Public–Private Task Force Issues Recommendations to Move Mitchel Field Forward with a Snapshot of What Is Possible

In a move designed to create a viable roadmap for private investment in Mitchel Field, a task force including the Long Island Contractors’ Association (LICA) as well as planners, economists, developers, architects, professional athletes and elected officials will be submitting to Nassau County Executive Ed Mangano a document that outlines options designed to encourage the broadest possible response from the development community, including the ability to literally raise the roof of the existing Coliseum.

Task force chairman Alan Eidler, President of Spiegel Associates, stated, “We worked within very specific criteria; what is feasible today? The taxpayer has said no to public monies. In addition, increasing the density of the site will run afoul of existing zoning. We needed to entertain tactical and strategic options. We needed to be inclusive of any and all concepts that are viable and we needed to review them based on the realities of the marketplace; the role of the Coliseum before, during and after a hockey season; and the ability for new development to work with its neighbors to generate new jobs, tax revenue and investment.”

(Continued on next page)
Task Force Clean Start

Hon. Gregory Peterson, former Hempstead Town Supervisor stated, “We looked at this challenge from two perspectives. We wanted professional planners to provide us with the top down guidance that recognizes the reality of what can be built, both by code and by the marketplace. Then we wanted to explore what an actual alternative would look like. The result is a document that is exactly the type of practical roadmap we were hoping to achieve.”

The task force reached prompt consensus on the need for speed, which is the foundation of the Request for Proposal (RFP) to be offered to the development community. After multiple false starts over the last ten years, the real estate industry is wary of opportunities within the Hub. To cut that Gordian knot, the group is recommending that the County Executive appoint an independent Hub “Development Facilitator” who reports directly to him, and whose task is to expedite the process, set specific deadlines for approvals and interface with the Town of Hempstead and other government agencies to ensure a timely and defined development approval process.

Density is a driving element in creating an RFP that will attract viable private investment. Nevertheless, the task force found that “more” may not be better. The RFP must instruct respondents to provide an option that incorporates the existing zoning code and State Environmental Quality Review process so that their designs fit into that model. The RFP should also leave open an opportunity to propose alternatives if their benefits can be proven. The RFP must also encourage joint ventures with incentives for creativity, a development team’s economic depth and its proven ability to work with surrounding community groups and adjacent businesses.

The concept of a minor league baseball stadium within the Hub remains attractive, offering economic and marketing synergies. In his preliminary review, economist Thomas Conoscenti determined that the Coliseum and a ball field, coupled with educational facilities and corporate R&D facilities, will provide a positive impact to the ailing Long Island economy, creating investments, jobs, wages and tax revenues which will multiply throughout the economy in the region.

“What we will not be able to calculate is the psychic income derived from the sport arenas which will also provide a positive effect to the local economy,” he noted.

A concrete look at one concept

Moving beyond the review structure needed to invite feasible RFP responses that have “what it takes” to be built, the task force enlisted the help of award winning architect Angelo Corva and his colleagues at Sidney B. Bowne & Son, and John F. Caruso to create an actual design option for the Mitchel Field property.

Task force chair Alan Eidler noted, “This is an extraordinarily innovative approach that pays attention to density, the financial
costs required to tackle the job, the need to be attractive to the surrounding community, and the core objective of generating serious economic activity.”

Corva stated their concept would see the existing Coliseum expanded and enhanced, its roof literally raised while its side walls would be pushed out and recreated as soaring window enclosed facades. A 6,800 car parking garage would be built adjacent to the building along with restaurants and retail, a minor league stadium with an optional dome roof, and surrounding acres set aside for appropriate complementary use that may range from sports to education to corporate R&D.

“We have estimated a capital cost of some $346,500,000 and there is no contribution required from county taxpayers,” stated Corva. “It leverages the existing 77 acres identified for redevelopment, requires a transparent RFP process with all facilities reverting to the County at the end of the lease, while creating multiple revenue streams for county coffers. This would include land lease rent, sales and entertainment taxes, special event fees, and other incentives offered by the winning developer.”

Marc Herbst, LICA’s Executive Director, noted, “At the end of the day, the issue isn’t what we suggest or propose. It is how the County creates an RFP that allows the smartest architects and developers to recognize opportunity and thereby allow investment to take place that will move this County’s economy forward. Our thought process is designed to facilitate that approach and we believe this task force has accomplished that goal. We would welcome the chance to directly address any questions the County Executive may have.”

