



DIMENSIONS

Newsletter of the New Jersey Builders Association



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Dimensions newsletter is produced by the New Jersey Builders Association (NJBA). NJBA is a housing industry trade association of builders, developers, remodelers, subcontractors, suppliers, engineers, architects, consultants and other professionals dedicated to meeting the housing needs of all New Jersey residents and facilitating the realization of the American Dream. NJBA serves as a resource for its members through continuing education and advocacy. The NJBA and its members strive for a better, greener, more affordable housing market. Additional information is available at www.njba.org.

NJBA recognizes and appreciates the expertise of its members. In this spirit we invite and encourage our members to submit articles for publication in Dimensions. NJBA reserves the right to make the determination on which articles will be published, the timing of the publication and, if need be, the right to edit articles after consultation with the author. Questions or comments may be sent to Padraig Ryan at pryan@njba.org.

A Message From NJBA President Corey Wescoe



Dear NJBA Members,

The annual Atlantic Builders Convention will be held April 1-2 at Harrah's in Atlantic City and I am hoping to see you all there to take part in the largest industry trade show in the Northeast.

It's been a long and productive year and the association's 71st annual convention will mark the end of my term as President of the New Jersey Builders Association. It has been an experience that has been very rewarding both personally and professionally, and for that I am extremely grateful.

During my tenure, NJBA members, officers and staff have been actively engaged in critical policy making discussions that continue to protect the interests of our industry in the legislative and regulatory arenas.

The 218th Legislative Session came to a close in January and the Legislature sent over 200 bills, including numerous bills affecting the building industry, to the Governor's desk.

Of utmost importance was **S3252/A4713(Greenstein/DeAngelo)**, which would have required builders to install fire sprinklers in all new townhome construction in New Jersey. NJBA was alerted to a renewed legislative push for this bill in early December. NJBA's Government Affairs team and the members engaged in an aggressive lobbying campaign and we were able to secure two crucial amendments: (1) clarifying the definition of townhouse and (2) implementing a "grandfathering"

provision to safeguard projects with existing site plans. While these amendments were very helpful, they did not alleviate all of NJBA's concerns, and we continued to communicate our outstanding concerns regarding housing affordability and infrastructure installation issues. Over our remaining objections, the bill was rushed through the Legislature and onto the Governor's desk. NJBA could not support the bill in its final form, which was ultimately **pocket vetoed** by Governor Murphy on January 21, 2020.

Another legislative priority **strongly opposed** by NJBA that moved through the Legislature came on the heels of Governor Murphy's commitment to crack down on employee misclassification and a promise "to root out contractors who exploit and cheat workers." This resulted in enactment of several proposals that may create challenges for businesses which utilize independent contractors since the various proposals impose burdensome responsibilities and additional liability on companies involved in construction. Although NJBA worked with legislators to narrow the scope of the legislation, these measures will unfortunately have a deleterious effect on the homebuilding industry.

As you know, NJBA not only plays defense against potentially harmful legislation but also proactively advocates for policies to benefit to homebuilding industry in NJ. My priority as NJBA President to address the unprecedented delays in building code plan review and inspections continues to make headway. We have been working with state legislators and top government officials to create a building code approval process that allows for more options for inspection and plan review. Change is gradual, but we are confident that these conversations will lead to an expeditious

solution that will provide builders with predictability and certainty to help decrease costs and improve the state's reputation as unfriendly to business.

On the regulatory front, NJBA is preparing for potentially wide-ranging rule changes in addition to the soon to be released Stormwater, updated Site Remediation, Category One Waters and Public Access rules.

