

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

NAIOP OF OHIO

**2018
LEGISLATIVE
ACTION
AGENDA**

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NAIOP NATIONAL & NAIOP OHIO OVERVIEW

NAIOP, the Commercial Real Estate Development Association, has become the leading organization for developers, owners and investors of office, industrial, retail and mixed-use real estate. NAIOP comprises 18,000+ members and provides strong advocacy, education and business opportunities through a powerful North American network

NAIOP, founded in 1967, has evolved into one of North America's largest, most prestigious and valuable commercial real estate organizations.

When key players in commercial real estate joined together nearly four decades ago to form NAIOP, they believed they could forge a path towards a better future by providing their colleagues with new avenues to:

- Network with industry peers.
- Gain industry insight through educational programs with cutting-edge insight.
- Pursue new channels for career and professional development.
- Advance the business environment for commercial real estate through political activity.
- Conduct research to actively benefit developers and members of commercial real estate.

Today, NAIOP continues to pursue its core mission by:

- Creating Professional Recognition and Business Opportunities
- Providing Cutting-Edge Educational Programs
- Leading the Real Estate Industry in Research
- Delivering Strong Legislative Representation

NAIOP Ohio is a statewide association of the four (4) Ohio local chapters.

The Ohio chapter boasts over 400 members representing our industry across the state.

NAIOP Ohio is supported by a state wide board with trustees representing the 4 local chapters. This 16 member board promotes our initiatives, track issues, and advocates for the real estate industry at the state level.

In summary, our primary pursuit is to assist the progression of economic development activity in Ohio, acting as an advocate of Ohioans and the development community to create jobs, viability, and a quality of life that retains and attracts talent to the State.

RECENT NAIOP OF OHIO SUCCESSES AND INITIATIVES

- NAIOP of Ohio recently led the way in helping to draft and secure the enactment of statutory amendments to clarify the scope of community reinvestment area real property tax exemptions for renovated buildings and to clarify the scope of real property tax exemptions for properties for which covenants not to sue are issued. Before these clarifications, some developers undertaking challenging redevelopment projects were not securing the property tax exemptions that they expected based on the intent of those laws.
- NAIOP of Ohio board members regularly meet proactively with federal and state environmental regulators to help the regulators understand commercial real estate development and how regulations impact the development community.

- The NAIOP of Ohio board regularly hosts state political leaders to help them understand matters of importance to the commercial real estate community and to build constructive relationships with them. Within the past couple years, the board has met with both major parties' gubernatorial tickets, Senate President Obhof, and Speaker Smith.
- Along with historic preservation advocates and others, NAIOP of Ohio helped to save the Ohio historic preservation tax credit when it was slated for elimination in the 2015 biennial budget bill. Because of time limitations, only one Ohio historic preservation tax credit advocate was provided the opportunity to testify before the Senate Finance Committee, and that speaker was a NAIOP of Ohio board member.
- NAIOP of Ohio was a lead advocate behind the enactment of state legislation that authorized local governments to approve property tax exemptions for the increase in value of property planned for commercial or industrial development while the property is in the pre-development stage.
- NAIOP of Ohio was a lead advocate behind the enactment of state legislation that made important revisions to Ohio's recording curative statute to make it more consistent with that of others states.

H.B 469 – TAX CREDIT – MIXED USE PROJECTS

ISSUE:

House Bill 469 authorizes a new tax credit for insurance companies that is designed to assist property owners in raising capital for the development of “transformational mixed use development” (“TD”), defined as multiple-purpose developments that include at least one large building and that are expected to have a “transformational economic impact” on the surrounding area. The nonrefundable credit equals 10% of the development costs associated with the TD. The credit is to be claimed against the state’s taxes on foreign and domestic insurance companies.

The credit is awarded by the Director of Development Services through an application process initiated by the property owner. After receiving the owner’s development plan the Director may certify the TD for the credit if the substance of the plan meets the bill’s eligibility criteria. If the project is certified, the property owner may sell or transfer the rights to “preliminary approved” tax credits to one or more insurance companies in order to raise capital for the project.