Entitled “Clean Start,” task force members include Alan Eidler, President of Spiegel Associates and chairman of the Clean Start task force; Oyster Bay Town Supervisor John Venditto; North Hempstead Town Supervisor Jon Kaiman; Marc Herbst of the Long Island Contractors’ Association; John Duffy of the Public Works Alliance; land use and municipal planning expert Fred Ippolito, who also serves as Oyster Bay’s Planning Commissioner; past Executive Director of the Long Island Regional Planning Council Michael White; Mitch Palley, CEO of the Long Island Builders Institute; Islanders’ great, Bobby Nystrom; economist, Dr. Thomas Conoscenti; Hon. Gregory Peterson, former Hempstead Town Supervisor and Hempstead Town counsel David Levy.

J.H. COHN: Contractors Continue to Struggle with Impediments Caused By Low Bids

Article written by: Stephen J. Harrison, CPA and Stephen D. Ebinger, CPA of J.H. Cohn

Throughout the economy’s most recent downturn and its subsequent stumbling recovery, contractors have contended with competitors consistently submitting bids far below a sustainable, profitable level. Although most contractors can afford to underbid a project or two and commit their company to work through difficult jobs, they rely upon the next round of profitable projects to make up for previously incurred losses. Given the current economic reality, however, one has to look hard to find where the next wave of profitable work will come and carefully consider whether they are appropriately capitalized to sustain this strategy until the next boom.
Those contractors who are, themselves, the low bidder must take all measures necessary to minimize potential risks. While being the low bidder on a contract used to be cause for companywide pride and celebration, it is now too often a cause to reflect on the “winner’s curse” and ask, how much did we leave on the table? Unsuccessful bidders are quick to examine bids and look for a reason to challenge the winner, but it is equally important that owners and managers take a hard look at competitor bids with an eye towards understanding where potential differences lay. Ask the difficult questions of estimating and production teams, including: Did they truly have a better plan to build this project? Did they rely on low bids from suppliers or subcontractors? Did they leave something out and, if so, do they know what was missed? And, do they have contingencies in place to recoup those costs? The more aware and informed contractors are of the challenges to be faced, the better prepared they will be to react to difficulties that may arise.

Once a contractor analyzes the bid, understands the reasons behind the low bid, and is comfortable as to how to work best with the owner, they should develop a proactive plan to address areas of concern. Our fathers taught us it is far better to “measure twice and cut once,” and I contend that this principle needs to be even more closely adhered to in this market. In addition to “sharpening the pencil” and revisiting overhead, re-examining equipment and utilization rates, and analyzing conditions for contingencies and reserves, now is also the time to once again consider subcontractor and supplier relationships.

Just as an owner must question whether the low bidder is truly a responsible bidder, contractors must also evaluate whether a low price subcontractor or supplier has the track record and capacity to perform. The low bid material supplier has excellent pricing, but does it have the inventory, supply chain management tools, and distribution capabilities to deliver the right quantity of the right product to the right jobsite at the right time? These risks can be difficult to evaluate, but they are real and costly. While these processes were hopefully vetted pre-bid, and the risks of non-compliance judged to be outweighed by the supplier’s pricing advantage, now that the job has been won areas of concern should be re-visited. Many projects have very onerous liquidated damage provisions, and it is impractical to think one can rely on a subcontractor’s bonding company to perform on time in the event of a failure. We have all seen enough to know that performance bonds and legal actions are far too ineffective to provide the immediate relief that will be needed to get a supplier or subcontractor back on track.

At a recent industry event, a public agency official commented that he was being congratulated for contracting out so much work at such low prices. He appropriately cautioned that he was choosing to wait until the work was actually completed before accepting any praise, and clearly acknowledged the realities inherent in contractors taking work at low prices and the risks of them not being sufficiently solvent to finish the work they start.

These challenging times will inevitably produce winners and losers. To avoid turning a winning low bid contract into the loss of the business, contractors must twice measure the capabilities of

Continued on next page
their company, their connections with the project owner, and the strength of their relationships with suppliers and subcontractors. Just as importantly, they must seek the counsel of their team of trusted advisers to best position their company to reap the benefits of the next construction boom.

For more than 90 years, J.H. Cohn has cultivated its reputation for honesty, integrity, technical excellence, and genuine concern for clients. With offices located in New York, New Jersey, Connecticut, California and the Cayman Islands, they’ve worked hard to become their clients’ primary advisors, providing informed, objective advice and services designed to help them reach their business goals. For more on J.H. Cohn visit their website here.

