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Time for the 'legal extortion' of developers to be scrapped

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Comptroller John Liu is trying to make building in New York City more difficult and more expensive.

Last week, the Comptroller released a report from a task force he assembled to make Community Benefits Agreements (CBAs) more transparent, more equitable and more enforceable.

Unfortunately, the report fails to address two fundamental issues with CBAs: Are they legal and are they good for the city?

Leaving aside these two issues, there is widespread disagreement among the members of the task force and the general public about whether the recommendations address the problem or add to it.

Earlier this year, the Bar Association issued a report on CBAs which echoed its findings of two decades earlier when this problem emerged in the development process.

The Bar report concluded in part, citing two Landmark Supreme Court cases, that government can only seek "benefits" from a project that mitigates an impact the project creates. In short, there must be a "nexus" between the impact and the mitigation required.

Further, the mitigation required must be proportional to the impact. For instance, if a project adds 10 children to an already crowded school, government can not ask the sponsor to build a new school that could accommodate all the students in the school as a condition of project approval. The recent

CBAs have gone well beyond the nexus and the standard of proportionality that the Supreme Court required.

Many CBA advocates however believe every development project has limitless resources leading to demands for day care centers, schools, small business loans and even cash grants in return for project approval. The problem with this process is that communities are not judging projects based on their merits, but only on what they can get out of the process. The Kingsbridge Armory project demonstrates how damaging to the city this

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process has become. Others have claimed the process is even worse, namely that it is "officially condoned extortion."

Even the task force's recommendations were highly problematic and a source of controversy among the members. Eight frustrated members of Lui's panel either resigned or refused to sign the final report and wrote in a letter that upon review of the draft report, they have strong concerns about the recom-

mendations for changes in the City's land-use process.

A key recommendation was to establish a community benefits process before a project enters the Uniform Land Use Review Procedure (ULURP). Those individuals and practitioners familiar with ULURP stated that this would undermine ULURP, which is a system that has served the City well by diluting authority and injecting more bureaucracy.

ULURP has worked well, and the City has more jobs, parks, affordable housing units and revenue due to the development that has gone on in NYC.

We should be ending CBAs not attempting to find approaches to fix a flawed and likely illegal concept.

In other REBNY news:

Attention brokers! If you want to help your clients get that mortgage, then you must send an email to public officials through REBNY's Action Center about the Federal Housing Finance Agency (FHFA) proposing a guidance (rule) that would restrict Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from investing in mortgages in buildings with a Flip Tax (private transfer fee covenant). REBNY has made it easy for you and it only takes a couple minutes. Go to www.rebnyactioncenter.com

REBNY is "Betting on New York" for this year's casino-themed Real Estate Board of New York Residential Deal of the Year Awards and Charity Gala Committee on Thursday, Oct.



21 at the Grand Hyatt New York. The annual gala is the Residential Divisions' Fundraising event for the Members In Need Fund. For more information, email Jeanne Oliver-Taylor at jtaylor@rebny.com.

The Commercial Brokerage Division presents "Downtown Office Market: Glut or Glory?" with an incredible panel on Tuesday, Oct. 26 to discuss their views on Lower Manhattan and what is being done to ensure its re-growth. Coffee and Danish begins at 8 a.m. and the seminar runs from 8:30 to 10 a.m. in the Mendik Education Center at REBNY, 570 Lexington Ave.

Panelists are Frank Cento, executive director, Cushman & Wakefield; Dennis Friedrich, president & CEO, Brookfield Properties; Peter Hennessy, president New York Tri-State, Cassidy Turley; and Janno Lieber, president, World Trade Center Properties, LLC. The moderator is Joseph Harbert, chief operating officer, New York Metro Region, Cushman & Wakefield.

Members cost \$10 and non-members \$15. Register online only at www.REBNY.com