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NJBA NEW JERSEY BUILDERS ASSOCIATION

DIMENSIONS

Newsletter of the New Jersey Builders Association

IN THIS ISSUE

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 their 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 New Jersey. 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 Grant Lucking at grant@njba.org.*

LETTER TO NJBA'S MEMBERSHIP

By David B. Fisher, PP, AICP

The Atlantic Builders Convention is fast approaching and that means my term as President of NJBA is coming to a close.

David B. Fisher, PP, AICP
NJBA President

It has been a tremendous journey and I'd like to thank everyone in this association for their work in helping to achieve our goals and enhance the stature of our organization in New Jersey. I'd also like to extend my best wishes to incoming President George Vallone. I know the Association will be in good hands under his strong leadership.

Over the past year, we have achieved some significant legislative victories, most notably, an additional extension of the Permit Extension Act (PEA). We were told last year that another extension of the PEA was essentially a non-starter, but NJBA worked diligently and through a tremendous outreach effort built the case for another extension. After gaining critical support from legislative leadership, the bill was introduced in October and received overwhelming final approval by both the Assembly (67-0-8) and Senate (31-5), and was signed into law by Governor Christie just prior to the end of the year. It was truly a victory against all odds and one that will make a real difference for many of the members of this Association, and just as importantly, the economy of this State.

We were also successful in having the Economic Opportunity Act clean-up legislation signed into law by Governor Christie on October 24th. This new law makes critical amendments to the "Economic Opportunity Act of 2013", which consolidated our State's various financial incentive programs down to two very powerful economic development tools: a new and revitalized GrowNJ program and an expanded and improved Economic Redevelopment Growth Grant program that would be the State's sole developer incentive, including $600 million for residential projects.

I was pleased to witness the strength of our lobbying efforts first-hand this past summer when I testified before the Senate Environment and Energy Committee on proposed amendments to the Coastal Zone Management and Coastal Permit Program rules issued by the New Jersey Department of Environmental Protection. I expressed strong support for the pragmatic, procedural changes that will make significant improvements to the coastal regulatory program and I look forward to the follow-up proposals that will make necessary, substantive amendments to the State's coastal policies.

I also spent time in Trenton meeting with the Governor's representatives, including the Governor's Superstorm Sandy Czar, various Counsels to the Governor, and the Lieutenant Governor's staff to discuss NJBA's legislative and regulatory priorities.

Unfortunately, not every bill in Trenton can warrant our support. NJBA utilizes considerable time and effort opposing dozens of detrimental proposals. A few of the NJBA strongly-opposed bills that we worked to defeat included legislation requiring sprinklers in single and two-family homes, mandating the size of elevators, creating a building trades licensing program, imposing rent controls on senior housing, establishing unrealistic mold remediation requirements and mandating onerous green/blue roof regulations. I am proud of NJBA's accomplishments in defeating what were often well-intended, but misguided initiatives which would have imposed severe and costly requirements on the home building industry.

I am also pleased to report on the successful efforts of those members who have been working with me throughout my term on my Municipal Land Use Law (MLUL) Reform Task Force. We have been meeting monthly to discuss many of the problems associated with New Jersey's land use procedures, including the lengthy time frame to secure development approvals, the public hearing process, the excessive cost of escrow and technical review, and all of the overwhelming requirements associated with the development approval process. The Task Force has finalized the first in a series of necessary amendments to the MLUL. Specifically, S2818 (VanDrew), would amend the MLUL by simplifying and streamlining the application and review process for preliminary site plan and subdivision approval consistent with the original intent of the MLUL. This bill, would create a 'true' preliminary approval process and checklist, as distinguished from a more detailed final approval with all requisite engineering documentation. It would also extend the vesting period for a preliminary approval from three to five years, to allow sufficient time for completion of the detailed engineering plans and outside agency approvals associated with the final approval.

On the legal front, the uncertainty of COAH had continued to plague our industry. In response, I re-convened NJBA's Affordable Housing Task Force and, with the assistance of several expert NJBA members and land use counsel, we developed and submitted extensive written comments on behalf of NJBA. At a July 2nd COAH public hearing, I presented oral testimony critiquing the Third Round Rule proposal from a legal, planning and policy perspective. On August 1st ,

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SUMMARY 2014-2015

By: Carol Ann Short Esq., CEO

Carol Ann Short, Esq. NJBA Chief Executive Officer

A Year in Review

To say that this has been a busy year is clearly an understatement, both from a policy perspective as well as from an Association business perspective.

Legislative Activity

Against all odds, NJBA led the charge to yet another extension of the Permit Extension Act which was set to expire at the end of last year. The extension, P.L. 2014, c.84, was signed into law by Governor Christie on December 26, 2014 and provides an additional year of tolling, keeping alive hundreds of residential, commercial and mixed use projects through the end of 2015. In addition, on October 24, 2014 the NJBA-supported Economic Opportunity Act clean up legislation was signed into law as P.L. 2014, c.63. Specifically, this law makes necessary amendments to the Grow NJ program, extends the deadline for a developer to submit a temporary certificate of occupancy, and clarifies that the minimum sales price of a tax credit transfer certificate awarded under the Economic Redevelopment Growth Grant program is to be calculated before discounting to present value.

Beyond the enactment of PEA and the EO 13 clean up law this year, just as importantly, NJBA successfully staved off a number of NJBA-opposed proposals including sprinkler mandates, a construction moratorium, generator requirements, rent controls on senior housing, mold standards, green/blue roof standards, environmental justice reviews, mandatory elevator sizes and prompt payment bills, to name just a few.

NJBA also continues to develop other legislative initiatives. One priority is to amend the Municipal Land Use Law (MLUL) as it relates to the review of development applications and the standardization of inspection of improvements, referred to by NJBA as the "FAIR Act". Two other MLUL related initiatives include a proposal to simplify and streamline the application and review process for preliminary site plan and subdivision approval, consistent with the original intent of the MLUL, and the establishment of a special Land Use Court. Other NJBA legislative priorities include a proposal to provide more certainty with respect to coverage for faulty workmanship under commercial liability insurance policies and an amendment to address inequities that exist in certain water and sewer usage charges.

Legal Action

The battle for clarity on affordable housing requirements in NJ continued in 2014. Last March, we witnessed the most strongly worded Supreme Court Order to date, directing COAH to comply with specific timeframes to adopt new "third round" rules to implement the Mount Laurel doctrine and setting November 17, 2014 as the date by which the new rules must be in place. While this Order rejected the State's request to have an open-ended period of time, it did allow the State additional time to comply with the Supreme Court's September 26, 2013 decision. Just a few months later, the COAH third round rule proposal was published in the June 2, 2014 NJ Register.

NJBA President David Fisher presented testimony at the July 2, 2014 public hearing and on August 1, 2014 NJBA submitted extensive legal and policy related comments on the serious reservations that NJBA had with this rule proposal. NJBA was critical of the proposal because it did not mirror the prior round methodology as directed by the Supreme Court, dramatically reduced municipal affordable housing obligations and created unnecessary burdens on the construction of new affordable housing. On October 20, 2014, COAH met for the purpose of adopting these "third round" regulations. However, in a surprising turn of events, the vote by the COAH members ended in a 3-3 tie and, consequently, the regulations were not adopted.

On January 6th, the NJ Supreme Court heard oral arguments on a motion filed by Fair Share Housing Center and supported by the NJBA, asking the Court to allow builder's remedy suits against towns, notwithstanding the fact that they filed fair share plans with COAH. The motion was filed because COAH remained deadlocked following the 3-3 tie. Counsel representing COAH advised the Court that COAH had done nothing since October 20, 2014 to try to break the deadlock, and that there were no COAH meetings scheduled. Municipalities urged the Court to allow for some "immunity" from builder's remedy suits. On March 10, 2015, the New Jersey Supreme Court unanimously ruled that the courts will once again assume the lead role in enforcing the constitutional requirement, imposed by the Mount Laurel doctrine, that municipalities must create realistic opportunities for the construction of low and moderate income housing.

In other legal news, on January 22, the NJ Supreme Court reinstated a downzoning decision that allows only 1 unit per 20 acres for potential environmental protection interests in Griepenburg v. Township of Ocean. When the Court decided to hear the matter despite the issue of downzoning being well established, NJBA determined to seek amicus curiae status and later participated in oral arguments before the Court on November 14, 2014 to protect our members' interests. In reaching its decision, the Court relied heavily on the State Planning designation for the properties and concluded that the zoning initiative was permitted by the MLUL.

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NEW JERSEY RESIDENTIAL FIRE SPRINKLER REQUIREMENTS

By: Michael Bruno, Esq. & Timothy DeHaut, Esq.

On January 21, 2015, a huge fire ripped through The Avalon at Edgewater, a large apartment complex in Edgewater, New Jersey, causing significant property damage to the building and displacing hundreds of the buildings' residents. It has been reported that lawsuits have already been filed and legislation has been introduced in the General Assembly calling for a moratorium on all approvals for multi-family development until the State's building codes can be reviewed and revised. Additionally, a bill, A-1698, known as the "New Home Fire Safety Act" is being pushed with renewed urgency and recently was approved by the New Jersey Senate Budget and Appropriations Committee by a nearly unanimous vote. Interestingly, the same legislation was passed in both houses last year but expired on Governor Christie's desk via the so called "pocket veto." A-1698, which, if approved and signed into law, will require fire suppression systems in new single and two family homes. It is apparent the Edgewater fire brings the ongoing national debate surrounding building codes and sprinkler requirements to a head in New Jersey.

