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I would like to thank the Chairs of the Senate Majority Policy Committee and Senate Democratic Policy Committees for their invitation to testify here today.

My name is David Patti and I am the President and CEO of the Pennsylvania Business Council. I will note for the record that I served in the past as a staff member in the Pennsylvania Senate in two capacities relevant to today's discussion: as a policy analyst for economic development, and as the Executive Director of the Local Government Committee. I served also as the Chief Operating Officer of Team Pennsylvania, and at which time that individual was also a Special Deputy Secretary in the Department of Community and Economic Development. And, I served for 18 years as a Board Member of the Berks County Industrial Development Authority; my final four years as the Chairman of the Board.

Let me be clear: Pennsylvania is not hospitable to the attraction of business investment.

And many policies make Pennsylvania inhospitable to retaining the employers and jobs we do have.

Pennsylvania's byzantine labyrinth of local government units and instrumentalities; our land use and development planning processes; and our extraordinary serial permitting requirements at the local and state level are barriers to business investment.

These are important issues and I will elaborate on them. But I must also tell you that our planning and permitting issues are not the sole inhibitors of economic development in Pennsylvania. We must also address – and can explore in other hearings – critical deficiencies that include:

- an abusive legal climate;
- an uncompetitive regulatory climate;
- inadequate and aging infrastructure;
- insufficient workforce in key skill areas;
- high energy prices; and
- some of the highest business tax burdens in the nation.

The Pennsylvania Business Council has provided the General Assembly with access to our product www.pascorecard.com which tracks 55 metrics of economic competitiveness and business climate. These metrics include factors used by site selection consultants. But I admit we do not have metrics for today's topic.

One metric would be complexity – the difficulty of permitting. Another metric would be"time-to-market" – the speed with which permits are granted so that developers can move quickly to make investments and bring new facilities online.

Until it was defunded and disbanded in the 1996, the Advisory Commission on Intergovernmental Relations (ACIR) regularly examined states for the most complex and overlapping government jurisdictions. Pennsylvania was a hands-down winner. In one study completed in the late 1980s, the ACIR gave to "honors" to residents of Whitehall Township, Allegheny County who at that time could conceivably be subject to the laws, rules, regulations, taxes, fees. or levies of 22 different government units or agencies.

Not all governments or agencies measure the time and effort it takes to get a project from drawing board to reality, but it is a very real factor for developers. They know costly delay when they see it and they see it in Pennsylvania. And some governments make a real effort.

Portland, Maine found that very few data were available to study their own situation or compare themselves to other municipalities in Maine or around the nation. The city conducted two studies a few years ago to try to quantify wait times for building permits. They then established a program to speed their processes.

In the summer of 2015, Denver, Colorado's economy was booming and their Community Planning and Development Office was stressed. The newspaper reported, "Building permit approvals from Denver's Community Planning and Development Office are taking three times as long as the normal time, in some cases -- upwards of 12 weeks. The city aims to complete those in four weeks. Commercial construction, like new apartment complexes and businesses, are taking six weeks. Those are also supposed to be done in four weeks."

It's a good sign when government sets goals, and the public and media take notice of success or failure.

Pennsylvania has complicated planning and permitting processes in place for good reason: to protect human health and safety; protect the environment; preserve open space and a way of life; give forethought to social costs, externalities and unintended consequences; and to help developers themselves to understand and embrace best practices. These are important policy goals.

Like all elements in government – the art comes in balancing interests so that we can enjoy the fruits of economic growth. And we could learn from those who set goals for permit completion times.

Certainly, mistakes can be made. Bureaucracy can expand to absurdly burdensome levels. And individuals can act inappropriately. But largely, I do not believe these are our problems at the state or local levels.

Some local governments might be slow to respond to opportunities, but then they answer to their taxpayers for the result: loss of economic growth and prosperity.

There are many inter-related elements of Pennsylvania's state and local planning and permitting processes that we can explore and seek to improve. I am going to limit my remarks today to just three issues:

- Complexity of local government;
- Unintended consequences of the Sunshine Act; and
- Unreasonable requests of developers and their agents.

1. Complexity

Even when all of the local government units are motivated to seek, promote and facilitate responsible development, the structure and process of government can be cumbersome

Our problems are designed into processes that haven't kept up with the times and which were not built for speed and agility.

I want to make sure that my friends in local government know that I fault the state constitution and state statue for the way in which our local governments are structured and operate. It is, after all, the various codes that set forth the duties, responsibilities and operational limitations of our counties, cities, boroughs, townships, planning commissions, zoning commissions, water authorities, sewer authorities, municipal authorities, industrial development authorities, and economic development corporations.

We have too much local government. We all know it. We have known it for decades. We put municipal consolidation language into the 1968 constitution and we never took another step.