The owner’s development plan must include a detailed description of the proposed TD, an estimate of the development costs, a financial plan, a schedule for completion of construction, an assessment of the anticipated economic impact, and evidence that state and local tax collections will increase by more than the estimated credit amount within five years following completion of the project.

The bill defines “development costs” as project-related expenses incurred by the property owner in connection with the TD, including expenses incurred before the project is certified by the Director. The bill identifies architectural and engineering fees as development costs.

The following eligibility criteria are set forth in the Bill: (1) the estimated development costs associated with the project must exceed \$50 million, (2) the development plan must include at least one building that is either 15 or more stories high or 350,000 or more square feet in floor area, (3) there must be more than one intended “use” associated with the project site, and (4) the development must be expected to have a “transformational economic impact” on the project area. The bill identifies retail, office, residential, hotel, recreation, and structured parking as potential uses that could be incorporated into a TD.

The project area must consist of all territory within a specified radius centered on the site of the TD. The project area must be at least ¼ of a mile, but not larger than a mile.

The insurance company that obtains a tax credit certificate under this statute may claim the credit against the state’s taxes on foreign and domestic insurance companies. The credit is nonrefundable and, if not fully utilized in one year, the excess credit may be carried forward for up to five years.

POSITION:

NAIOP Ohio enthusiastically supports this Bill. While this Bill is narrowly drafted and only a few such projects are likely to be eligible for the credit, NAIOP believes that any tax credit supporting transformational development in Ohio are beneficial to the commercial real estate industry and the people of Ohio.

H.B. 727 – OHIO QUALIFIED OPPORTUNITY ZONE TAX CREDIT

ISSUE:

House Bill 727 would create a tax credit for investments in Ohio Qualified Opportunity Zones. If enacted, taxpayers investing at least \$250,000 during a taxable year in an Ohio Qualified Opportunity Fund will earn a nonrefundable tax credit equal to 10% of the investment.

The Qualified Opportunity Zone program was created as part of the Tax Cuts and Jobs Act, enacted on December 22, 2017, in order to encourage investment in businesses located in low-income communities throughout the country. This program provides taxpayers who recognize gain on the sale of property (including, for example, investment assets such as stock or other security interests, and business assets) with the opportunity to defer and partially eliminate such gain, as well as additional future gain, by investing the sale proceeds in a Qualified Opportunity Fund.

A Qualified Opportunity Fund is organized for the purpose of investing in a Qualified Opportunity Zone Business or in Qualified Opportunity Zone Business Property. The proposed legislation would require a taxpayer seeking the tax credit to invest in a Qualified Opportunity Fund that holds 100% of its assets in a Qualified Opportunity Zone Business or in Qualified Opportunity Zone Property located in a designated Ohio Qualified Opportunity Zone. The U.S. Treasury Department has certified 320 census tracts in Ohio as Qualified Opportunity Zones.

The Qualified Opportunity Zone program has the potential to be a powerful economic development tool. The proposed tax credit for investing in Ohio Qualified Opportunity Zones could generate even more interest in the program within Ohio – making investments in Ohio more attractive than similar investments in other states.

POSITION:

NAIOP of Ohio strongly supports House Bill 727 and urges the General Assembly to enact it or a substitute version of the bill promptly. Moreover, as the IRS continues to issue guidance regarding details of the Qualified Opportunity Zone program that were not addressed in the Tax Cuts and Jobs Act, NAIOP of Ohio urges the General Assembly to take a proactive approach in appropriately conforming the Ohio Qualified Opportunity Zone Tax Credit program to the federal Qualified Opportunity Zone program. By conforming the programs, the General Assembly will make the Ohio Qualified Opportunity Zone Tax Credit a more effective “piggyback” program, which will give low-income communities in Ohio an advantage over low-income communities in other state in attracting investment capital.

OHIO HISTORIC PRESERVATION TAX CREDIT

ISSUE:

The Ohio Historic Preservation Tax Credit Program provides tax credits for the rehabilitation of Ohio's historic buildings. This program provides a 25% tax credit to owners for the rehabilitation expense of historically designated buildings. This credit can also be combined with a 20% federal historic tax credit to provide additional leverage for rehabilitating historic buildings.