Sprinkler systems are required for certain residential buildings under the International Building Code ("IBC") and National Fire Protection Association ("NFPA") standards, as adopted in New Jersey. Specific fire sprinkler requirements known as NFPA 13 and NFPA 13R apply depending on the type and size of the building. NFPA 13R is commonly regarded as the residential code while NFPA 13 applies to larger buildings. Most states' building codes require NFPA 13 for buildings with more than four stories, while NFPA 13R can be used for buildings up to and including four stories, like the Edgewater complex. NFPA 13 is considered a "fully sprinklered" system, protecting most of the building, including attics and other unoccupied spaces, while NFPA 13R protects more limited, occupied spaces. NFPA 13R is generally considered a protection to allow building occupants time to escape a building in the event of a fire, but not fully protect the building and property from damage. Like most states, New Jersey's construction code currently allows for NFPA 13R for residential buildings up to and including four stories in height.

Advocates argue that the current construction codes do not do enough to protect against events like the Avalon fire and NFPA 13 and/or other fire retardant measures such as limiting the use of particle board sheathing and engineered trusts should be required for multi-family residential buildings. As noted, there has been a renewed political interest in previously introduced legislation in the New Jersey State legislature.

Opponents to increased requirements argue that the NFPA 13R performed as intended at Edgewater– allowing all residents to safely exit the buildings without injury. Many building industry advocates also argue that adding additional sprinkler requirements will only increase the cost for consumers without a corresponding increase in safety.

The enhanced political sensitivity regarding fire suppression systems corresponds with a proposal on January 5, 2015 from the New Jersey Department of Community Affairs ("DCA") to update the current version of the State Uniform Construction Code (based on the 2009 International Code Council Model codes). The DCA proposes to update the State's code to correspond to the most recent model code, the 2015 edition. The question remains whether the model code adequately increases fire protection through the use of fire resistant materials and other enhanced systems or whether additional legislation and changes are necessary. In the meantime, the debate continues - will the enhanced measures cause an increase cost in housing and is it justified.

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HOMEOWNERSHIP SURVEY: MORE AMERICANS OPTIMISTIC ABOUT HOME OWNERSHIP

By John Stasche

American consumers may finally be leaving the anxieties of the housing recession behind them.

In a recent Ipsos poll of more than 2,000 consumers, 68 percent of respondents believed that now is a good time to buy a home. That's a strong improvement from 2012, when a similar survey had 58 percent of respondents in that group. Similarly, a majority of Americans (55 percent) in the 2014 survey believed homeownership was an achievement to be proud of.

"That was good news," says Vickee Adams, Wells Fargo Home Mortgage's vice president for the consumer lending group's external communications. "The results were encouraging given the number of challenges in the last five years, to have homeownership considered a dream and an aspiration and something that people still wanted to achieve. This was news we thought our industry and consumers should know about."

The Ipsos poll, conducted on behalf of Wells Fargo in June 2014, was an opportunity to tap into consumer attitudes and perceptions about home buying. It also brought positive news on questions about consumers' financial responsibility. Overall, the survey found that Americans have been taking steps to improve their financial situation, making it likely homeownership is in reach for an increasing number. For instance:

- 82 percent say they understand how to manage their personal finances (how to save, earn and invest money, and work within a budget), and the same proportion agree that they generally do not spend beyond their means.
- About two-thirds (63 percent) of respondents have a "rainy day fund," including more than half of the millennial respondents, ages 18–34.
- Most respondents are also careful with their money: Only a quarter (27 percent) report that they tend to spend their money and not think twice about it.

While those figures might make it seem like more Americans would be prepared for homeownership, misperceptions about the home buying process may be keeping some qualified buyers on the sidelines.

Two-thirds of the respondents (64 percent) described themselves as very comfortable or somewhat comfortable with their knowledge about how much down payment is required when purchasing a home. But nearly half were misinformed, believing that a 20 percent down payment is required. (In reality, a variety of loan programs can bring the down payment requirement to 5 percent or lower.) When asked about credit scores, 52 percent of respondents said they were knowledgeable about whether someone with a low credit score can still purchase a home. But again, nearly two thirds incorrectly believed that you need a very good credit score to buy a home.

The recent housing recession—and the resulting tightness in the credit market—could certainly have played a role in influencing those beliefs, says Elyse Schulman, who leads the research team for Wells Fargo Home Mortgage's consumer lending group. "[After the recession,] there were many lenders that were only allowing a larger down payment," she says. "Now we're removing some credit overlays again in the industry, so people are confused. What is the right down payment? What kind of credit do I really need? Everybody's walking around with some misperceptions in their head that do need some correction."

For builders, an opportunity lies within the confusion: to help potential buyers better understand the purchase process and their ability to qualify for a mortgage.

"One of the things we found we could specifically educate consumers about is the variety of loans available to them," Adams says. When asked, most homebuyers (81 percent) were familiar

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FUTURE OF AC AND THE SHORE HOUSING MARKET

By Kevin Gillen, Ph.D.

The Jersey shore markets have had their share of challenges over the past several years. The housing bust fell especially hard on the market for second homes, and led to an abnormally large price depreciation in these communities. Hurricane Sandy hit in 2012, leading to further depreciation in not only the value of many Shore homes, but in their physical condition as well. Four of Atlantic City's 12 casinos closed last year while gaming revenue has been almost cut in half from eight years ago. The resulting layoffs from some of the area's largest employers exerted further downward pressure on the values of nearby workforce housing.

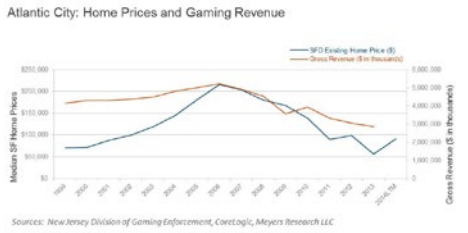
However, recent statistics show that 2014 may have been a turning point for many markets in this region. Home prices have started to trend upward overall, with some areas performing better than others over the past year. The data indicates that home prices in many Shore towns have bottomed out and are starting to recover. In Ocean County, home prices are 40% higher than they were a year ago, according to Zonda. South Jersey beach towns near Atlantic City, such as Ventnor, Margate and Brigantine, have all posted more modest single-digit appreciation at the end of last year. Even in hard-hit Atlantic City, home prices showed a slight uptick at the end of 2014, but the price for a median existing single-family home is still under $100,000. The good news is that almost all the Shore towns up and down the coast are seeing prices either stabilize or trending higher.

Larger home sizes are also a contributing factor to the rise in Jersey Shore home prices. Homes that were destroyed by Sandy were razed and replaced by newer, stronger, and larger homes that helped boost sale prices significantly in some areas. "It's ironic that a storm that would damage your housing stock ends up increasing the value of the housing stock by promoting more expensive housing stock," said Kevin Gillen, Chief Economist at Meyers Research LLC.

Since Sandy, Shore businesses have been reporting steady increases in business over the past couple of summers and home prices have followed suit. Zonda shows that median single-family home prices increased for the second straight year in Ocean County. Prices are now back to their highest levels since 2010 and are trending upwards. The 6.1% annual price growth outperformed the New Jersey state average of just about 1% growth over the past year and Ocean County's 20-year average annual appreciation rate of 4.3%.

Atlantic City's home prices have suffered as a result of the area's struggling gaming industry. New Jersey was once the second-largest gaming

state in the U.S. behind Nevada, but the introduction of casinos in the surrounding states have cannibalized much of the gaming business that used to belong to Atlantic City. Gaming revenue continued to plunge in 2014 as four of Atlantic City's closed their doors. However, the area's casinos started the year off strong which is a positive sign for 2015. According to New Jersey's Division of Gaming Enforcement, the eight existing casinos in Atlantic City saw total revenue jump 19% from January of last year. According to data in Zonda, home prices reached a recent bottom in 2013 and have shown signs of recovery in 2014. As seen in the chart below, home prices in



the region have been highly correlated with the performance of the gaming industry. With an increase in revenue from the casinos to start the year, 2015 may shape out to be a much-needed turning point for Atlantic City home values.

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EXPLORING THE POTENTIAL APPLICATION OF "CREDITS" TOWARDS WATER OR SEWER CONNECTION FEES IN NEW JERSEY REDEVELOPMENT PROJECTS

By Robert S. Goldsmith and Irene Hsieh

Development in New Jersey often requires the payment of a water and/or sewer connection fee pursuant to the Sewerage Authorities Law, the Municipal County Utilities Authorities Law, or the County and Municipal Water Supply Act. But what about a redevelopment situation where the previous owner has already paid these fees and the new owner may not place an additional burden on the system? A review of New Jersey cases indicates that courts will uphold practical and equitable connection fees. Thus, redevelopers may be able to argue that they are entitled to "credits" towards existing connection fees.