The House held hearings on local government consolidation several years ago. I will not rehash those issues, but note that it's not only the number of municipalities, but the number of instrumentalities our municipalities create that is daunting to developers. The don't know who does what, or where they should go. Often the information they are given by one agency contradicts that of another. "Who has primacy? The state, county, or municipality?" Well that depends. "Help me through this maze!" was a refrain I heard continually from developers and their agents when I met them in previous capacities.

Moreover, in my opening remarks, I used the phrase "extraordinary serial permitting" with a very specific purpose: many of our permitting steps require precursors. That is, a developer must have permit A, before B, and B before C, and C before D, rather than the ability to process approvals and permits in a parallel and simultaneous fashion. Our Municipalities Planning Code (MPC) spells out approval roles for municipal planning commissions and municipal zoning commissions, an advisory role for the county planning commission, and requirements of the governing body. Final local government action might also require input or agreements from a conservation district, water authority, sewer authority, parking authority or other instrumentality.

Then there are the state agencies: PennDOT, Department of Environmental Protection (DEP), Department of Labor & Industry (L&I), and Historical & Museum Commission.

There can be multi-state agencies like a watershed. And there is occasionally the Federal Government: the Corps of Engineers, the Federal Aviation Authority (FAA), other agencies.

There is no one-stop shop.

There have been attempts to amend the MPC to provide for consolidation of local permitting and approval processes, but over the past 30 years of my experience in this area I can point to few accomplishments.

One of the missions of the Governor's Action Team, since its creation in the Thornburgh Administration, has been to crash the system and get permits for developers, but it has seldom been able to provide this service.

We need to instill rationality, predictability, and a bias for action if we are to capitalize on Pennsylvania's potential. And, of course, all the while we must continue to safeguard the public's interests.

2. Unintended consequences of the Sunshine Act

Let me add another wrinkle to our problems: for all of the right reasons – accountability, transparency, integrity and other virtues – we make it difficult, if not impossible, for developers and local government units to have the meetings they need to have while still complying with the Sunshine Act and open meeting laws. Our laws prohibit a quorum of members of a governing body to meet with one another unless the meeting is advertised and open to the public.

Once the "sunshined" meeting is convened, the governing body members can excuse themselves into an executive session to discuss a real estate contract, but case law is rather muddled on what can be done in the way of planning and negotiation behind closed doors.

There is, in fact, a 2013 Pennsylvania Supreme Court decision in a case from Berks County (*James M. Smith vs. Township of Richmond -- 623 Pa. 209*) in which the majority decision authored by Justice Saylor held that closed-door gatherings that do not involve "deliberations," do not violate the Sunshine Act. The Supreme Court held that closed door informational meetings are permissible. But defining a "deliberation" is not so straightforward. Wrote Justice Saylor:

> *Making a decision implies the exercise of judgment to determine which of multiple options is preferred. Thus, a discussion of agency business may be said to have taken place "for the purpose of making a decision"—and therefore, to have comprised "deliberations" — where the discussion consisted of debate or discourse directed toward the exercise of such judgment. This would occur, for example, where*

> *agency members weigh the "pros and cons" of the various options involved, or otherwise engage in comparisons of the different choices available to them as an aid in reaching a decision on the topic, even if the decision is ultimately reached at a later point.*
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> *Gatherings held solely for the purpose of collecting information or educating agency members about an issue do not fit this description, notwithstanding that the information may later assist the members in taking official action on the issue. To conclude that such information-gathering discussions are held for the purpose of making a decision would amount to a strained interpretation not reflective of legislative intent. In this regard, it bears noting that, although the [Sunshine] Act is designed to enhance the proper functioning of the democratic process by curtailing secrecy in public affairs, the legislative body has expressly cabined the openness directive by reference to a specific discussional purpose ("making a decision"), thereby leaving room for closed-door discussions held for other purposes.*
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> *We observe, moreover, that, while it is possible such closed-door sessions may have a practical benefit as suggested by the sources referenced by the Township Parties, (see supra notes 6–7) when an agency holds such gatherings and invites parties to ongoing litigation, skepticism among the general public is not unreasonable, as suspicions may naturally arise that the conversations are aimed at deliberating agency business in private. In such cases, the agency incurs the risk that citizens will challenge the propriety of its actions, and consequently, that it will have to defend those actions in the context of legal proceedings where an evidentiary record is developed (as in this case) and a determination is made by a fact-finder concerning whether a violation occurred. However, since the Act does not forbid agencies from proceeding in this manner, it is not our function as a reviewing court to impose a bright-line preclusive rule to that effect. Rather, the question of whether any such discussions were required to be open to the public depends on the facts of each case. Additionally, in view of the "presumption of regularity and legality that obtains in connection with proceedings of local agencies," Kennedy, 575 Pa. at 135, 834 A.2d at 1123, the challenger bears the burden to prove a violation.*

For good reason, some solicitors advise their client municipalities or instrumentalities to avoid such closed-door meetings.