In addition to being treasured pieces of our heritage, these buildings are economic development engines for communities and main streets throughout our great state. The rehabilitation of these buildings creates jobs, leverages private investment, strengthens our historic assets, and attracts emerging businesses.

Through the first twenty funding rounds, tax credits were approved 399 projects to rehabilitate 545 historic buildings in 67 different Ohio communities. The program is projected to leverage nearly \$5.6 billion in private redevelopment funding and federal tax credits directly through the rehabilitation projects, and it is projected to create more than 40,000 jobs. The demonstrated return on investment of this program is \$6.72 for every \$1.00 of State credit.

In 2015 and 2016, \$145 million of tax credits were awarded out of a requested \$368 million, which highlights the need for continuation and enhancement of the program.

POSITION:

NAIOP Ohio supports the continuation and enhancement of the Ohio Historic Preservation Tax Credit Program. NAIOP Ohio opposes converting the program into a grant program that is subject to appropriation because the current program is extremely efficient, attracts tax credit investors from throughout the United States into Ohio that partner with Ohio developers to rehabilitate historic buildings, and is well-understood and predictable. The Ohio Historic Preservation Tax Credit program will continue to benefit Ohio by:

KEEPING OHIO COMPETITIVE: Ohio is one of 35 states to offer a state historic tax credit. This coupled with the fact that Ohio has 3,800 properties listed on the National Register of Historic Places, which is the 3rd most nationally, indicates the need for this credit to allow Ohio to remain competitive.

JOB CREATION: This program has shown to create jobs and will continue to do so if it continues to receive support.

PRIVATE INVESTMENT: Federal and State historic credits attract investment from taxpayers that are able to utilize the credits. In today's world in which credit availability is scarce, programs such as this provide leverage needed to allow real estate development to continue.

RETURN ON INVESTMENT: As reported in the economic impact study prepared by Cleveland State University's Maxine Goodman Levin College of Urban Affairs, the transformation of debilitated and often vacant properties into economic development

assets is projected to provide the state nearly \$10 billion in economic impact over the 2007 – 2025 time period and create over 6,900 jobs. The report specifically provided that:

- For every \$1 of OHPTC Program investment, the 111 redevelopment projects will generate \$40.58 in total construction and operating impact to the Ohio economy.
- For every \$1 in OHPTC investment in the redevelopment of the 111 historic buildings will leverage \$8.24 in construction spending from 2007–2013. In addition, nearly 83 construction jobs were created per \$1 million awarded in Ohio Historic Preservation Tax Credits.
- For every \$1 in OHPTC investment in the redevelopment of the 111 historic buildings will leverage \$32.33 in operating benefits from 2010–2025. In addition, over 298.8 jobs in operations were created per \$1 million awarded in Ohio Historic Preservation Tax Credits.

REAL PROPERTY TAX AMENDMENTS

ISSUE: H.B. 118 – LIMITING GROUNDS FOR DISMISSAL OF A COMPLAINT AGAINST THE VALUATION OF REAL PROPERTY

Proposed amendment to Revised Code (H.B. 118) to prohibit any hearing body from dismissing a complaint against the valuation of real property on the basis of a failure to accurately identify the owner of the real property.

Ohio law authorizes certain persons who believe their real estate has been inaccurately valued to file complaints challenging the county auditor's value. County boards of revision have adopted a form that is uniform throughout the state. For various reasons, the owner of the real estate is sometimes misidentified on the complaint form. For example, deeds can identify multiple owners while county records might only reflect one owner; sometimes there are differences in spelling on different sources of information. The amendment clarifies that if the real estate is accurately identified, then the board or court hearing the valuation case cannot dismiss a complaint if the owner is incorrectly identified on the complaint form.

POSITION:

NAIOP supports efforts to simplify administrative provisions and clarify Ohio law and supports the proposed amendment to House Bill Number 118. The statute, as written, places undue burden on a complainant to ascertain and verify the name of the person owning the real estate. The amendment codifies the Supreme Court of Ohio's position that the name of the complainant is not specifically required by statute. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627. Because the amendment helps ensure a tax payer's complaint is heard on the merits, NAIOP supports the passage of House Bill 118.