General Standard in Assessing Connection Fees

There are three general statutory standards which come into play when calculating a reasonable connection fee: the fee must (1) be uniform within each class of users (unless otherwise statutorily provided); (2) not exceed the actual cost of the physical connection, if made by the authority; and (3) represent a "fair payment towards the cost of the system." Although some figures must be computed into the fee (i.e., debt service, number of service units, etc.), the standards are otherwise open to interpretation.

In the case *Airwick Industries, Inc. v. Carlstadt Sewerage Authority*, the New Jersey Supreme Court found that the key concepts in a reasonable connection fee were a "fair contribution" towards debt service and standards of "rough equality," which harmonize with the idea of connection fee "credits" for a redevelopment project. However, it is worth noting that courts rarely strike down a connection fee, and instead will give the authority another chance to re-calculate the fee.

Potential for a "Credits" Argument in New Jersey Case Law

Although no published New Jersey case has addressed the concept of "credits" in determining a connection fee, several cases indicate that the courts may support this idea. In *Nestle USA-Beverage Division, Inc. v. Manasquan River Regional Sewerage Authority*, a plaintiff who was adding a new product to its factory production and simply increasing the amount of flow to the sewerage authority was not obligated to pay another connection fee since it was not adding a new connection or modifying an existing connection.

Similarly, in *Animated Family Restaurants of East Brunswick v. East Brunswick Sewerage*, the court held that an actual connection to the sewerage system was a prerequisite to the imposition of a fee. Based on the court's rulings in these cases, redevelopers may be able to successfully argue that any proposed connection fees should reflect the fact that the redevelopment will not add a new physical connection. In *Animated Family Restaurants*, the court also observed that a mere change in the use of property is not enough to impose a new connection fee, an important concept for redevelopers to emphasize in negotiations.

In its 2013 decision in *612 Associates, L.L.C. v. North Bergen Municipal Utilities Authority*, the New Jersey Supreme Court held that any connection fee must "reflect the use of each system" and it should not be "duplicative." In the case, the plaintiff's property was connected to the North Hudson Sewerage Authority and its sewage flowed for approximately 300 feet in those pipelines before reaching the North Bergen Municipal Utilities Authority, where it was processed and treated. The Supreme Court held that both authorities could collect a connection fee, but the fee must be "tied to the capital costs of the relevant portion of each authority's system." The same norm, to avoid a duplicative result, compels a credit mechanism for prior hook-up and usage.

Conclusion

Since New Jersey courts follow standards of fairness and equality in evaluating connection fees, authorities may be persuaded to institute a "credit" mechanism for redevelopers.

Redevelopers should argue that when a predecessor in interest has already paid a connection fee, the redevelopment connection fees should be based on any immediate capital improvement costs required to provide utility services

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NJDEP'S NEW GUIDANCE RULES: NEW OFF-SITE AND ON-SITE CONTAMINATION LIABILITY.

By Marc D. Policastro Esq. and David Miller Esq.

Parties responsible for investigation or remediation of a property are frequently confronted with issues when previously unidentified contamination is discovered on-site during the course of development activities. The discovery of a "new contaminant" raises numerous questions concerning the respective responsibilities and legal liabilities of (a) the person or entity conducting the environmental work or development of a site, (b) the owner or operator of neighboring properties, and (c) the consultant(s) or Licensed Site Remediation Professional ("LSRP") overseeing the remedial work.

In an effort to infuse some clarity on the issue, NJDEP is currently drafting technical guidance for those confronted with suspected off-site groundwater contamination. The "Off-Site Source Ground Water Investigation Technical Guidance Document" includes explanations of NJDEP's position regarding a responsible party's obligations, the responsibilities of the person conducting an environmental investigation on the subject property (usually an LSRP) and the technical procedures for responding to a confirmed off-site source. The proposed guidance, like other NJDEP guidance documents, is intended to assist the regulated community in complying with NJDEP's regulations. In short, a legal determination that a new constituent has been generated from an "off-site" source may, by law, relieve the non-discharger from liability. N.J.A.C. § 7:26E-3.9. Accordingly, adherence to the Department's guidance document may prove to be a game changer in subsequent litigation with third parties, the State or future homeowners. The results of off-site fingerprinting under the new guidance will also be instructive for developers required to make public offering statements and will affect the substance of contractual obligations between buyers and sellers.

When contamination is discovered at a site that is not already known to DEP, the guidance suggests that the investigator should immediately report the discharge to the State's "hotline" and file a Confirmed Discharge Notification within 14 days thereafter. Under the guidance, even if it is believed that the discovered contamination is migrating onto the site from an off-site source, the responsible party should remediate the contamination until it can be adequately demonstrated that it is from an off-site source. That remediation requires, in addition to handling removal or control of the on-site hazardous substances, the public notification mandated by NJDEP's regulations, especially in the case of contamination considered to be dangerous, or contamination in environmentally sensitive areas, referred to as an "immediate environmental concern".

Significantly, a responsible party is not required to remediate contamination on their site that can be demonstrated to be emanating from an off-site source. If off-site investigations (e.g., a Preliminary Assessment) are completed and support the conclusion that the new contamination is the result of an off-site source, the guidance indicates that NJDEP should be notified that contamination has been discovered and is due to a verified off-site source. After notifying the State and otherwise complying with remediation requirements, the LSRP may be authorized to issue an Area of Concern-specific Response Action Outcome, which is similar to an "area specific" No Further Action Letter. Thereafter, the responsible party may proceed with the original remediation without concern for the contamination from the off-site source.

The guidance also provides more technical advice concerning investigatory approaches to support the conclusion that on-site contamination is the result of a verified off-site source by establishing "lines of evidence" that tend to show that the discovered contamination is not from an on-site source. Specifically, as examples, investigators should (1) determine groundwater flow (2) document that contamination is migrating or has migrated onto the site (3) demonstrate a migration pathway between the

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IS MY BUILDING ADEQUATELY INSURED?

By Anthony Bevilacqua

As insurance advisors, we are constantly being asked by building owners or homeowners how much insurance should I purchase to rebuild my building or home. That is an excellent question! It is one that must take into account many different variables, some of which are within the owner's control, and some outside of their control.

First, let's dispel a common misunderstanding – the market value of real property has absolutely no relation to the cost to reconstruct it. Many times we are challenged by building owners and homeowners who believe their home is over-insured because they could not sell it for the amount of coverage they are required to insure it. For some, that might be true.

To help develop a basic understanding of how insurance companies view replacement cost, one needs to consider several important features of the policy. First, the limit of insurance indicated for a building or home is the ultimate amount of money you can recover from your insurance company for all costs necessary to reconstruct the building. One important point to understand is the cost of demolition and debris removal erodes that ultimate limit. A structure insured for $500,000 in which $80,000 was spent for demolition and debris removal means only $420,000 is left for actual reconstruction. Second, material and labor costs vary from region to region. For example, labor costs can be affected if the structure needs to be rebuilt using union labor in whole or in part. Material costs can vary depending upon the time of year, weather conditions, production and delivery limitations, labor strife and other factors.

When attempting to establish an adequate amount of insurance to reconstruct real property, these are more factors to consider:

- Catastrophe Exposure – Large scale damage from hurricanes, tornadoes, wild fires, earthquakes and floods place a significant strain on material cost and labor expense to meet the demands of rebuilding large areas. Construction costs can escalate as much as 50%, or more, after widespread disasters and the rush to rebuild.
- Older Buildings – The northeast region is full of commercial and residential structures that date back 100 years or more. If it is your desire to have your insurer reconstruct the building using the same style and type of materials, provisions must be made in the limit of insurance to account for these elevated material costs and the need for artisan craftsmen to reproduce the intricacies of trim-work and exterior facades.
- Non-Conforming Use – Is your building located in a non-conforming use zone? If so, you have a real headache trying to rebuild the building if destroyed by fire, explosion or other catastrophe. Will you be able to rebuild the building for its intended use at that location? Have this question answered first before you start developing a reconstruction cost.
- Code Changes – When an insurance company issues a policy that provides 'replacement cost' coverage, it agrees to rebuild the structure to the same size and style you had the day before the loss occurred. That agreement, however, does not extend to the increased cost driven by building code changes that have occurred since the building was originally constructed. Costs relating to re-build real property to current code requirements need a special rider added on top of the replacement cost clause to pick up the additional reconstruction cost.
- Coinsurance versus Agreed Amount – When you purchase insurance for real property, you should avoid a policy that includes a coinsurance clause. The coinsurance clause is an escape hatch for an insurance company to pay a loss for an amount less than the limit of insurance if you picked a limit that is too low. Commercial property owners should always demand an Agreed Amount clause that voids the action of the coinsurance clause.
- Replacement Cost Rider – Almost

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MORRISTOWN ASSOCIATES V. GRANT OIL COMPANY

By George J. Tyler, Esq. and Matthew J. Krantz, Esq.

On January 26, 2015, the New Jersey Supreme Court reached a decision important to brownfields developers in Morristown Associates v. Grant Oil Company. The decision assures developers that no statute of limitations applies to contribution claims under the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11, et seq., thus allowing developers of contaminated properties to pursue such claims against the parties responsible for the contamination without concern for when the discharge occurred or when the developer should have known that the property was contaminated. The decision also reinstates the right to pursue contribution claims to developers that would have otherwise been barred from doing so under the statute of limitations by the Appellate Division's decision.