Earlier this month, Governor Murphy unveiled the Energy Master Plan, which outlines targets to reach the Administration's goal of **100 percent clean energy by 2050**. The plan calls for the electrification of the building sector and enhanced code adoptions to "support net zero carbon new construction." In concert with the unveiling of the plan, Governor Murphy also Signed Executive Order 100 which directs the Department of Environmental Protection (DEP) to develop "Protecting Against Climate Threats" (PACT) regulations. The majority of the PACT regulations and EO concerns greenhouse gas emissions and short lived climate pollutants but also directs the Commissioner of DEP to issue an administrative order that identifies the DEP regulations that will be updated in order to integrate climate change considerations such as sea level rise, into its regulatory and permitting programs. DEP subsequently identified in Administrative Order 2020-01, the Flood Hazard Area, the Coastal Zone Management, Freshwater Wetlands, and Stormwater Rules, as rules that would be updated, within 24 months, to account for climate change. NJBA will be diligently monitoring the progression of this rulemaking and participating in all available stakeholder sessions.

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The Effect of an Arbitration on Other Proceedings

By Edgar Alden Dunham, IV, Esq.

You are the owner of a construction project with problems. As required by your contract, you commence an arbitration against your general contractor. Unfortunately, things don't go so well. Your claims are denied. Ahh, you say, I can file actions in court against the subcontractors. They didn't participate in the arbitration because I didn't have arbitration agreements with them. So, my loss against the general contractor doesn't apply. I can get a do-over against the subcontractors in the court proceeding, right?

Unfortunately, it doesn't work that way. Under the legal doctrine of *res judicata* and the companion doctrine of collateral estoppel, your claims against the subcontractors are likely to fail.

Res judicata is Latin for "the thing has been decided," which is based on the principle that a final judgment of a competent court is final and conclusive unless new material evidence is discovered. It precludes parties, or those *in privity with them*, from re-litigating issues that were or could have been raised in a previous proceeding that resulted in a judgment on the merits. Collateral estoppel precludes a party from re-litigating *an issue* that was necessary to a judgment on its merits in the prior litigation. For *res judicata* or collateral estoppel to apply, it is fundamental that the party against whom it is being applied had a full and fair opportunity to present its arguments.

The claims against the subcontractors are basically the same claims that you lost in the arbitration proceeding.

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You may try to dress them up as tort claims instead of contract claims, but the claims arise out of the same facts, resulted in the same damages, and will require substantially the same proofs. Accordingly, the subcontractors are in privity with the general contractor for purposes of *res judicata* not only because of their subcontracts, but also because the claims are basically the same. Therefore, *res judicata* bars your claims.

Exactly this scenario occurred in a recent Connecticut case, *Girolametti v. Michael Horton Associates, Inc.*, 332 Conn. 67 (2019), in which, an owner sued subcontractors after losing an arbitration against the general contractor. After winding its way through the appellate process, the Supreme Court of Connecticut dismissed the claims on the basis of *res judicata*. The Court found that the claims were, at heart, the same claims the owner lost against the general contractor with whom the subcontractors had privity. The Court also found that a *subcontractor is deemed to be presumptively in privity* with a general contractor for purposes of *res judicata*.

So, you decide to dress up the claims against the subcontractors more. If the

court sees through the subterfuge, just as the Supreme Court of Connecticut did in *Girolametti*, the claims will be dismissed. If the claims are different, but still rely on issues necessary to the arbitration decision, you will be barred from re-litigating those issues under collateral estoppel. Your only real chance is with claims that are uniquely against the subcontractors that were not, and could not, have been brought in the prior proceeding.

What if you had won against the general contractor? And now want to pursue additional claims against the subcontractors? And the decisions on the issues necessary to the award included findings that would help your claims against the subcontractors? Are those findings binding against the subcontractors under collateral estoppel? Unfortunately, the answer is NO. The arbitration findings are not binding against the subcontractors UNLESS the subcontractors had the opportunity to defend against them in the arbitration proceeding.

The takeaway is that your participation in an arbitration may be held against you by a nonparticipant, but you are not going to be able to hold an arbitrator's award against a nonparticipant. Thus your participation in an arbitration can have an effect on other proceedings, but it will only be to your benefit if the other party in the subsequent proceeding had the opportunity to participate in the arbitration.

