for me personally because I lost one of my law partners to the Corzine Administration [Banking and Insurance Commissioner Steve Goldman].

The governor was dealt an awful set of cards. Beyond the obvious \$6 billion deficit, he must deal with a state that has lost its competitive edge. New Jersey has always been a costlier state in which to do business than Sunbelt and even some neighboring states, but companies nevertheless felt the benefits of our state—its geographical location, talent pool and the like—were worth the extra cost.

But with housing prices fast becoming unaffordable to those who comprise that talent pool, with property taxes spiraling out of control, the less desirable geographic locations are suddenly looking much more desirable to corporate site selectors. Quite tellingly, as Gov. Corzine was taking the oath of office—literally—Lenox [the china manufacturer] was announcing its decision to relocate from Trenton to Pennsylvania.

RENJ: If you were sitting across the table from Gov. Corzine right now, what would you say to him?

ZANGARI: Two things. First, keep the incentives grant programs alive—namely BEIP [Business Employment Incentives Program] and BRRAG [Business Relocation and Retention Grants]. As Rutgers economists Hughes and Seneca recently observed, these programs have helped stem the flow of jobs out of the state and were the deciding factor in other corporate relocations into the state.

Second, not all business incentives require state funds. Time is money, particularly to developers and their corporate tenants. Time kills deals and projects. Governor Corzine's installation of an "economic czar" inside the Governor's Office [Gary Rose, a former Goldman Sachs colleague] is a good first step. Gary will hopefully be able to resolve glitches at the state level that sometimes kill a project.

Beyond that, if DEP or DOT approvals could be expedited, projects will move faster, landlords will collect rent sooner, corporate tenants will move in sooner and the economic multipliers will kick-in sooner. So my other suggestion to Gov. Corzine would be to propose a new "fast-track" permitting law. True, the fast-track legislation enacted by the McGreevey Administration was an ugly mess, but that doesn't mean the basic concept should have been abandoned, particularly in the case of development projects located in Planning Areas One and Two.

RENJ: What direction is the eminent domain issue going to take?

ZANGARI: The interesting thing is that the U.S. Supreme Court said nothing new in its Kelo decision last year. The Court simply reaffirmed decisions going back to the 1960s which permit governments to take property for the "public purpose" of economic development. The nuance in Kelo is that the Court equated high unemployment and an eroding tax base with traditional "blight" such as decaying buildings.

States are free, of course, as the Kelo decision pointed out, to define "blight" more stringently. And that's exactly what's going to happen in New Jersey. Since the Kelo decision, nearly a dozen bills have been introduced in Trenton addressing the condemnation process and its close cousin, the redevelopment process. In my opinion, a bill will eventually shake out and address some badly needed reforms.

The redevelopment process, which enables condemnation, will be made more thorough and transparent. Planning boards will be able to declare an area in need of redevelopment only after a more deliberative process that includes oodles of public notice, public participation and a well-documented planner's report.

The RFP process by which redevelopment designations are awarded to developers will be more tightly controlled to avoid the current noxious interplay with "pay to play" contributions by developers and their consultants to municipal officials.

"And governments will likely be required to award the property owner whose land is taken a bonus value to reflect the enhanced worth of his land by virtue of its new-found location within a redevelopment zone.

RENJ: Is there anything we've missed?

ZANGARI: Proposed regulations dealing with historic preservation, wastewater treatment, storm water runoff, stream encroachment. The list goes on. It's full employment for development professionals. But remember: Time kills deals and projects!—RENJ