Historically, property owners and their attorneys operated under the belief that no statute of limitations applied to contribution actions under New Jersey's Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11, et seq. In the event a developer remediated a site prior to construction, a claim for contribution against the responsible parties was always believed to be a viable option, no matter how long ago the discharge occurred. However, in August 2013, in Morristown Associates v. Grant Oil Company, the Appellate Division of the New Jersey Superior Court deviated from popular opinion by holding that the six-year statute of limitations applicable to property damage claims under N.J.S.A. 2A:14-1 also applied to private contribution actions brought under the Spill Act. Fortunately for the building community and other downgradient property owners, the decision was short lived. The New Jersey Supreme Court reversed the Appellate Division on January 26, 2015, and conclusively held that no statute of limitations applies to contribution claims under the Spill Act.

In finding that the general statute of limitations for property damage applied to Spill Act contribution claims, the Appellate Division first noted that the Spill Act itself did not contain a statute of limitations provision. Referring to other cases in which statutes were silent as to the application of a statute of limitations, the Appellate Division determined that the six-year general statute of limitations, contained in N.J.S.A. 2A:14-1, applied. The Appellate Division further noted that this determination was consistent with Federal case law on the issue and with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), which expressly provides for a six-year statute of limitations for cost recovery actions.

In reaching its decision, the Appellate Division reviewed, but ultimately rejected, two prior Appellate Division decisions to the contrary. First, the Appellate Division distinguished the decision in Pitney Bowes, Inc. v. Baker Industries, which found that a ten-year statute of repose did not apply to a Spill Act contribution claim, because it involved a statute of repose instead of a statute of limitations. Second, the Appellate Division dismissed the decision in Mason v. Mobil Oil Corp., which explicitly held that a statute of limitations did not apply to Spill Act contribution claims, because it was unpublished, and therefore not precedential.

On appeal, the Supreme Court disagreed that the Spill Act was silent as to the statute of limitations. The Supreme Court pointed to the language of the Spill Act, which states that "[a] contribution defendant shall have only the defenses to liability available to parties pursuant to [N.J.S.A. 58:10-23.11g(d)]." The defenses to liability provided in N.J.S.A. 58:10-23.11g(d) include "an act or omission caused solely by war, sabotage, or God, or a combination thereof." The statutes of limitations defense is not included as one of the enumerated defenses in the statute. Since N.J.S.A. 58:10-23.11g(d) does not include the statute of limitations defense, the Court found that there was a legislative intent to exclude it.

The Supreme Court also noted that its decision was supported by the longstanding view that the Spill Act "is remedial legislation designed to cast a wide net over those responsible for hazardous substances and their discharge on the land and waters of this state." In other words, it allows those responsible for contamination to be held responsible without being afforded a defense grounded in the simple passage of time.

Further, the Supreme Court acknowledged that the historic understanding in this State is that no statute of limitations applied to Spill Act

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SURFIN' U.S.A.

By Cathy Coloff

Are you paying 80% of your employees to "cyberloaf" on the Internet… watching funny videos, searching for a better job or accidentally downloading a virus on your network?

Recently, we have seen a dramatic increase in the number of local businesses suffering significant financial and productivity losses due to employees inappropriately using their Internet access during work hours. Much of this is fueled by social media sites such as Facebook and YouTube. In fact, studies have shown that between 60 and 80% of people's time on the Internet at work has nothing to do with work!

The increased incidence of "cyberloafing" results in part from the growing percentage of employees who use the Internet for work reasons, as well as the fact that Internet use has become a bigger part of everyday life in general. Young and old alike have become addicted to the lure of the World Wide Web. Popular activities include perusing social media sites, personal email, online banking and shopping. The list goes on and on. Honestly, there is a lot of really engaging content out there—it's all very tempting.

Personal Internet usage is one of the biggest threats to employee productivity. However, productivity is not the only thing that suffers when employees "cyberloaf." Companies are losing millions of dollars because employees are spending 2-3 hours a day goofing off online. And if this is not enough, there's also the danger of employees inadvertently downloading viruses to your network from malicious sites. Or a lawsuit due to accessing inappropriate sites for inappropriate risqué reasons (pornography)—all while on the clock.

So, what's a business owner to do? A Company Internet Use Policy is a good start. When no policy is in place, you not only open your business to potential risk, you also open your business brand and reputation to potential harm. By creating an Internet usage policy for your business, you are able to clearly define what you consider as acceptable computer usage for your business. Company Internet Use Policies must be made part of official corporate statements and continually conveyed to employees. Remember, however, once the policy is in place it needs to be enforced.

Unfortunately, a Company Internet Use Policy is NOT enough! A recent study showed that the presence of a strong Internet policy at work was not enough to curb activity, as many employees don't think it's wrong to surf the web, and a policy was not going to change their way of thinking.

Once a policy is in place, IT Radix recommends utilizing Content Filtering software to block selected websites and monitor employee Internet surfing activity (site-blocking and site-tracking). Applications can be customized granting specific access to departments, workgroups or employees who utilize the Internet as part of their job (e.g., social media directors).

Let IT Radix help you choose a Content Filtering product that best meets your business needs. Catch the IT wave and you'll be sittin' on top of the world!

About the Author
Cathy Coloff, is a Managing Member with IT Radix, LLC. She has 20+ years of experience in network systems with particular emphasis on local area networking and business applications. With extensive corporate experience at Exxon and Bear Stearns, Cathy works with IT Radix customers to develop their IT best practices without the big corporate price. She can be contacted at 973-298-6908 or itsales@it-radix.com

UNDERSTANDING THE NEW ACCOUNTING FOR REVENUE RECOGNITION: ENGINEERING AND DESIGN INDUSTRY

By: Christina Lazaro, CPA, & Margaret F. Gallagher, CPA

The future of accounting for revenue has arrived. Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers (ASU 2014-09) establishes a uniform revenue recognition model for substantially all industries; however, the extent of the industry-by-industry impact will vary dramatically. ASU 2014-09's broad principles will necessitate greater judgment and advance preparation. Here are frequently asked questions and answers regarding implementation of ASU 2014-09 in the engineering and design industry.

When is ASU 2014-09 effective?
Nonpublic entities are required to apply the new standard for annual reporting periods beginning on or after December 15, 2017. Public entities are required to adopt ASU 2014-09 in reporting periods beginning after December 15, 2016. Early adoption of ASU 2014-09 is generally not permitted. A delay in implementation is possible—stay tuned for developments.

What are the basic ideas?
ASU 2014-09 establishes a core principle: recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This core principle emphasizes when a change in control occurs.

There are five steps to applying that core principle:

Step 1: Identify the contract with a customer.

- A "contract" does not mean a legal document; it is essentially an agreement between you and your customer that creates enforceable rights and obligations.

Step 2: Identify the performance obligations in the contract.

- The contract may contain more than one distinct good or service.

Step 3: Determine the transaction price.

- Variable elements will require up-front estimation and careful consideration.

Step 4: Allocate the transaction price to the performance obligations in the contract.

- Allocate using the relative standalone selling price of each good or service, or an estimate if that is not available.

Step 5: Recognize revenue when or as the entity satisfies a performance obligation.

- This may occur at a point in time, or over a period of time.

While none of the above sounds radically different from how we currently account for revenue, applying the steps in certain industries may be challenging and produce different outcomes than current practices.

Additionally, all entities will be subject to more disclosure requirements. These will vary by industry, and the extent of management's judgments.

How will ASU 2014-09 affect the engineering and design industry?
We believe the impact on the engineering and design industry will ultimately be moderate. Given the prevalence of legal contracts, a common default conclusion is that the changes will be significant. However, a deeper review reveals that it is unlikely that revenue will be recognized in a substantially different manner than now.

The "cost-to-cost" method of revenue recognition that prevails now will generally continue, only with new terminology. Much design work, specifically in the civil, municipal and survey fields, creates value to the customer as a function of time incurred, subject to agreed-upon pricing. This will yield revenue recognition that is very similar, if not identical, to the current methods.

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DISASTER 101: EMERGENCY PREPAREDNESS IN THE POST-SANDY BUILDING INDUSTRY

By Barbara K. Schoor

When Superstorm Sandy hit the East Coast in October 2012, it became the second-costliest such event in U.S. history, following Hurricane Katrina. The destruction resulting from the storm not only changed the way New Jerseyans live – it also changed the way real estate developers do business.

Community Investment Strategies (CIS), a leading developer of affordable multi-family housing communities, was one of 12 affordable housing organizations in New Jersey and New York that received a grant from the Enterprise Community Partners to participate in its three-year Learning Collaborative for Multifamily Housing Resilience program aimed at recovering, rebuilding and reforming the way builders plan post-Sandy.

Since then, CIS, like many development firms and organizations affected by the storm, has analyzed its emergency preparedness efforts – and for good reason. Resiliency planning contributes to a company's success. At CIS, our efforts reinforce our company's reputation for providing a quality product, show that we are a conscientious developer that cares about residents and their ability to live successfully in their homes, and protect our sites because we are prepared for the worst.

Identifying the Need

Resiliency planning goes beyond anticipating and preparing for a natural disaster or an emergency situation. While many of the Learning Collaborative partners consisted of public agencies and non-profit supportive housing groups, our challenge as a for-profit company was in distinguishing between CIS' responsibilities as a landlord and the renters' responsibilities as tenants.