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The Changing Property & Casualty Insurance Market

By Anthony Bevilacqua

As Bob Dylan once wrote, “the times they are a changing.” Nothing is truer than what has been occurring in the insurance marketplace since May 2019. Resource journals to which we subscribe track industry wide insurance rate changes since July 2017. For most of 2017, insurance rates overall decreased about 4% year over year. Starting in early 2018, there was a slight bump for about three to four months whereby underwriters attempted to raise rates 3-5%. That strategy lasted about two months as the market place settled back into what was essentially a flat rate change year.

Last year started much like 2018. Then, around May 2019, the insurance world shook as the full impact of the past two years of catastrophic losses attributable to wildfires, tornadoes, floods, hurricanes and ice storms, both domestically and internationally, hit the books. Within weeks, rates bounced upward across the board a minimum of 5-7% for good insurance accounts – defined as those with no claims or very low claims during the past 3 to 5 years. Accounts with a poor claim history started seeing major increases of 20%, or more, in some cases. Looking forward into 2020, this upward rate trend is expected to continue. How long it will last is the question.

Within the US market, certain types of accounts are being hit hard not just with rate increases but also constrained ability to find limits. One such market feeling the pain is multi-family, wood frame builders risk. During the past 24 months, underwriters of wood frame multi-family construction projects have experienced mega fire losses in Texas, Arizona and California.

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As a result, it is no longer possible to predict rates, especially for multi-year policies. Further, several carriers have vacated the market while others have significantly reduced their capacity (the ability of an insurer to put out limits of insurance). Some underwriters have reduced capacity by 50% of what they could offer in January 2019.

Another market now in flux is habitation accounts of any type – condominium associations, townhouse associations, apartment houses and mixed-use properties where the majority of the square footage is residential. Property rates are increasing a minimum of 10%; liability rates at least 10%, sometimes more. We have evidence of a few apartment accounts staring at a 300% liability rate increase. Some underwriters have vacated the market here, too. The drivers for this dilemma are ever increasing verdicts for slip and fall cases as well as assault and battery cases. Trucking and transportation is another industry beset with rising rates and limited market capacity. Coastal properties, both commercial and personal, along the eastern seaboard and gulf coast are suffering a similar fate.

There is good news. Advance notices by the New Jersey Workers Compensation Rating and Inspection Bureau (NJCRIB) suggests rates are not expected to rise for 2020. As of this writing, NJCRIB is

proposing an overall average 3.8% rate decrease taken collectively among the 300 some rate classifications. Whether construction classifications will realize the decrease is yet determined.

Now is a good time to pay much closer attention to your property and casualty insurance budget. Below are some ideas to help manage your costs:

- In NJ, construction accounts are eligible to apply for a work comp rate credit thru a program offered by NJCRIB for your work comp insurance. Eligible businesses can earn up to a 25% rate credit by completing and filing a form NJCRIB mails to you each year 6 months prior to your work comp policy anniversary date.
- Regardless of your industry, investigate if your trade association offers a special program for insurance or has endorsed a specific insurance company that is dedicated to provide a unique coverage product for your type of operation.
- Have an insurance consultant conduct a risk analysis of your business and your current insurance program. You may find there are areas of your business that are underinsured, or areas where you can improve the scope of coverage for little or no additional cost.
- Seek out insurance agents or brokers that have a dedication to your industry. These firms have established relationships with underwriters that have a long-term interest in your type of business. These agents have broader buying power, and can craft more consistent coverage from year to year than others who do not have these markets or expertise.

About the Author: Anthony Bevilacqua, CPCU, is the President of Anthony & Company. Anthony & Company provides superior coverage flexibility with highly rated national insurance companies who are able to meet the varied needs of your business. Mr. Bevilacqua can be reached at anthony.bevilacqua@anthonycompany.com and (908) 806-8844.

Wetlands Mitigation: Alternatives to Costly Mitigation Banks

By Barbara J. Koonz, Esq.

Large and small development, remediation and brownfields redevelopment projects in NJ have long required an assessment of wetlands and a form of mitigation to compensate for any disturbance or destruction of wetlands, state open waters or transition areas that the project may cause. The cost of this mitigation has been dynamic, recently resulting in exorbitant prices for mitigation bank credits in some service areas. To comply with the NJ-DEP's permit requirements while controlling project costs, permittees and developers are compelled to be more innovative in developing mitigation proposals. Even in areas where mitigation banks are available, permittees and developers are evaluating the suitability of properties they own or control, not only to serve as mitigation areas for their own projects but for others within the same service area.