ISSUE: H.B. 342 TIMING AND CONTEXT OF BALLOT ISSUES

Tax levies often come before voters in ballot initiatives. The tax levy ballot language can be complicated and technical. The proposed amendment makes the language more readily understandable.

POSITION:

NAIOP supports efforts to facilitate the voting process. Making ballot language more understandable for all voters is a desirable objective. The amendment helps achieve that goal. Accordingly, NAIOP supports the passage of House Bill Number 343.

ISSUE: H.B. 343 – LEGISLATIVE APPROVAL REQUIRED BEFORE A GOVERNMENT ENTITY CAN FILE A COMPLAINT AGAINST A VALUATION OF REAL PROPERTY

School boards often file tax complaints seeking to increase the county's valuation of real property based on information obtained from a review of public records. Increasingly, school boards are filing complaints based not on sale transactions, but on newly recorded mortgages. The property owner then incurs legal costs to defend against the school board's complaint that was filed in absence of a transfer.

POSITION:

NAIOP supports all parties' right to protect their legal and economic interests. The proposed amendment ensures government entities are fully informed as to the complaints and counter-complaints filed on their behalf. The proposed amendment protects taxpayers from unsubstantiated complaints. Additionally, this amendment helps ensure equal and uniform values. For these reasons, NAIOP supports the passage of House Bill Number 343.

ISSUE: H.B. 361 – INCREASE TIME FOR DECIDING PROPERTY TAX COMPLAINTS

Under existing Ohio law, boards of revision are required to render a decision within 90 days after the complaint against the valuation is filed. If the board of revision does not render a decision within the 90-day period, then the complaint becomes a "continuing complaint" for subsequent tax years.

POSITION:

NAIOP recognizes that county governments have limited time and resources. Extending the statutory time from 90 days to 180 days does not impact taxpayers' ability to present their arguments or their chance to receive a fair hearing. Accordingly, NAIOP supports the passage of House Bill Number 361.

ISSUE: LIMIT WHO CAN FILE A COMPLAINT AGAINST THE VALUATION OF REAL PROPERTY

Under existing Ohio law, several different persons and entities can file complaints challenging a county's valuation of real property. The proposed amendment would remove that right from "the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county." The proposed amendment provides that a county recorder would have the right to file a complaint against the valuation of real property. The proposed language also allows "the board of county commissioners, the prosecuting attorney or treasurer of the county, the board of township trustees of any township with territory within the county, the board of education of any school district with any territory in the county, or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint only as a counterclaim."

POSITION:

While NAIOP recognizes frivolous complaints are filed, NAIOP would recommend the amendment be drafted to include a provision allowing tenants who have a pecuniary interest in the real estate assessment to file complaints and counter-complaints. For this reason, NAIOP opposes S.B. 123 as it is presently written.

OHIO EPA & ARMY CORPS OF ENGINEERS – MITIGATION POLICY DEVELOPMENT WITHOUT FOLLOWING RULE MAKING PROCEDURES

ISSUE:

33 CFR Part 332, titled “Compensatory Mitigation for Losses of Aquatic Resources,” establishes rules governing the mitigation of impacts to waters of the United States that are authorized under Section 404 of the Clean Water Act. Notably, 33 CFR 332.8(b) requires the Army Corps of Engineers district engineer to establish an Interagency Review Team (“IRT”) to review documentation for the establishment and management of mitigation banks and in-lieu fee programs. In Ohio, the current IRT includes representatives from two state agencies, the Ohio EPA and the Ohio Department of Natural Resources, as well as representatives from four federal agencies. The IRT process in Ohio is unwieldy and has morphed into a group of agency representatives who are developing policy behind closed doors under the guise of “interagency coordination.” While the group refers to the policies as being “guidelines” and indicates that such policies are not compulsory, the agencies, including Ohio EPA, routinely apply the guidelines as if they are rules.