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Stephen D. Ebinger, CPA, is a J.H. Cohn partner and a member of the firm’s Construction Industry Practice. He can be reached at sebinger@jhcohn.com or 516-336-5502

**LICA’s Annual PAC Reception Honors an Infrastructure Ally on October 13th**

LICA is moving to publicly support and aggressively advocate on behalf of those public officials who have consistently fought on behalf of our region’s roads, rails and bridges. Top on LICA’s list is New York State Senator and Chairman of the Senate Transportation Committee Charles J. Fuschillo, Jr. who is being honored at LICA’s upcoming PAC Reception.

LICA’s Executive Director Marc Herbst was blunt in addressing his colleagues throughout the heavy construction industry. “Whether you are a LICA member or not, our industry needs to be active. It needs to be involved. And it needs to participate by supporting those who understand the value of public works and Long Island’s fair share.”

As the ranking Republican member on the Senate Transportation Committee over the last two years, Senator Fuschillo fought for Long Island’s fair share of transportation stimulus funds, spoke out strongly against the MTA payroll tax and called for a five year capital plan for road and bridge projects to create jobs and keep the infrastructure safe.

The Senate Transportation Committee oversees the work of the State’s transportation system including the Department of Transportation, Department of Motor Vehicles, the Metropolitan Transportation Authority (including the Long Island Railroad), Port Authority of New York & New Jersey, New York State Thruway Authority and other agencies.

Continued on next page
PAC Reception is a “Must Show”

LICA is asking its members to support the industry’s allies, who, like Senator Fuschillo, insist on protecting the taxpayers’ biggest investment, our roads and bridges, at LICA’s Annual PAC Reception on Thursday, October 13th, from noon to 2:00pm at the Stonebridge Country Club in Smithtown.

LICA Chairman James Pratt, III of Pratt Brothers, Inc. stated, “The quality of our highways, roads, bridges and mass transportation systems will determine the fate of our economy, the ability to create jobs and generate new investment. Senator Fuschillo has been a major advocate for road and bridge capital plans and has the drive to make a difference and an appreciation of what is at stake. In addition, he has been an important ally to our industry here on Long Island and across New York State.”

By way of demonstrating the importance of this elected official, the LICA PAC will be matching individual contributions to ensure that Senator Fuschillo has the resources to have his message heard. Suggested contribution is $250 or $500 per guest.

If you are interested in attending, please click here for LICA’s invitation. Please send your response form to LICA Comptroller and Office Administrator Sheryl Buro at sburo@licanys.org or by fax at 631-231-4291.

AGOVINO & ASSELTA, LLP: Recent Statutory Amendments Provide More Time to File Bond Claims and Mechanic’s Liens

A recent amendment to the New York State Finance Law extends the time in which to bring an action on a labor and material payment bond required to be issued in connection with public improvement projects. The amendment now permits suits to be filed within one year from the date on which the public improvement was completed and accepted by the public owner. The statute previously measured the one year time period from the date when final payment became due under the claimant’s subcontract.

This amendment is intended to avoid inconsistent court rulings as to when final payment actually became due under a particular subcontract by expanding the time within which claims for nonpayment may be brought. By doing so, it also eliminates the need for early construction trades to file suit before a project is even finished.

It must be pointed out, however, that the amendment does not change the statutory requirement that those without a direct contract with the prime contractor that issues the payment bond (i.e., sub-

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subcontractors and suppliers to subcontractors) must still provide written notice of their claim within 120 days from the date on which they last provided their labor or material. Therefore, while everyone’s time to sue on the bond is now extended beyond project completion and acceptance, there are those that will still need to take affirmative action to protect and preserve their bond rights prior to project completion. Failure to timely take such action will bar the claim against the bond.

Similar expansive rights were also recently given to those seeking payment on private improvement projects, extending the time within which a mechanic’s lien may be filed. While a notice of lien must still be filed within eight months of the date when the last item of work was performed or materials were furnished by the lienor (or within four months, if the project involves a single-family dwelling), an amendment to the Lien Law now permits liens for retainage to be filed within ninety (90) days after the date the retainage was due to be released.

Since retainage is often not due until well after a contractor last provided labor or materials to a project, this amendment is clearly intended to resolve the unenviable choice a contractor previously faced of having to file a lien for its not yet due retainage or waiting until its retainage later becomes due, only to discover that the retainage is not going to be paid and that its lien rights have expired.