Mitigation can take the form of onsite or off-site wetland restoration, creation or enhancement; purchase of credits from an approved mitigation bank; upland preservation; land donation or monetary contribution. There is a regulatory hierarchy, where feasible, that provides (i) for small disturbances of 1.5 acres or less, or disturbances affecting only ordinary resource value wetlands, mitigation in the first instance is to be performed through the purchase of credits; (ii) for larger disturbances and transition areas on-site mitigation is recommended in the first instance; off-site mitigation or the purchase of credits in the second instance. In all cases, if mitigation is not

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feasible through the purchase of mitigation bank credits, or on-site or off-site mitigation, then the NJDEP will consider monetary contributions, upland preservation and land donations.

Mitigation through the purchase of in-kind credits from a bank whose service area (usually coincident with the state watershed management area) includes the project site, are often the most expeditious option. However, where the purchase of credits is not required, it may not be the best choice for projects with larger disturbances given sometimes prohibitive costs.

A mitigation proposal for the purchase of credits from an approved mitigation bank requires only an evaluation by NJDEP that the number of credits adequately compensates for the loss, signing appropriate documents and purchasing from an approved bank. While the process is simple, the purchase of in-kind credits can be unreasonably costly, particularly in more populated urbanized areas. The cost of such credits can currently exceed \$500,000 a credit.

The cost and complexity of satisfying permitting requirements for the development of mitigation banks has limited the number of qualified mitigation bank developers and approved banks. The unanticipated consequence of these regulatory complexities in the absence of corresponding financial protections has resulted in a small number of banks controlled by an even smaller number of managers, resulting in minimal competition among banks. In the absence of rulemaking or the introduction of other banks to spur competition, consideration should be given by permittees and developers of on and off-site project mitigation proposals as an alternative to the purchase of mitigation bank credits for themselves and others in their service territory.

When evaluating whether to undertake an on-site or off-site mitigation project, in lieu of, or in addition to the purchase of credits, it is advisable to:

- Retain a consultant with experience in wetland delineation, habitat assessment and mitigation projects in NJ to evaluate the proposed mitigation area
- Obtain a conceptual review of the mitigation area from NJDEP
- Obtain a cost estimate from a mitigation services company experienced in securing the rights to the mitigation area, and the design, development, maintenance and monitoring of the proposed mitigation

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Consumer Insights: Americans' Views on Homeownership

By Sean Loomis

As builders, it's important to know what buyers are thinking when it comes to homeownership. How do Americans look at homeownership? Is affordability impacting plans to buy? What's getting in the way of homeownership?

We asked those questions and more in Wells Fargo 2019 "How America Views Homeownership" survey. The survey was conducted by The Harris Poll April 17-29, 2019, among 1,004 U.S. adults 21 and older.

Among the findings were a strong commitment to homeownership and a willingness to make sacrifices and tradeoffs to own, which is great news for builders and the entire housing industry.

Seventy percent of Americans indicated that they see owning a home as a sign that someone is a "successful adult," on par with having a career. In fact, homeownership is much more widely equated with being a successful adult (more than twice as much) than having children (34%) or getting married (32%).

As a group, millennials indicated that they were very committed to homeownership. Ninety-five percent of millennial homeowners say buying their home was worth all the sacrifice to save for it, and 86% of millennials as a whole say the benefits of homeownership outweigh the drawbacks.



The survey also showed that Americans are willing to take extra steps to achieve their homeownership goals. Nearly half of Americans in the survey who are saving to buy or renovate a home have pursued other financial means outside their primary job to supplement their income to pay for it, such as selling items online, starting a small side business, driving for a rideshare company and dog sitting/walking.

Even more were willing to give up something in order to save for a down payment. More than seven in 10 Americans say they would give up something - including dining out, going to events and even vacations.