POSITION:

While the establishment of an IRT is required by the above-referenced federal rule, the participation in the IRT by state agencies requires those agencies to operate within the confines of Ohio’s laws and regulations. Compensatory mitigation for impacts to wetlands and streams is almost always completed using mitigation banks and in-lieu fee programs. Therefore, the burden and cost of complying with the “guidelines” that the IRT establishes is routinely passed on to permit applicants by the sponsors of the mitigation banks and in-lieu fee programs in Ohio. NAIOP of Ohio believes that all meetings of the IRT should be open to the stakeholders and sponsors. If the IRT chooses to meet behind closed doors from time to time, the minutes of such meetings should be available to stakeholders and sponsors in accordance with Ohio’s Sunshine Laws. Furthermore, NAIOP of Ohio believes that it would be appropriate for the IRT to include the Ohio Department of Transportation, and for the IRT to offer certain “at large” seats to members of the regulated community as well. Finally, 33 CFR Part 332 encourages the district engineer to establish a memorandum of agreement (“MOA”) with each agency that is a member of the IRT. We believe that the state of Ohio should move promptly to establish a MOA, with stakeholder input, that clearly defines the protocols pursuant to which the staff from the state agencies will participate in the IRT process.

PROPERTY RIGHTS TAKING FOR USE AS RIPARIAN SETBACKS

ISSUE:

The distinct nature of private property rights was fundamental in the formation of our government. So much so that the high bar necessary to ratify such was pursued and reached not by just one but two federal Constitutional Amendments. *The Fifth Amendment of the United States Constitution includes a provision known as the Takings Clause, which states that "private property [shall not] be taken for public use, without just compensation." While the Fifth Amendment by itself only applies to actions by the federal government, the Fourteenth Amendment extends the Takings Clause to actions by state and local government as well.*

However, at least one current rulemaking process is violating these rights.

The Ohio EPA is obligated to implement programs and issue rules and permits governing activities across a broad range of environmental considerations. One such permit is known as the Construction Storm Water General Permit (CGP). The federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]), which was enacted in 1972, provides that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The Clean Water Act amendments of 1987 (referred to as the Water Quality Act of 1987) explicitly required the U.S. Environmental Protection Agency (EPA) to adopt regulations to require NPDES permits for storm water dischargers associated with construction activities. Construction sites disturbing one or more acres of land have been required to obtain NPDES permit coverage since March 10, 2003.

The Ohio EPA has delegated authority to implement the NPDES permit program in Ohio, including authority to issue permits such as the CGP. By statute, NPDES permits, including the CGP, expire every five years. The prior permit expired on September 30, 2017. When the prior CGP was renewed, however, it included a unique set of requirements specifically for certain private property located within the Big Darby Creek watershed. This set of unique conditions established the requirement to maintain "riparian corridors" adjacent to Big Darby Creek and its tributaries. These requirements impose conditions on the use of property within these corridors effectively taking property rights from landowners. Concerns were raised during the public comment period for the CGP that these unique conditions exceeded the government's reach into private property owner rights. No notice was specifically provided to the impacted landowners within the Darby Creek watershed. These requirements have now found their way into the statewide Construction Storm Water General Permit and have been extended to portions of the Olentangy River Watershed. If unabated, similar requirements will migrate to watersheds throughout the State of Ohio, and will establish precedent for the functional taking of tens of thousands of acres of property and property rights from thousands of private landowners.

There exists within our national laws well-established principles which outline the required processes to be followed should the public purpose need arise to obtain property rights from private landowners. The process of establishing public purpose only

begins if legislative authority has been given to initiate. Then, direct notification is required, not only to the specifically impacted landowners, but also to the proximate landowners whose property rights or underlying value could be impacted. Once public purpose has been established, a valuation of the rights to be taken must be performed, negotiations take place, and agreements reached. Specific appropriation of public funds is then required to complete the needed transactions.

Ohio EPA has not conducted a valid process to establish public purpose inclusive of property owner notifications, nor has the agency been granted legislative authority to initiate a taking. Similarly, the agency does not have legislative authority to bargain and provide compensation, nor has it been appropriated funding to do so. Every State of Ohio agency and/or its Director is afforded only such authority as is specifically granted by the Legislature pursuant to the Ohio Revised Code. Such authority does not exist for the Director of Ohio EPA.