One of CIS' primary focuses during the initial days following Superstorm Sandy was to identify operational areas that we could modify to better meet both the company's and residents' needs in the future. When Sandy hit, many of the families living in our multi-family housing units faced the same challenges as those living in private, single-family residences: loss of power and/or heat, confusion about evacuation plans and insufficient emergency supplies.

A key component of any emergency preparedness plan should include identifying and addressing critical issues in a timely manner. For CIS, that response was two-fold: what actions needed to be taken to continue the company's operations, and how could we address the unexpected influx of requests from the management side of our business?

As a result, CIS is developing community-oriented relationships with groups that provide emergency relief services. That way, if the need arises, there is already an established line of communication with local organizations to assist rental occupants.

We also evaluated our operational procedures to ensure we knew how to communicate if phones or email were inoperable, who was responsible for visiting each site to assess possible damage and coordinate plans for repairs, and what was needed to return damaged buildings or properties to their functional state.

Taking Action

Successful developers must consistently evaluate their building design and construction practices. We found that some design elements that had been incorporated from an aesthetic standpoint actually served a functional purpose in Superstorm Sandy's aftermath – fireplaces in some multi-family buildings provided residents with necessary heat, so we have since begun incorporating fireplaces into more of our buildings.

Other building practices to consider may include:

- Electronic security controls: If the power goes out, these controls stop operating. In addition to providing residents with a manual way to override these controls should the electronic system stop functioning, builders should consider tying these systems into back-up generators.
- Emergency lighting: Most battery packs that supply lighting in an emergency work for eight hours, but many buildings lost power for days following Superstorm Sandy. Consider supplying each of your buildings with backup battery packs or connecting these to generators for the emergency lighting systems.
- Traditional construction techniques: Look beyond standard requirements and codes and brainstorm innovative ways to combine weather-barrier products to assist with the

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About the Author.
As vice president of Community Investment Strategies (CIS), a leading developer of thousands of expertly designed and well-managed affordable multi-family housing communities in New Jersey, Barbara K. Schoor has acquired more than 19 properties and managed the development of more than 1,700 apartment units. In her role, Barbara, a NJBA board member, manages CIS's affordable housing initiatives – including new construction and substantial rehabilitation projects – handling all aspects of development, from due diligence to design, regulatory approvals and financing.

ENERGY SUBCODE UPDATE – WHERE NJ STANDS AND WHERE WE MAY BE HEADING

By Doug McCleery

With the implementation of the 2009 International Energy Conservation Code as the New Jersey Energy Subdcode approaching its fifth year of implementation, one would think that this one is old hat. Along with the other components of the 2009 I-codes, it was adopted in September of 2010 with compliance required for permit applications completed after March 6, 2011.

One would think. However, implementation is not as complete, nor has it gone as smoothly as expected for a number of reasons:

- The adoption included delayed implementation of a key provision for residential buildings. Duct leakage testing, made mandatory by the new code for any system not located entirely within the thermal envelope, was not required for any home permitted before January 1, 2013;
- The economy severely curtailed the number of new housing starts for several years;
- A high percentage of the homes that were built during the recession were completed under the New Jersey ENERGY STAR Homes Program, which provided an alternate compliance path and a lot of technical assistance for participating builders;
- Superstorm Sandy provided a lot of other distractions to builders and construction officials alike;
- Permit extensions continue to exist, creating three different energy subcode standards simultaneously in the marketplace.

For all of these reasons, as the State is considering the adoption of the next energy subcode, it is worth reviewing a few of the highlights of the residential provisions of the current one (2009 IECC):

- For the first time, performance testing was introduced. Compliance of the insulation and air sealing requirement can be demonstrated by checklist (with the builder responsible for a part of the verification) or by an air leakage test commonly known as a "blower door test", also the responsibility of the builder. As mentioned above, the duct leakage test is also part of the requirement.
- The code is silent on who may perform the two tests, although the test procedures are identical to those used by HERS Raters for builders participating in the NJ ENERGY STAR Homes Program. This code compliance option remains.
- A popular New Jersey tradeoff, permitting basement wall insulation to be omitted when high efficiency heating equipment was installed, was removed.

The 2009 code, through increases in insulation values, requirements for more efficient windows and the new air sealing and duct sealing standards, is projected to save approximately 15%, when compared to the previous version. For those interested in more information, the NJ DCA Division of Codes and Standards published an excellent resource on energy code compliance, known as Bulletin 11-1. Now onto what may lie in our future.

On January 5, 2015, the Division of Codes and Standards published proposed revisions to the NJ Energy Subcode in the New Jersey Register. In order to reference the most recent standards, the proposal includes the adoption of the 2015 IECC, skipping over the 2012 edition. – Pointing out again - the highlights:

- Based on a 2014 US DOE preliminary determination of the impact of a New Jersey adoption of the 2015 IECC, savings for residential structures would be approximately 16% (1% savings between 2012 and 2015 and 15% savings between 2009 and 2012).
- Primary changes in the 2015 IECC include increased insulation values, significantly reduced air leakage and duct leakage targets and mandatory air leakage testing.
- The 2015 IECC includes the introduction of an Energy Rating Index (ERI) alternate compliance path with a specific target score based on climate zone. The ERI compliance path allows a verified energy rating, a HERS Score, complete with inspection and performance testing results to satisfy the documentation and inspection requirements of the energy subcode. The NJ ENERGY STAR Homes program follows such a path.
- The NJ proposal maintains the increased insulation standards and reduced air and duct leakage targets, but eliminates the mandatory air leakage testing. A compliance path allowing insulation and air sealing to be verified by inspection would remain.

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REVEL IN THIS: DEVELOPER CAN DO CONDOS – AND SHOULD

By Barbara A. Casey

Now that the $2 billion gamble has gone bust and lawyers and interested parties spar over just what to do with Revel, one constituency has been conspicuously absent from the discussion – residential homebuilders.

Revel, with its 1399 empty hotel rooms, is just begging for an opportunity to be the catalyst to bring vibrancy and a sense of place and purpose to Atlantic City's east end. Residential, you ask? Yes. For-sale condominium units built from those empty hotel rooms, allowing regular people, not just large commercial conglomerates, to invest in the City. And every NJBA builder knows what happens when residents move into a community – businesses follow, to serve the needs of those homebuyers.

Looking at the numbers, if you convert a portion of the Revel's units to create 500 condominiums and sell them in the $250,000 range, that's $125 million right there. Word on the street is that the entire project may only cost $50 million. Even if another $50 million is needed to repurpose the space, that leaves nearly a 25% profit before even considering the value of the casino, meeting, restaurant, retail and remaining pure hotel space.

We all know, however, that successful development hinges on more than numbers. The project must be viable and sustainable. Condo conversion and consequent homeownership would enhance viability and sustainability. A residential presence is crucial for creating the sustained demand businesses need to thrive. As the venerated Urban Land Institute (ULI) noted in its 2012 report, *Residential Futures*, to "ensure a community's overall sustainability and long-term success" will require "fulfilling the vision of building high-quality, inspiring places to live that are connected to services."

Mayor Guardian, City Council, and State and County officials all recognize that a mixed-use model, with a variety of lodging, service, entertainment and retail offerings, is needed to reduce the reliance of Atlantic City's (and the region's) economy on casino gaming. But proposals on the table now center on rental housing or large-lot, single-family housing, neither of which will produce the density businesses look for when deciding whether to invest in a community.

Ergo, create for-sale condominiums from a portion of the Revel hotel rooms – one- and two-bedroom units with living space, small kitchens and access to one of the best beaches on the northeast U.S. coast, priced so the average working family can afford a piece of the Jersey Shore. Families with young children, who otherwise would never think of Atlantic City as a destination, could visit the beach and enjoy safe and fully equipped living space, with access to shopping, restaurants, entertainment, culture, and even gaming for the adults, possibly within the erstwhile Revel building itself. Five hundred potential new households at the Revel would spur development in surrounding areas as businesspeople develop and market attractions and retail enterprises such as waterparks, grocery stores, restaurants, bowling alleys, miniature golf courses, and mini car racing tracks.

And any angst over loss of hotel space is unwarranted. Successful rental programs for independently owned condominium units exist all across the world, with a network of shared use programs just waiting to get new inventory of this caliber.

ULI's in-depth study last year of potential redevelopment of Atlantic City's South Inlet neighborhood, where the Revel stands, clearly noted the need for a revitalized year-round community in the area. The ULI Advisory Services Panel report recommended wide-scale renovation of existing neighborhoods, as well as development of new housing. The report, however, was issued before many pivotal developments in the bankruptcy case, and did not identify any potential residential uses at the Revel. Creating condos in the Revel really just extends the ULI recommendation to the Revel property itself, which is already built, already beautiful, and easily converted into condos with spectacular views and world-class amenities. With existing space for 13 restaurants as well as 55,000 square feet of retail space, three nightclubs, two theaters with a combined capacity of 9,000, an outdoor performance deck, and five pools, the Revel can be both a vacation destination and a permanent community.

Condo conversion at the Revel can work for the property and help Atlantic City as a whole by increasing demand for business services and creating a community that can move out from the core. It won't happen overnight. It will take years. But potential developers and government planners who do not consider residential uses at the Revel are missing an important piece of the picture.