Trade-offs were also acceptable to non-homeowners who are working to afford a home. Nearly eight in 10 non-homeowners said they would be willing to accept their second choice of a city or town in order to afford their own home. And nearly three quarters of non-homeowners said they would be willing to buy a smaller home with fewer amenities.

The results are encouraging because they show that homeownership remains an important part of the fabric of American life, and that – even if it takes a lot of work, sacrifice and saving – Americans are willing to put in the effort because they feel homeownership is an important goal and significant milestone in their lives.

Your lender should recognize the importance of homeownership and want to be there to support consumers through the homebuying process because the top cited barriers to homeownership are financial. Americans are concerned that the down payment, their credit score, and existing debt will get in the way of buying.

Lenders should also work with potential buyers to help them understand their options and find a path to homeownership. For example, loan programs should have low down payment options for customers who are buying a home and financial health bankers who can walk consumers through the steps they need to take to improve their credit score or pay down debt.

Homeownership is important to Americans – it defines who we are and provides an important sense of accomplishment. It's something builders can take pride in – and we do, too – as we all play a role in helping buyers achieve their version of the American Dream.

About the Author: Sean Loomis is a Regional Builder Sales Consultant at Wells Fargo, supporting builders and our originators in Ohio, Pennsylvania and New Jersey. He has experience working both on the builder side of the business and on the financing side. Before joining Wells Fargo, he worked for seven years originating home loans with a concentration on new construction. Sean served for 13 years in sales and marketing for a regional builder in the Midwest. He also is active in NJBA, serving as Vice Chairman for the Master Sponsor program in 2018 and Chair of the program in 2019.

Owners: Contractual Ignorance is Not Bliss

By Aaron S. Brotman, Esq.

It is tempting for a developer to leave project documentation and updates to the contractor. In a dispute, the owner's major advantage is that it holds the money. While it is the contractor who typically has the burden to prove extra costs or extended time, a prudent owner should not leave documentation to someone else. Understanding pertinent terms of your contract is key to properly defending yourself against a claim and setting yourself up for success.

Know the Payment Requirements

The monthly payment process is unique to each project with specific documenting requirements imposed on the contractor. The onus for ensuring the proper documentary support is on the contractor, and verification for the work typically falls on the architect under the American Institute of Architects' standard forms. However, as any owner should understand, there is more to a payment requisition than simply confirming that the work has been performed.

- Are there contract-specific payment hurdles? For example, must it certify payment of prevailing wage?
- What particular information and/or format is required for payment applications?

It is also vitally important to understand when your obligation to pay the contractor ripens so that you pay neither too early nor too late. Two particular payment-related issues that often tend to come back up to bite the owner are the down-stream effects of change orders and lien releases.

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Moreover, owners must be aware that in New Jersey, and some other states, there is a statutory "prompt payment" requirement, which can be costly if not followed. When signing off on a change order, understanding the scope of the pricing is essential to understanding if you are looking at potentially more charges down the line.

- What is the scope of the change order? Is it limited to the added work, or does it affect the pricing for the rest of the project, too?

Similarly, understanding the lien release language and making sure the releases are provided can protect you when the work comes to an end.

- When accepting a release, what is and what is not being released?
- Where are you still exposed?
- What parts of the project do you still need to keep an eye on?

Failing to ensure that these monthly releases are timely and routinely

submitted exposes you to the risk that a court may find you've waived the requirement and the releases along with it. Understanding paired with diligence is essential to protecting yourself.

Know the Notice Terms

Understanding what, how, and when a party must act to notify the other that there has been either an event that may result in a claim, or of a claim itself, can make or break a claim. Thoroughly understanding the notice terms of the contract is key to both to both defensive and offensive cost control.

- Is the notice specific enough? Does it allow a fair opportunity to understand the underlying facts and overall impact?
- Was the notice timely? Is the format acceptable?
- Do liquidated damages require notice?