POSITION:

NAIOP feels strongly that steps need to be taken to reverse this taking of private property rights. The effects of the CGP are far reaching and rise above the narrow view being undertaken by this agency. These effects rise to the level of fundamental law, not rulemaking, let alone a “construction general permit.” At the very least, there is broad confusion and provision of legal clarity is requisite. The approach employed by the Ohio EPA is also influencing many municipalities to follow similar flawed processes to incorporate such unauthorized takings provisions into their local ordinances as well.

The State of Ohio must recognize the significance of what is contained in the bundle of rights which accompany private property. Citizen owners rely in their property to preserve their lifetime of productive work, provide for their families, fund their retirement and conduct business to drive a viable economy. This flawed process erodes the underlying value of the impacted property. Such value is paramount for public institutions such as school districts to assure their financial security to deliver education. The actions of this taking by the CGP provides no consideration for these profound matters.

BROWNFIELD REDEVELOPMENT IN OHIO POST-CLEAN OHIO FUND PROGRAM

ISSUE:

One of the legacies of America’s and Ohio’s strong manufacturing history is the “brownfield” property, which is a former industrial site that is now vacant or underutilized, and whose redevelopment is hindered because of environmental concerns. Redevelopment of brownfields is inhibited because developers are concerned by the liability and uncertainty (time and cost) associated with environmental cleanups. Further, current brownfields remediation incentive programs do not adequately address the challenges of these sites. These “but for” costs are preventing re-use of blighted areas in favor of greenfield development.

At one time the Clean Ohio Fund created by Governor Bob Taft provided funds to support the cleanup of these properties and was financed with a multi- million dollar bond program. The program intended to preserve natural areas and farmland, protect streams, create outdoor recreational opportunities, and revitalize brownfield properties.

With bipartisan support, the General Assembly put the measure on the ballot, and it was passed by the voters. Between 2002 and 2013, the Clean Ohio Fund invested \$400 million in 164 brownfield redevelopment projects throughout Ohio resulting in \$1.4 Billion in annual contributions to the state GDP. (“Investing in Brownfields: The Economic Benefits of the Clean Ohio Revitalization Fund”, Greater Ohio Policy Center, April 2013).

Historically, the Clean Ohio Revitalization Fund was funded from the state’s liquor profit revenue. Today, those monies are being used to fund the JobsOhio program. Current Ohio brownfield remediation programs work to lower clean-up costs to local governments and developers; however, the programs target specific site types or only offer loans—increasing developer risk and limiting redevelopment possibilities.

POSITION:

NAIOP is concerned that Ohio is failing to meet the need of these legacy sites with necessary resources, and effectively abandoning many brownfield sites and forsaking economic development opportunities. Without a flexible state funding program, these brownfield sites will remain vacant and abandoned, and continue to pose a blighting influence and a health and safety threat to the communities of Ohio. They are a liability to the communities in which they are located, preventing the reuse of land, the full use of public infrastructure investments, and resulting in further impact to neighboring property values and investment. By failing to address these sites, community and economic development is inhibited. Local government services are spread over wider geographic areas, increasing taxpayer costs, and challenging the creation of efficient and sustainable communities. Ohio’s communities are not prepared, or able to, finance the measures needed to address the financial challenges posed by these properties.

NAIOP feels strongly that steps need to be taken to address the reduction of state monies allocated toward brownfield redevelopment, and reprogram existing resources to more productive use. For this reason, NAIOP respectfully urges Ohio’s legislators to support the reintroduction of a brownfields program that includes an investment strategy that is flexible, sustainable, and complements existing state and federal programs. A “Clean Ohio Revitalization Fund 2.0” program would further unlock the economic potential of Ohio’s industrial, commercial, mixed-use, and residential opportunities. Public and private entities acknowledge the successes of the previous CORF program and, therefore, are working together to establish a set of policy recommendations for potential funding options for a similar program. NAIOP looks forward to having thoughtful conversation with Ohio’s legislators about regulatory reforms and funding options for brownfields redevelopment that meet the needs of Ohio’s communities.