When I met with local officials to seek approvals for economic development projects, there were a lot of conversations that began with, "Well if _____, then _____." Or, "Do you think _____ would _____, if so then I guess we could _____." I suspect some people would describe those conversations as bordering on "deliberations."

But those conversations cannot easily be held in public, either. Not because of any impropriety, but because often details aren't yet decided, and some plans require a more elaborate communications rollout plan.

You can well imagine the sort of legitimate questions that would be on the minds of local public officials:

- What are you going to make?
- How many jobs will you create? Are you moving any jobs from elsewhere?
- How are you going to take care of noise, or dust, or smell?
- What's the traffic going to be like?
- Will there be fire or safety issues? Environmental?
- How much water will you use? What are you doing about sewage?
- What will the building look like?

These questions deserve answers, but many developers are going to be reluctant to discuss the topics in a public forum until all of their plans are set. They don't want to "think aloud" before an audience that is likely to include skeptics and critics.

Other questions might be perceived by developers as giving away confidential details of business operations to competitors. Marketing and pricing plans for a new product line, the floorplan of a new plant, the amount of energy, water consumption, or shipping capacity might be seen by the developer as confidential information they don't want disclosed.

Certainly, details about land prices, shared improvement costs, and economic development incentives are details the local governments and economic development agencies don't want disclosed to competing governments.

A work-around --- at least for early stage meetings – is for economic development agencies to take developers from meeting to meeting to meeting with local officials keeping the number of participants under the quorum threshold. But you can imagine how quickly project developers tire of this process and decide to go site shopping in another state. They look to the economic developers and ask, quite logically, "Why are you making it so hard for me to spend my money here?"

The other option is for economic developers and local governments is to ignore the laws. Obviously, this is not the option we should promote.

We need to find a way to protect the public interest and to prevent corrupt transactions while maintaining agility, confidentiality, and time-to-market.

3. Unreasonable requests of developers and their agents

I mentioned at the outset that Pennsylvania has other challenges to its economic competitiveness. To be sure, developers often seek financing to mitigate some of Pennsylvania's shortcomings, and tax abatements available in Keystone Opportunity Zones (KOZs) and through other programs. But this is a two-way street: it is not unusual for state and local agencies to hope that developers will solve some of their problems.

Perhaps it has changed since the passage of Act 89 – I hope it has – but in my experience PennDOT was always quick to hope that a proposed project would bring with it funds for bridge re-building, road maintenance and off-site improvements. PennDOT hoped developers would do magically what the General Assembly had not: find a funding stream.

Two seconds into a conversation I had with PennDOT about a proposed food processing industrial park on the Berks/Lebanon border, the official said, "Well if you want a Highway Occupancy Permit, you're going to have to build us a bridge." I asked how much it would cost. "Probably $10 million," he answered immediately and matter-of-factly. I asked where I might get the funds. He recommended an "earmark from Congress."

I don't mean to single-out PennDOT. The old bridge was in bad repair, and the agency had no funds at its disposal. Our proposed food processing park would have had truck traffic. The project morphed into warehouses and the need for a new bridge was even greater. But the industrial park is not the only user or beneficiary of the bridge. Expense infrastructure requirements borne entirely by the developer can make a project economically infeasible. Ultimately, in our case, a bridge was built -- funded from multiple sources.

Improvements for one project generally will benefit existing or other future facilities in the area. But that one project cannot be expected to act as the bank for everyone.

Similarly, local governments have been known to request that water treatment or sanitary sewer capacity built for an economic development project, be expanded and extended to provide service for the local village. Other developers are asked to extend energy service in a manner that benefits the region, not just their project – but at the developers expense. Housing developers routinely build playgrounds and recreation areas – sometimes outside the boundaries of their development.

More recently, we have seen government agencies demand that developers help them with social or economic issues such as job training and employment: "We want you to hire these people over here and that means you have to train them and pay for their transportation to work each day."

When permit approvals are contingent on these agreements, concessions, or extra expenditures, discussions can take on an ugly tone and turn-off developers. The developers will simply go to places where they feel more welcomed.

Partnerships are fine, but extortion is not. We cannot reasonably expect developers to incur great expenses unrelated to their projects. And we can't be surprised if they leave Pennsylvania to expand their operations in a more business friendly environment. Pennsylvania must be able to fund infrastructure, energy distribution, workforce development and other precursors of economic expansion so that we can offer "shovel ready sites" at affordable prices without haggling over who pays for what.

This concludes my testimony. Thank you for the opportunity to join you. I would be happy to take your questions.