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NEW JERSEY PROPERTY TAX ASSESSMENTS AND APPEALS: "THE GOOD, THE BAD AND THE NOT SO UGLY (SETTLEMENT)"

By Kevin DiMedio, Esq.

I'm sure you're asking "what could possibly be Good about any taxes?" Well, notwithstanding the idiom that taxes never seem to go down, a successful real estate tax assessment appeal will reduce your property's taxable valuation, and consequently the property taxes you must ultimately pay. Less taxes would be considered "Good" by most accounts.

By way of brief overview, property taxes are a result of the municipal budget process and are not appealable. However, property assessments may be challenged and a taxpayer who appeals is required to submit proofs that the property is over assessed. The law provides that the assessment is presumed to be correct, and a taxpayer must overcome this presumption to obtain an assessment reduction. The deadline for filing a property tax appeal petition in New Jersey is April 1 of the current tax year, or May 1 of the current tax year if the municipality has implemented a town-wide revaluation or reassessment. New Jersey law also sets forth that any "taxpayer" may appeal a property tax assessment, and "taxpayer" includes property owners, tenants, mortgage holders, tax sale certificate holders and contract purchasers. Any property owned by a corporation or other entity must be represented by an attorney admitted to practice law in New Jersey.

The "Good:" Reduced Taxes

Property tax assessments are based upon the property's overall value, which changes yearly based on many factors (economy, natural or regulatory restrictions, use/utility, vacancy rates, sales, etc.). These factors, real or perceived, may improperly inflate the value and result in an over assessment. Thus, a successful tax appeal reducing your property's assessment and taxes would be "Good" by most accounts, as previously mentioned. Whether commercial, residential, industrial, institutional, or unimproved ground, a reduced property assessment translates into an increase in the bottom-line… which is always "Good."

The "Bad:" Litigation

The assessment appeal process has similarities to traditional litigation, and most do not relish the time and costs often involved with litigation. Although the appeal process is the mechanism to challenge an assessment, it can vary depending upon the forum available. A tax appeal petition must be filed with the County Tax Board within the county where the property is situated. Should the property assessment exceed $1 million, the taxpayer can file directly with either the State Tax Court or the County Board. Evidence must be provided by the taxpayer and or its expert to support the proper valuation methodology for the property (Sales Comparison Approach, Income Approach, or Replacement Cost Approach). In the rare case an appeal has not resolved by the end of the tax year, another appeal must be filed for the next tax year, and a resolution is usually reached retroactively for all years. County judgments can be appealed to the State Tax Court. There are strategic advantages to the choice of forum (County vs. State) depending upon property type, property/owner economics, relationship with and reasonableness of local assessors, the likelihood of settlement, etc. However, the majority of assessment appeals are resolved without going to hearing or trial by way of stipulation of settlement between the parties.

The "Not So Ugly:" Settlement

As mentioned the majority of tax assessment appeals resolve by way of settlement. Settlement can occur at any time during the appeal process, whether at the County or State, and there can be numerous opportunities to engage the local assessor or other municipal party of authority to engage in settlement discussions. The State Tax Court mandates that a settlement conference occur between the parties before proceeding to trial. Once settled or a judgment is issued, the New Jersey Freeze Act can apply and provides that the new assessment resulting from the appeal may not be raised for 3 years (including the year of appeal). As the April 1st filing deadline is fast approaching, now is the time to review your property assessment, and the likelihood of success of an appeal to obtain the "Good" result.

By way of update, current legislation is pending in New Jersey (A-3351, Diegnan) which would require a taxpayer appealing an assessment of real property assessed at more than $1 million to file an appraisal within 90 days of filing the appeal. Our industry should strongly oppose this unnecessary measure as a legislative attempt to control Tax Court rules and procedures, and since the measure is not practicable, costly and simply not

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STUDENT HOUSING – DESIGN, DELIVERY AND TECHNOLOGY

By Ronald C. Weston AIA, PP, LEED AP

Student housing is one of the most important and complex challenges facing colleges and universities today. The design and delivery of residence halls has evolved in recent years, and computer technology has played a key role. How these buildings are financed and constructed, and how they contribute to attracting the best students, are all major factors for consideration.

Montclair State University accepted students into The Heights, its new 2,000 bed dormitory, less than 21 months after design started on the project. It was one of the first Public Private Partnership (P3) projects authorized by the State of New Jersey, where a private developer, in this case, Capstone Companies, of Birmingham, Alabama, built and operated a project on public land. Capstone Companies hired Terminal Construction Corporation, of Wood Ridge, New Jersey, as their design-build contractor, with Paulus, Sokolowski and Sartor Engineering, P.C. (PS&S), of Warren, New Jersey, as the Architect/Engineer of Record. Now, three years after the first students moved in, the project has proven to be a great success and an excellent example of how higher education institutions are leveraging student housing facilities to attract top students.

Design

The Heights residence hall was sited in an abandoned rock quarry on the summit of the first ridge of the Watchung Mountains. The design consists of two buildings, each with four wings and a central core area. The total building area is approximately 550,000 square feet with a final construction cost of approximately $135 million.

Each building includes two mid-rise cores which match the story height of the individual wings and a low rise core which interconnects and allows communication between all four wings. The wings vary in height from six to eight stories with footprints ranging from seven thousand five hundred square feet to nine thousand five hundred square feet.

The rooms are suite-style singles and doubles with integral bathrooms shared by no more than two students. The rooms, wired for Wi-Fi and 78 channels of cable TV, have higher ceilings than the older dorm buildings.

Among the amenities at The Heights include a pair of community kitchens where students can make their own meals and also attend cooking classes taught by the University's dining services chefs. Other enticing amenities are a game room featuring a large-screen TV, a lounge on each floor, spaces for tutoring and a soundproof room where students can practice presentations. A 600-seat full-service cafeteria serves as a core amenity space for the students.

Delivery

The design for this fast-tracked P3 project was completed in less than four months with advance design packages for foundations, precast concrete superstructure, structural steel and major mechanical equipment.

The advance design packages also facilitated the code review by the State of New Jersey. To expedite the design delivery, our A/E team held weekly meetings with Capstone, the CM, and major subcontractors. The interactive communication enabled PS&S to design continuously to the budget, and avoided major re-work to the construction documents late in the cycle.

Technology

PS&S was able to efficiently use 3D BIM technology with Revit software, to design and document the project. PS&S has been using Revit for virtually all of its work for more than ten years. The software has significantly enhanced productivity, improved overall quality, and has been particularly useful on multi-discipline projects.

The foundations for the buildings were complicated due to the topography of the quarry site. By leveraging design BIM technology, Revit was used to accurately model these structural features, and the model was then used to convey the layout of foundation walls and footings in close coordination with the architecture. The major floor and wall openings were coordinated in real-time with the architectural and MEP Revit models. The cores are the operational hub of the buildings, and considerable coordination, facilitated by Revit, was paramount to the success of project.

Navisworks was used to facilitate quality control checking and clash detection between the architectural and engineering design disciplines. The various models were overlaid within Navisworks and a listing of coordination issues was produced. This listing was then utilized to make any necessary changes to eliminate the conflicts. In fact, the change order rate due to drawing issues was less than one third of one percent of the total construction cost – well below industry standards.

As demonstrated with the Montclair State University project, this technology allows the team to significantly accelerate the design and construction of complex projects while simultaneously reducing the number and cost of change orders dramatically.

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LETTER TO NJBA'S MEMBERSHIP

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COAH met to adopt the Third Round Rule proposal but surprisingly was deadlocked in a 3-3 tie. The New Jersey Supreme Court began the New Year with oral arguments on Fair Share Housing Center's motion, which asked the Court to allow builder's remedy suits against towns, notwithstanding the fact that they have filed fair share plans with COAH. Counsel representing COAH advised the Court that COAH had done "nothing" since October 20 to try to break the deadlock, and that there were no COAH meetings scheduled. On March 10, 2015, the New Jersey Supreme Court unanimously ruled that the courts will once again assume the lead role in enforcing the constitutional requirement, imposed by the Mount Laurel doctrine, that municipalities must create realistic opportunities for the construction of low and moderate income housing.

NJBA is fortunate to have members who are also committed to sharing their time and technical expertise, which in turn enabled the Association to remain vigilant and proactive on the regulatory front. During my tenure, our members continued their active participation in numerous discussions and technical meetings -- including those with the front office; the Red Tape Review Commission; state agencies such the DEP, DCA, BPU or Agriculture; regional entities such as the Highlands Council or Pinelands Commission; and other public venues. As a result of the dedication of our members, NJBA was able to accomplish the following: (1) critically evaluate the BPU's proposed Main Extension rules and also amendments to the Uniform Construction Code: (2) support proposed Coastal rules while highlighting areas for additional changes; (3) participate in stakeholders discussions on amending the Water Quality Management Planning rules; (4) push back on DEP's contemplated approach for more rigorous stormwater management measures; (5) evaluate over 45 stormwater basins statewide in a compressed schedule; (6) identify necessary amendments to the Highlands Regional Master Plan; (7) support the State Planning Commission's proposal for a 3-year extension for centers; (8) strongly advocate for the issuance of the revised Flood Hazard rules; (9) identify problematic provisions of the Freshwater Wetlands rules for future amendments; and (10) lead discussions with other trade groups on site remediation issues. Members not only educate agency personnel on regulatory impacts, but also share their insights with each other during committee discussions and educational seminars, such as the July 2014 PEA seminar and upcoming ABC programs.