Understanding when the notice is facially insufficient can allow you to quickly dismiss it. This may seem like a trivial point but raising the failure with the contractor in a timely, open, and forthright matter during the project allows you both to know where you stand. These conversations may be difficult, but handling the issue directly, and then documenting that discussion and understanding, helps clarify the likely outcome is for everyone involved. Further, depending on the individual facts of contract, you may have inadvertently waived a defense

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Masquerading to Attack Your Network

By Cathy Coloff

Many of us enjoy pretending to be someone or something we are not. Who doesn't love a masquerade party? However, when it comes to your company's network, a visitor in disguise is not welcome.

Most small and midsize business (SMB) owners focus on the day-to-day operations of their organization, driving growth, facilitating hiring and guiding marketing, without a single thought to the security of the computer networks these processes depend on. Unfortunately, according to Verizon's annual Data Breach Investigations Report, a full 71% of cyberattacks are aimed squarely at SMBs that are known to have less secure networks than larger companies. How do hackers infiltrate hapless small businesses?

Phishing Emails

An employee receives an email directly from your company's billing company, urging them to fill out some "required" information before their paycheck can be finalized. Included in the very professional looking email is a link your employee needs to click to complete the process. But when they click the link, a host of vicious malware floods their system, spreading to the entirety of your business network within seconds, and locks everyone out of their most precious data. In return, the hackers want thousands of dollars, or they'll delete everything. Today it's easier than ever for an attacker to gather information and make a phishing email look like every other



run-of-the-mill email you receive each day. Train your employees to recognize these sneaky tactics and put safeguards in place in case someone clicks the malicious link.

Bad Passwords

According to Inc.com contributing editor John Brandon, "With a \$300 graphics card, a hacker can run 420 billion simple, lowercase, eight-character password combinations a minute." What's more, he says, "80% of cyberattacks involve weak passwords," yet despite this fact, "55% of people use one password for all logins." There's simply no excuse for using an easy-to-crack password. Instead, it's good practice to make a password out of four random common words, splicing in a few special characters for good measure. HowSecureIsMyPassword.net will check the strength of your password.

Malware

While malware is often delivered through a shady phishing email, that's not the only way it can wreak havoc on your system. An infected website (such as those you visit when you misspell sites, a technique called

"typosquatting"), a USB drive loaded with viruses or even an application can invite vicious software into your world. These days, antivirus software is not enough - you need a combination of software systems to combat these threats.

Social Engineering

As fallible as computers may be, they've got nothing on people. Sometimes hackers don't need to touch a keyboard at all to break through your defenses - they can simply masquerade as you in order to get a team member to activate a password reset. It's easier than you think and requires carefully watching what information you put on the Internet. Don't put the answers to your security questions out there for all to see.

The best way to protect yourself from masked intruders is to partner with an IT expert that constantly keeps your system updated with cutting-edge security.

About the Author: Cathy Coloff is the Managing Member with IT Radix. Recognized in 2018 as one of New Jersey's Best Women in Business by NJBIZ and in 2015 as the Morris County Chamber of Commerce Middle Market award winner, Cathy has 25+ years of experience in network systems. With extensive corporate experience at Exxon and Bear Stearns, Cathy helps IT Radix clients to harness the power of technology to stay up and running, maximize productivity, be secure, reach their goals and achieve success. Cathy can be reached at itsales@it-radix.com and (973) 298-6908.

Sport Court Permits in New Jersey Towns

By Nina Petersen

As backyard sports courts become the norm for luxury homes, it is important to understand the permit process before jumping in.

With all the excitement, it can be easy to forget that every town has its own regulations that must be meticulously followed. Whether it is a driveway hoop, new lighting for your existing court, or a whole backyard sports environment, there are different requirements for every town.

Making sure you have the correct permits is essential to get your sports construction project started!

The first step is always to call the town in which you live. Throughout New Jersey alone, there are a wide range of permits required by different towns. There are also different regulations in every town that must be followed for your permit to be approved.

Some towns require building permits, while some only require zoning permits. You may even encounter a town that requires both. By ensuring that you are prepared with the proper permits, you will be able to help your client begin the court building process as soon as possible.

The best way to ensure your success throughout this process is to know the regulations and get to know the people who work in the office. In many cases, the people who work at the town are there to help you and will be able to answer your questions most effectively.

