

The Increasing Borough

Title reviews are a funny thing. You would think that the goal would be to make government more efficient and less intrusive, cutting out all the excess of a title and making it a tight document that covers what's important with the least amount of regulations. I guess you only think that if you're a conservative. The Borough has been working on a rewrite of Title 17, the Subdivision Ordinances, and has come forth with their first intended modifications. They increase the verbiage, increase the regulations, increase the cost, increase the bureaucracy, and increase the inefficiency; while the only item decreasing is the ability of the Borough to make money selling the land it owns. Let's examine the proposed changes to the requirements for road construction in new subdivisions.

The first requirement being added is to 17.60.010.D, mandating a soils investigation report stamped by a registered professional including soil boring. The intention of this is to make sure the road design takes into account varying soil conditions, but the section this replaces already states: "Where new improvements would be constructed on top of or through soils considered frost susceptible, the cross-section shall be designed, signed and sealed by a registered professional." In other words, a registered professional is already required to design the road appropriately, so what the new regulation does is circumvent his judgment and requiring him to do soil bores even when he may know from knowledge and experience that it may not be necessary for this specific piece of land. This change would add costs to all subdivisions, even those known not to have frost susceptible soil. One of the hallmarks of bad regulation is when it mandates an action for an entire group that is only needed by a subset of that group.

In addition to mandating this for new construction, they will also add a requirement mandating proof for all previously constructed roads to meet the Title 17 standards, with soil boring and inspections. This will come at a huge cost, since some roads will have to be completely rebuilt.

The administration is requesting extending the warranty period from one year to two years for any roadwork in the subdivision. While not necessary since any contractor can be held liable for fraudulent claims, it's probably the least onerous of the changes. The part that's not so good about what they want with the warranties is that they are adding a requirement for a surety bond (or cash) of ten percent. This means

that the experienced contractors, who can get a bond, will have to do that, increasing the costs. It means that the new contractors who don't have the history to get bonded will have to front cash for two or more years just to do the job. This will not only increase the bids for these jobs, but there will be the hidden cost increase of having less competition for the jobs, since this will limit who can do these projects.

A huge problem with the surety concept is that the language provided allows the administration to draw on the money, or keep the money, as they feel it is needed, without any court process to determine fault. So if the contractor wasn't at fault, he would be the one who would have to go to court to get his money back, so he is being declared guilty without being proved so in a court of law. Any regulation that presumes guilt, or presumes that the government is omniscient, is very problematic.

Lastly, the Borough would like to add a section requiring some specific engineering inspections during road construction. This is another example of mandating to the licensed professional some specifics that are already covered by the general concepts laid out elsewhere in this title.

While some would like these regulations because of problems some contractors have caused, let's look at this fact. The Borough engineer stated there were 15 incidents with contractors. Of these, 10 were taken care of. The other five were not taken care of, and were never even taken to the legal department. The Borough just decided not to pursue these cases. So the real problem isn't that we don't have enough regulation, it's that the Borough isn't enforcing what's already out there.

In the end, instead of the efficiencies that are being clamored for throughout the nation and our borough, we get increased regulation and increased costs, by taking away decisions from responsible human beings, and trying to cover every minute detail in regulation. The Title 17 ordinance, 2011-61, is scheduled to be voted on January 26th, 7pm at the Borough Assembly meeting.