On the home front, NJBA has also enjoyed a host of organizational successes this year. We added several new members to the Master Sponsor program, our MXD affiliate and our membership. We also continue to revamp and develop programs that appeal to members. At my direction, our State Board of Directors meetings have taken on a new interactive format which is bolstering member participation and increasing focus on key issues. At our latest meeting, we welcomed Senator Joe Kyrillos and Assemblyman Louis Greenwald, in addition to a panel of Master Sponsor attorneys who shared their expertise on the Permit Extension Act and reported on COAH's litigation status as well as downzoning litigation.

I am confident that the victories and successes of our organization will continue to grow in magnitude as the economic recovery in New Jersey takes hold. Our industry continues to rebound and builders are back at work, helping New Jerseyans fulfill the American dream of homeownership. The improving trend may be best evidenced by the upcoming Atlantic Builders Convention (ABC) where floor space is selling out at record pace. Thousands of attendees will visit the hundreds of exhibitors slated to showcase the best and latest groundbreaking technologies and services available in the building industry. We have nearly 20 educational seminars scheduled providing attendees with continuing educational credits and several major parties and networking events that are sure to 'wow' attendees after the show floor closes.

New at ABC this year is a "Meet NJBA" event that will draw attention to the many benefits of membership in our organization. Our voice in Trenton and throughout New Jersey is strongest when our membership is engaged and we have demonstrated our organization can have a major impact on the industry's bottom line when we work toward a common goal. That work starts with membership and I know our many attendees at ABC will be interested in joining after hearing from our members.

Before I conclude my final Dimensions article as President, I'd like to extend my appreciation for the great support that I received at my 60th Birthday Party last October. And the best part was that the proceeds benefitted the State Builders Political Action Committee (BPAC). The PAC is a crucial part of our success in claiming legislative victories, without which our achievements in Trenton would be scarce, at best. It is of paramount importance that we remember to support our elected representatives who support housing. Remember, when it comes to public policy matters for the home building industry, we are neither Democrats nor Republicans -- we are pro-housers.

Thank you for the opportunity to lead this fine organization and for all of your support throughout my year as President. Remember to keep building toward the American dream of homeownership for all New Jerseyans.

I look forward to seeing you all at the Atlantic Builders Convention, March 24-26.

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The Court also suggested the landowner should have sought a use variance before instituting a challenge to the rezoning. Since the Court's suggested course of action for applicants is at odds with long established principles of law regarding exhaustion of administrative remedies, NJBA filed a Motion requesting the Court to clarify its decision. The NJBA extends its sincere appreciation to Master Sponsors, Richard Hoff, Esq. (Bisgaier Hoff, LLC) for the pro bono amicus representation and NJBA Land Use Counsel Tom Carroll, Esq. and Stephen Eisdorfer, Esq. (Hill Wallack) for their contribution.

In the interest of NJBA's MXD Used Developers and affordability of rental housing, NJBA also successfully sought amicus curiae status in an apartment licensing fee case, Timber Glen v. Township of Hamilton. NJBA's argues that Hamilton's ordinance impermissibly expands the scope of its licensing authority under the New Jersey Licensing Act, the ordinance is pre-empted by the Housing and Multiple Dwelling Law, the fee itself is unreasonably high, and the impact of increased rental housing costs. The matter is pending before the Appellate Division for an oral argument date.

On the local level, a Stafford Township municipal zoning ordinance requiring all future development be LEED green building certified was recently was found to be invalid by the DCA, after NJBA asked for an investigation. It was determined that the zoning ordinance superseded the State UCC Act in violation of State law and the municipality was directed to repeal the invalid ordinance. Since the energy efficiency of buildings is governed by the IECC and LEED certification is not required, the township cannot require LEED certification.

Regulatory

Through the active engagement of our Associate and Builder members, NJBA has also been very active on the regulatory front before various state and regional entities. NJBA testified in opposition before the Red Tape Review Commission on the use of "Checklist Ordinance" by the Highlands Council and then further elaborated on Highlands' issues during a meeting with Lieutenant Governor Kim Guadagno's Chief of Staff and other key staff. NJBA prepared a comprehensive comment letter, which outlined numerous concerns with the Plan Conformance process, the Regional Master Plan and the underlying Act. Similarly, NJBA maintains dialogue with the Pinelands staff to urge for amendments to the Comprehensive Management Plan while utilizing grant monies from NAHB to develop a technical strategy to refute a study about the Kirkwood-Cohansey aquifer.

NJBA remains vigilant by participating in stakeholders discussions, meeting on an ongoing basis with senior DEP, DCA and Agriculture staff, and critiquing agency rulemaking (whether existing, proposed or anticipated). These discussions have provided NJBA with a solid and credible platform to urge for much needed regulatory reform with the affected agency and the front office, as noted with COAH's third round rule proposal, Water Quality Management Planning rules, BPU's Main Extension rules, or reduction of buffers and elimination of redundant regulations from the Flood Hazard rules. NJBA's efforts have been made to provide our industry with the best foot forward in the anticipated recovery as well as to ease current regulatory constraints.

Executive Leadership

Last summer, the NJBA Officers and 20 of NJBA's Past President's convened for the first time in almost five years, to exchange ideas as NJBA moves forward, beyond the most recent and unprecedented real estate recession of our lifetime. NJBA President Dave Fisher spoke about the changing complexity of the membership, as well as the changing desires of new homebuyers. The group touched on some of the most critical issues confronting home builders in this State, from zoning issues to property tax reform, and engaged in a hearty dialogue around the future strategic planning for the Association. Dave invited the group to present ways to (1) improve NJBA's ability to stay relevant; (2) create value for members; (3) attract new members; and (4) better serve the existing membership.

In an effort to keep the ongoing dialogue and communication between the State and the Local Associations, Dave formalized the quarterly meetings that Rob Fallone instituted a year earlier. These meetings provide the necessary forum for the NJBA Officers, the Local Presidents and the Local Executive Officers to meet and exchange ideas around increasing membership, and enhancing programs and other member benefits. Next year, the group will expand to a full Executive Board, including the Local Associate Vice Presidents and the Presidential Appointees. The Local Executive Officers and the NJBA Vice Presidents have weekly conference calls to keep the information flowing between the Locals and NJBA. We will continue to keep the lines of communication open through daily conversations as well as our various communication tools, (i.e. Weekender, Member-Grams, the Website and Dimensions).

NJBA Business

If you have recently visited the NJBA office, you will notice a few differences. First, you may find yourself searching a little longer for a parking space out in front of our office. That is because several new tenants have recently moved into the building at 200 American Metro Boulevard. (If you do have trouble finding a spot, please be aware that there is additional parking available behind the building with a convenient entrance from that rear parking lot.)

One of the new tenants includes NJBA's sub-lessee, NJ Realtors. Until February 23rd, NJ Realtors was headquartered in a building in Edison, where it had been for many, many years, throughout

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Bob Ferguson's reign. (Many of you will remember the late Bob Ferguson as the Executive Vice President of the NJ Association of Realtors for nearly 40 years.) Under the leadership of their Officers and current CEO, Jarrod Grasso, NJ Realtors will be constructing its new State headquarters in Trenton. In the meantime, the NJ Realtors staff of 19 has been sharing office space with NJBA. It was a natural and convenient coalition for the Realtors and the Builders to come together, and we are hopeful that this arrangement will further strengthen the building industry's voice in Trenton, as we work toward the common goal of homeownership for all New Jerseyans. We look forward to a cooperative and productive union!

When you visit, you may also notice that NJBA has taken a major step forward technologically, as well – migrating our IT systems to the "cloud". This move - which was long overdue - made it possible for NJBA to upgrade its IT platform, replacing the antiquated 2003 version of the operating systems and productivity software to the most current version, and putting into retirement the very outdated hardware which had actually begun to fail.

In addition to these obvious visible changes, there have also been structural changes to the organization. Last summer, NJBA underwent a corporate restructuring and an organizational overhaul; identifying, re-evaluating and clarifying job responsibilities and best practices for the most effective and efficient utilization of staff time and energy. This exercise was made necessary in response to the prolonged and protracted economic recession that so dramatically affected the building industry beginning in 2008.For a period of about six years, the NJBA staff underwent a natural downsizing, from 24 employees to eight. As a result, there was a need to ensure that NJBA was operating efficiently and effectively, resulting in maximum benefits for the membership. I am pleased to report that although NJBA is lean, it remains extremely productive and results-oriented. For your information, reference, and in case some of you may not be familiar with the current staff, please see the employee list and job responsibilities below:

Meet NJBA
Carol Ann Short, Esq.
Chief Executive Officer

Elizabeth George-Cheniara, Esq.
Vice President of Legal and Regulatory Affairs
(Legal, Regulatory, Environmental, Highlands, Pinelands)

Jeff Kolakowski
Vice President of Government Affairs
(Public Affairs, Legislative, Land Use & Redevelopment, Codes, MXD Affiliate)

Diane Nicolo-Pocino
Vice President of Events & Programs
(Director of ABC, Golf Outing, Events & Programs)

Lisa Obolsky
Vice President of Operations
(IT, Human Resources, Operations, Associate & Member Services, Association Governance)

Grant Lucking
Director of Communications and Public Affairs
(Master Sponsor Liaison, Communications - Website, Dimensions, Weekender, Press Releases)

Pauline Magnotti
Controller and Data Management
(Bookkeeping, Accounts Payable, Budget, Data Management, SAM)

Cindy Spicer
Coordinator of Events & Programs
(ABC Concierge, Supports - Events & Programs, SAM, Data Management)

Sabrina Delgado
Executive Assistant
(Receptionist, Supports - CEO, Government and Regulatory Affairs, Operations, ABC, Events & Programs)

HOME OWNERSHIP SURVEY

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with 30-year fixed-rate mortgages, and 69 percent were aware of heavily advertised reverse mortgages. But respondents were less familiar with FHA loans (64 percent), VA loans (57 percent), and especially renovation loans (17 percent).