They have the most experience and are the experts in their particular town's requirements. They will be able to help you navigate the process in the best way for the individual town.

Once you find the permits you need, you will need to get them in your hands. Some towns allow you to print permits straight from their website, while others require you to pick them up in person.

This is an instance where knowing someone in the office may come to your advantage. In some cases, these people will be able to email the permit directly to you and save you a trip to the office.

It is also important to find out what you need along with the permits. In many cases, you may need to get engineered drawings done. We recommend finding an engineer you trust. The clarity of drawings helps the process go more efficiently.

It is also necessary to be able to change your plans quickly if they do not meet the town's regulations. By making sure that you and your engineers know the intentions for the project from the beginning, they may be able to suggest adjustments as needed.

After all is said and done, you still need to wait for approval. This is sometimes the most difficult part because all you can do is wait. Following up with the office regularly will allow you to make sure the approval process is in motion.

By staying on top of progress, you will be able to adjust your project start time to align with the expected approval time.

Once the permits are approved, you will be able to break ground and get the project started. What may seem like an intimidating and time-consuming process (and, it often is), will be well worth it when the project is finished!

If this all seems like more work than you are willing to take on, many contractors will handle the permitting process for you.

No matter how much of the process you want covered, there is always someone willing to help you through everything.

About the Author: *Nina Petersen is the Assistant Project Coordinator with SportProsUSA, the premier source for building and maintaining sport courts in the metro area for over 10 years. As the exclusive Sport Court® residential and commercial court builder in New Jersey and New York City, SportProsUSA has a proven history and unparalleled experience of installing unique, playable and safe surfaces for every sport in every environment. Nina can be reached at info@sportprosusa.com and (201) 485-8520.*

Green Redevelopment for the 21st Century

By Katrina VanDeusen

Today's constantly evolving market demands innovative solutions that not only remediate properties to satisfy state regulations but allow redevelopment. Traditional engineering methodologies have left many properties in prime real estate locations such as next to a river, lake or coastline (i.e., Environmentally Sensitive Natural Receptors, or ESNRs) with residual contaminants, increasing their environmental liability and making them unappealing due to the more stringent ecological clean-up requirements. Looking to the future of the eventual build-out in the New York Metropolitan area will require redevelopment of properties that have been historically impacted by contaminants from industrial applications. The goals of the respective environmental agencies in New Jersey, New York and Pennsylvania address ecological end-use that will benefit future generations, and are demanding environmental remediation directives that enhance renewability, conservation and sustainability.

One often overlooked mitigation strategy that satisfies these agencies and pollution insurance claims is phytoremediation, which uses plants to clean up contamination with sustainable, cost-effective remediation. By using phytoremediation, landscape architecture can be integrated into your property which not only increases its redevelopment aesthetic, but doubles as an active remediation vegetative cap. For instance, tree plots can double as hydraulic control of impacted groundwater plumes, aerating soils with light non-aqueous phase liquid (LNAPL) plumes to augment degradation.

The focus of phytoremediation is on long-term, 100% sustainable, organic cleanups that protect not only human health but support habitat restoration to former or better habitat status. Some ideal candidates for phytoremediation are:

- Sites with large square footage/area of typical Brownfield Historic Fill soil that require a vegetative cap to comply with the New Jersey Department of Environmental Protection (NJDEP) Presumptive Remedy Guidance for redevelopment. This can decrease the need to import costly NJDEP "certified fill" as plants are required to be in contact with contaminated soils.
- Sites that contain shallow aquifer plumes of organic chemicals migrating towards a surface water body or wetland (organic pump and treat with trees).
- Sites that contain an ESNR where decades of industrial effluent have impacted the sediments and dredging is not an option.
- Sites that contain low-level PCBs, metals or other non-degradable contaminants ubiquitously covering large surface areas.
- Former industrial or Brownfield Sites that now want to capitalize on waterfront real estate opportunity zone markets for residential redevelopment.

