

## **The Green Recession?**

By Greg Peterson

Special To Banker & Tradesman

Yesterday

---

One of the icons of the early Earth Days was the Pogo poster: “We have met the enemy and he is us.” Forty years on, the time has come to face frankly whether we have moved from environmental renaissance to a baroque, self-defeating era of regulation. The question matters, not just because technological innovation and economic growth have historically been the best environmental protection programs, but also because there is increasing evidence that existing and proposed regulations and programs block investment in environmental improvement.

Now, I’m old enough to remember a time when rivers ran orange and black with industrial pollution (you don’t forget such sights), when passenger cars ran on leaded gas, got maybe 10 miles per gallon, and we had the smog to prove it, developers filled in wetlands and built in floodplains with the predictable results and raw sewage was regularly dumped into Boston Harbor. I have zero interest in going back.@

Even before the Great Recession took hold in the summer of 2008, however, Massachusetts had a well-earned reputation as a tough place to get a project done. Even relatively modest projects here face multiple, overlapping layers of local, regional, state and federal impact reviews and permitting approvals, above and beyond traditional zoning and subdivision approval, and of course years of appeals if and when permits and approvals are finally issued.@

Worse, projects located in areas that have public transit or are close to shopping and employment, or that propose more density (and thus more energy efficiency), appear to garner more entrenched opposition and face stricter review by officials intimidated by self-appointed (and often economically or aesthetically self-interested) protectors of the environment.@

The upshot: smart growth projects and environmental improvement projects do not happen.

Examples? The shameful roadblocks raised by politicians of all political stripes to Cape Wind (which I once had to explain to gobsmacked Sierra Club members in Portland, Ore., where wind turbines generating 2,000 megawatts provide a dramatic approach to the

Columbia Gorge National Scenic Area). The 10-year-and-still-unfinished process for North Point, possibly the smartest-growth project on the drawing boards in North America, adjacent to two rapid transit stations, was held up in the Supreme Judicial Court alone for nearly four years.@

And this is the tip of the iceberg. Countless land-based wind energy projects, community housing developments, public school and public library projects, and even solar energy projects which theoretically have the protection of M.G.L. Chapter 40A, §3, have been held up or derailed by one regulatory “gotcha” or another.@

Yet as the Great Recession bore down and unemployment skyrocketed, the initial reaction by Massachusetts and federal regulators and the environmental community was to move forward with new programs and new regulations. Building on the low-impact development stormwater policy, the state Department of Environmental Protection proposed massive on-site stormwater management retrofits for existing businesses. The U.S. Environmental Protection Agency is methodically moving forward with indirect stormwater management requirements imposed through local communities, starting on the North Shore. The creation of the Department of Transportation subjected abutters along the full length of the Massachusetts Turnpike to the jurisdiction of District Highway Engineers for highway access permits and off-site transportation improvement costs. DEP is still considering revised guidelines for potential indoor air impacts from 21E releases, focusing on at best marginal public health improvements at the expense of brownfields redevelopment.

### **Unworkable Edicts@**

Next, Massachusetts tied itself to the International Building Code, as it is updated from time to time, putting business here on an escalator of energy efficiency requirements that may or may not yield cost savings, use reductions, or enhanced competitiveness, and likely will be sideways of some historic preservation mandates. Massachusetts policymakers are considering requiring building energy efficiencies 20 percent greater than the then-effective building code, which may not even be technically feasible, ignoring the fact that most energy use in buildings is by tenants, not landlords, and creating severe budgeting and planning challenges.

@ Massachusetts also appears determined, at the insistence of activists, to address greenhouse gas emissions at the state level on a project-by-project basis (as though that will either make us more competitive or have a measurable impact on global climate change).

The chief justice of the SJC recently suggested in oral argument that the Chapter 91 license needed to land the power cord from Cape Wind should perhaps have included review of the full project, notwithstanding its location in federal waters. And when state officials asked for ideas to address climate change, activists seriously proposed that adding buffer zones around vernal pools would do the trick.

Just to make sure the voters aren't denied their own opportunity to mire the commonwealth, one set of activists has brought us the chance to repeal Chapter 40B at the polls in November, while another group has placed on the November ballot a proposal to kill virtually any biomass energy facility in Massachusetts larger than a woodstove. Predictably, merely making such proposals has by itself sown the uncertainty so deadly to investment. @

Some day the Great Recession will end. The question for Massachusetts business, universities, policymakers, environmentalists, workers, the unemployed and, ultimately, voters, is whether we will choose to follow it, or deepen it, with a "Green Recession."

***Greg Peterson is an environmental and real estate partner at Tarlow, Breed, Hart & Rodgers, P.C. in Boston. He is a past president of the Real Estate Bar Association for Massachusetts and a principal drafter of Chapters 40R and 40S and the Expedited Permitting Act.***