Wells Fargo Home Mortgage devotes a great deal of time, energy, and resources to homebuyer education workshops, Adams notes, whether through Home Mortgage Consultants, in partnership with builders, or through homebuyer education programs in areas impacted by the financial crisis.

In "Five great resources for first-time buyers," below, we discuss some of the ways builders can team up with Wells Fargo Home Mortgage to educate potential buyers and help first-time buyers prepare for homeownership. Those efforts can help overcome what respondents identified as the two most common barriers to purchasing a home: finding a property they can afford (25 percent) and lack of funds for a down payment (24 percent). With adequate awareness of loan programs that reduce those requirements, potential buyers may find they're more ready than they realized to purchase one of your new homes.

NEW GUIDANCE RULES

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off-site and the on-site area of concern and (4) demonstrate that there is no contribution or exacerbation from any on-site AOC. If investigations during the course of remediation lead to the discovery of contamination off-site that is not related to the contamination on-site, the guidance reaffirms current regulations and policy requiring "hotline" notification to NJDEP. The guidance leaves unscathed reporting requirements relating to immediate environmental concerns.

Significantly, parties evaluating contamination which may, even arguably, emanate from an off-site source cannot ignore the NJDEP's suggested practices. In the course of due diligence, undertaking preliminary assessments and securing "innocent purchaser" status will become even more important in the wake of NJDEP's new directives. Adherence to the new guidance could literally be the difference between inclusion, or exclusion of new contamination, and new costs and delays, in the process of obtaining final remediation approvals. Responsible parties should also consider "technical consultations" with NJDEP early to maximize opportunities to efficiently eliminate disputes between "on-site" and "off-site" liability.

If you have questions concerning the new guidance document you can contact Marc D. Policastro at mpolicastro@ghclaw.com, or via phone at 732-224-6507.

APPLICATION OF "CREDITS"

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to the redevelopment, as well as the additional burden placed on the utility by the redevelopment compared to the previous development. This will ensure that the construction and financing costs of a utility system's capital improvements are borne reasonably equally by all users, including redevelopers.

BUILDING INSURED?

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all insurance policies that insure real property include replacement cost riders. The replacement cost rider agrees to provide insurance proceeds to replace 'new for old' with materials of 'like kind and quality'. But the insurer's obligation to pay replacement cost dollars is contingent upon rebuilding the structure at the location described in the policy. Suppose you don't want to rebuild the building at that location. You would like to rebuild somewhere else. The insurance company says that's okay, but they no longer have the obligation to provide replacement cost funding. Rather, the replacement cost clause states the insurer only needs to offer 'actual cash value' which means the claim payment will take into account depreciation. For older structures, the depreciation factor could reduce the claim payout by as much as 50% of the amount insured.

Carefully consider the cost to rebuild real property. Insurance company statistics show almost 70% of all buildings in the U.S. are underinsured by 28%. Don't be one of them.

ENERGY SUBCODE UPDATE

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- The impact of the HERS compliance path (predicted to provide an additional savings of 15 to 20% compared to the prescriptive path) on the NJ ENERGY STAR Homes compliance path was not addressed in the proposal.

As you can see, this is not your father's energy code. The new code will require increased builder's attention to proper installation of insulation and HVAC distribution systems. Consultation with an experienced energy design engineer, or certified HERS Rater, in the early stages of design and purchasing will assure that compliance and better home performance are achieved.

MORRISTOWN V. GRANT

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contribution claims, and reasoned that the Legislature's acquiescence to this understanding lends further support to the Court's decision.

In an uncommon turn of events, environmentalists also laud the decision because it eliminates any benefit that responsible parties could glean from refusing to conduct the remediation. Since responsible parties can no longer avoid liability by waiting for the statute of limitations to expire, such parties may want to take an active role in the remediation to ensure that costs are minimized. Environmentalists are encouraged that this will lead to more, and faster, remediations.

PROPERTY TAX ASSESSMENTS

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productive to resolution of assessment appeals. Currently, appraisals are not mandated within such a compressed time frame in property tax appeals. Also, a majority of cases are resolved without appraisals, yet this bill would require an appraisal for most matters in the Tax Court and also create an artificial and compressed deadline (90-days) for appraisal preparation, especially in light of the fact that most tax appeals are already filed within a compressed time period (by April 1 of each year). Thus, all required appraisals would be due during the same time frame, and negatively affecting the workload of appraisers by not affording them an opportunity to review all discovery obtained during the appeal to prepare a comprehensive report. Further, this measure would unnecessarily increase litigation costs to municipalities and taxpayers and possibly outweigh any tax savings, thereby having a chilling effect on the likelihood of future tax appeals as well as settlements.

NEW ACCOUNTING FOR REVENUE

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Some engineering and design entities may have revenue streams that contain variable elements, such as incentive payments, awards or penalties. For example, a $500,000 contract may contain a $40,000 penalty if the work is not completed before a specified date. The penalty is considered variable consideration under ASU 2014-09. The new standard requires variable consideration to be estimated as part of the transaction price (Step 3, below) as long as it is probable that a significant revenue reversal will not occur (referred to as a constraint). ASU 2014-09 provides guidance on how to estimate this. Any estimated variable consideration not subject to the constraint is next evaluated for the timing of recognition (Step 5, below). Generally, the revenue will be recognized as the related performance obligation is satisfied, subject to the constraint. Applying this to our example, the entity will assess, based upon prior experience, whether it is probable that the penalty will be incurred (not subject to a significant revenue reversal). ASU 2014-09 discusses factors to consider in this assessment, such as the entity's history of performance, its ability to influence timely completion, and when the uncertainty will be resolved.

Given the swing from a risks-and-rewards approach to an emphasis on change in control, it is possible that engineering and design entities may recognize certain variable revenue streams sooner than they are today.

What should we be doing now? Later?

Companies are concerned about how much internal effort, external help and time they need to address implementation questions. Therefore, we recommend the following:

1. Develop a broad understanding of ASU 2014-09 (now).
2. Perform a deeper dive. Identify and evaluate the functional areas that ASU 2014-09 will change (accounting, finance, technology, legal, tax, financial covenants or internal controls). Specifically, select a few representative customer contracts or arrangements, and evaluate them using the new revenue model to identify differences. Evaluate each core service line separately (now).
3. Monitor industry-specific transition resources (now and ongoing).
4. Select a transition method, and plan for how you will retrospectively adopt ASU 2014-09 (now).
5. Establish an implementation plan, including a timeline, educational sessions, third-party resources needed and possibly a transition committee to oversee conversion (later).
6. Educate financial statement users and stakeholders about the changes ASU 2014-09 will have on your financial statements (later).

What resources are available to help us?

Start the conversation with your accountants now. For more information go to:

A broad discussion of ASU 2014-09 can be found at: http://www.aicpa.org/interestareas/frc/accountingfinancialreporting/revenuerecognition/downloadabledocuments/frc_brief_revenue_recognition.pdf

A resource for understanding and implementing the new revenue recognition guidance: http://www.aicpa.org/INTERESTAREAS/FRC/ ACCOUNTINGFINANCIAL REPORTING/REVENUERECOGNITION/Pages/RevenueRecognition.aspx

DISASTER 101

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management of windblown rain or flooding.

- Insurance coverage: Review and assess your insurance policies to ensure you have adequate coverage. Consider each property's unique needs and adjust your plans accordingly.

Planning for a Prepared Future

As a developer in a post-Sandy world, we must become more conscious of development locations from an engineering and scientific modeling standpoint, especially as it relates to how we manage flood waters that may threaten our properties. Our company, like many others, is being proactive by building our properties higher or further above the flood elevation limits than the existing codes and regulations require.

Builders' perspectives have changed, as well – no one expects to avoid damage completely during a natural disaster or unexpected event. We understand that environmental factors and emergency situations occur, but we can employ design and construction techniques to help minimize their damaging effects on our properties.

In a post-Sandy world, you can prepare for unexpected disasters by taking the following precautions:

- Review your company's emergency protocols.
- Analyze your plan and identify any gaps.
- Discuss emergency preparedness with others.

Promoting the importance of emergency preparedness will result in a community at large that is better-equipped to handle disasters – weather-related or not.