The best part is that phytoremediation costs a fraction (usually about 25%) of traditional remediation methods, is solar powered, and does not require installation of machinery, therefore resulting in zero abandonment costs. With phytoremediation, there are no permitting

requirements at either the municipal or state level, and it also satisfies regulatory requirements for the respective environmental agencies for New York, New Jersey and Pennsylvania and the United States Environmental Protection Agency (USEPA).

This technique allows you to usher in tomorrow's need for a green, sustainable design that gives back to communities by cleaning up sites as long as plants are alive. This makes it a highly attractive alternative remedial action that favors redevelopment aesthetic and increases the Return on Investment.

Although it is currently recognized as an innovative remediation strategy by the NJDEP, the USEPA has been utilizing phytoremediation on Superfund sites since the early 90s, which means there are decades of USEPA, NJDEP and scholarly research that prove it works! Over this time period many of the initial complications have been resolved so that the current designs take into account seasonal factors, groundwater modeling and other aspects of geology, ecology and hydrology to support creation of a sustainable design. Most recently the New York State Department of Environmental Conservation implemented this at a macro level, converting the entire Fishkill landfill into an organic phytoremediation vegetative design that will naturally remediate harmful contaminants in the soil and leachate.

Sustainability is more than just phytoremediation, alternative energy re-sourcing or recycling; it has evolved into a focused pursuit to meet global environmental sustainability goals to decrease carbon footprints.

About the Author: *Katrina VanDeusen, Senior Project Manager at Whitman, specializes in ecological restoration, assisting clients in navigating the complex remediation of former Brownfield, commercial or industrial properties, as well as implementing innovative remedial strategies to expedite clean-up for rapid redevelopment of sites. She is a member of Whitman's team of professionals who provide innovative solutions, including phytoremediation, to close out ecological Areas of Concern (AOCs), while also avoiding damage to natural resources.*

A Message From NJBA President Corey Wescoe

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Our service on behalf of the building industry will continue through face-to-face meetings in Trenton and educational seminars and workshops that provide up-to-date information to members. I am proud that during my time as NJBA President we were able to provide updates on the recent changes to the Uniform Construction Code as well as other significant legislative and regulatory changes that affect the way we do business.

As my term as President comes to an end, I would like to thank all the members of NJBA who worked hard for the association and helped to make my year as your President both a success and an honor. I look forward to working with all of you as we carry out our mission to create a more vibrant, greener and affordable housing market in New Jersey.

I also look forward to seeing you at Harrah's in Atlantic City on March 31, for my final Board meeting as President and for the installation of President-elect Michael Canuso as the 67th President of the NJBA. I have worked with Michael on various committees and believe he will be a great leader who will continue to make positive contributions to the housing industry in New Jersey. I offer him my support and wish him much success in his new role.

Sincerely,



Corey Wescoe
President
New Jersey Builders Association

Wetlands Mitigation: Alternatives to Costly Mitigation Banks

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- Enter into an agreement with the mitigation professional setting forth the relative responsibilities for meeting NJDEP's success criteria for a mitigation proposal

The NJDEP approval of a mitigation proposal will take time and be set forth in an approval letter or will likely include requirements for:

- Legal control of the mitigation area though ownership, easement etc.
- Site suitability
- Concurrently performing the mitigation activity with the disturbance
- Financial assurance meeting NJ statutory requirements
- Conservation restriction restricting the property in perpetuity, and
- Site monitoring obligations up to five years

Until more mitigation banks are created or the price of mitigation credits decreases, permittees and developers should seek creative ways to fulfill their wetlands mitigation obligations, including evaluating the use of on-site and off-site mitigation projects.

Owners: Contractual Ignorance is Not Bliss

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by failing to respond in a timely manner. A failure to understand the contract terms and respond appropriately can doom an owner just as easily as a contractor. An insufficient or untimely notice can prevent an owner's recovery just as easily as a contractor's.

Conclusion

Willful or reckless ignorance of the project documents, and the failure to properly document, can impact you from day one through the end of the project. On a contentious project in particular, this disadvantage can blow your budget on unforced errors or push you into costly and time-consuming disputes. You may think that what you don't know can't hurt you, but even for an owner, ignorance is not bliss.