With this change, however, it is certain that there will be much disagreement as to when retainage is due to be released under a particular contract. Additionally, there is sure to be some confusion where a contractor is owed both contract/change order money and retainage and mistakenly assumes that it has additional time to file a lien for all of its money. The extension of time in the amendment specifically applies to retainage only.

Agovino & Asselta, LLP emphasizes the practice of construction law and commercial litigation. The firm maintains offices in Mineola and practices primarily in Long Island, Manhattan and the New York/New Jersey metro region. They represent general contractors, construction managers, subcontractors, sureties, developers, owners, suppliers, equipment rental companies, engineers and homeowners in contract drafting and negotiations, litigation, arbitration, mediation and other ADR proceedings in connection with public and private construction contracts and projects. For more on Agovino & Asselta, LLP visit their website [here](http://www.agovinoasselta.com).

Joseph P. Asselta, Esq., is a Agovino & Asselta, LLP partner. He can be reached at jasselta@agovinoasselta.com or 516-248-9880.

[www.agovinoasselta.com](http://www.agovinoasselta.com)
Downstate DOT Partnering Session on October 6th

The next quarterly New York State Department of Transportation (NYSDOT) partnering session with the three downstate contractor associations – the Long Island Contractors’ Association (LICA), the Construction Industry Council of Westchester & Hudson Valley (CIC), and the General Contractors Association of New York City (GCA) – will be held at the GCA offices, 60 East 42nd Street, New York City, on Thursday, October 6th at 11:00am.

LICA members are encouraged to attend these sessions that provide information and insight into the infrastructure process. If you wish to have a particular topic placed on the agenda, please contact LICA Executive Director Marc Herbst at mherbst@licanys.org or 631-231-LICA.

LICA’s Veterans - Protected America, Building America

With Veteran’s Day activities already being planned for Friday, November 11, 2011, LICA is seeking to recognize the contribution of those veterans amongst our construction ranks who helped protect America and are now working to build America.

As part of that effort, LICA is asking its E-gram readers to tell us about your Veteran employees. Where did they serve and when? Were they engaged in any infrastructure projects while in the armed services? What construction projects are they involved in now and in what capacity? Send your stories to LICA’s Manager of Communications Michelle Giametta at mgiametta@licanys.org.

LICA Hosting Defensive Driving Course as Benefit to Members

The Long Island Contractors’ Association (LICA) is hosting a defensive driving course as a benefit to our members and their families on Wednesday, November 16th and Thursday, November 17th, from 5:30 – 8:30pm, at the LICA office in Hauppauge. Registration is $10 per participant.

The Defensive Driving Course (DDC) is a classroom-only course and is available to all licensed drivers.

Participants will receive the following benefits:
1. For three (3) years they MUST receive a 10% discount on their Liability and Collision insurance premiums for all vehicles (including motorcycles) for which they are listed as the primary operator. Company insurance premiums may also be eligible for reduction.

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2. Up to four (4) points will automatically be deducted from the existing total on their driving record

3. MOST IMPORTANTLY - Each participant will learn accident prevention skills, which should help, preserve their lives and property.

The DDC 6-hour classroom course is presented by National Safety Council-certified instructors who, with the help of modern, multimedia techniques, offer you a new approach to learning accident prevention skills. You’ll receive a course guide to use in class and to keep for future reference. Even the most experienced drivers find the course interesting and filled with valuable safe driving tips. It's also great for new drivers, about-to-be drivers, and of course, family involvement is encouraged.

Due to limited space, registration is available to the first 40 responses. Payment must be made in advance to reserve your spot. Click here to fill out the attached form and mail your check, made out to the Long Island Contractors’ Association, to 150 Motor Parkway, Suite 307, Hauppauge, NY 11788.

Attention LICA Members: Change of Date for LICA’s 2011 Holiday Party

Be sure to mark your calendars! The Long Island Contractors’ Association’s 2011 Holiday Party has been changed to Wednesday, December 14th, from 5:30 – 9:30pm, at Villa Lombardi’s in Holbrook.

Columbus Day Holiday Schedules

Please click here to view the LICA and GCA Columbus Day holiday schedules.

www.licanys.org

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## Bid Results

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<tr>
<th>Bid Date</th>
<th>Project Name</th>
<th>Owner</th>
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<th>Contractor 2</th>
<th>Contractor 3</th>
<th>Contractor 4</th>
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<tr>
<td>8/13/11</td>
<td>Rehabilitation of Plant No. 8</td>
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<td>JVR Electric</td>
<td>Eldor Contracting</td>
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