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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.
A MESSAGE FROM PRESIDENT JOHN KIRKENIR

Dear NJBA Members,

In a previous Dimensions article, I outlined my three-point plan for the Association - a focus on engagement, efficiency and education. I am pleased to report that we have made strides in all three areas and I look forward to building on the momentum we have generated.

On the engagement front, NJBA members have been intricately involved in helping the Association on committees and task forces, and additionally with relaying information from the field to NJBA. Members recently expressed concern that building inspection delays were becoming a major impediment to building and that part of the issue was the lack of adequate funding at certain code enforcement agencies due to improper municipal budgeting.

In response, NJBA met with the Department of Community Affairs (DCA) to discuss the issue. As a result of our meeting, DCA recently issued a finance notice to all municipalities and counties operating code enforcement agencies reminding them of statutory limitations on the use of building department revenue.

Several members also rose to the occasion this month in organizing a spectacular event, the Summer-Send Off, to benefit the Builders Political Action Committee (BPAC). This event was a major success raising significant funds for BPAC. I’d like to thank Carl Goldberg as PAC Chair and Debra Tantleff as Event Chair for all their efforts in organizing this event. In addition, I thank the other Host Committee Members Georgette Kyriacou and Joseph Riggs. A special thank you to Ralph Zucker of Somerset Development and Platinum Sponsor Anthony Rocco of Toll Brothers for partnering and hosting us at their visionary development project at Bell Works in Holmdel. I also want to recognize K. Hovnanian for their significant contribution as a Diamond Sponsor of the event. The importance of an engaged membership and BPAC will be paramount over the coming months as we enter a critical election where all 120 seats in the NJ Legislature and Governorship are up for grabs. I encourage everyone to vote in this extremely important election on November 7th.

Following the election, the Legislature will enter the Lame Duck session, one of the most unpredictable periods for the NJ Legislature. NJBA will need to be particularly vigilant in supporting pro housing initiatives and fighting back any misguided proposals that would impact our ability to provide housing for the residents of NJ.

On January 16th, either Democratic Candidate Ambassador Phil Murphy or Republican Candidate Lt. Governor Kim Guadagno will be sworn into office as the 56th Governor of NJ. Regardless of who wins the governorship, NJBA is working diligently with our members and coalition partners to prepare for the new administration as policies, procedures, and personnel will be changing in Trenton.

On July 27th, we made a major stride in the goal to increase efficiency by relocating and downsizing NJBA’s headquarters to Sharbell’s Town Center development at One Washington Blvd., Suite 5, Robbinsville, NJ 08691. This relocation will substantially reduce costs associated with NJBA’s lease at American Metro Center. On behalf of NJBA, I would like to thank NJBA Vice President Tom Troy and NJBA Builder Vice President Josh Mann, Esq. for working with me on the task force charged with finding the Association a new home. Further, thank you to Tom Troy and Sharbell for taking on the role as NJBA’s new landlord. Please keep an eye out for an invitation to our “Open House” in October.

To further increase efficiency, NJBA has reworked numerous policies that will allow both staff and members to do more with less. For example, in June, NJBA’s Board of Directors authorized the reduction of the number of requisite Board meetings from four to three per year. Additionally, NJBA committees have shifted to meeting on an as-needed basis. NJBA will continue to pursue other means of increasing internal efficiencies.

On education, I am pleased that NJBA has been diligently updating our Builder Members on remediation procedures for those affected by the problematic Weyerhaeuser TJI Joists. In working with the DCA and affected members, we have been able to quickly release

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DIMENSIONS

STATUS OF MOUNT LAUREL DJ CASES: A NEW CHAPTER IS BEGINNING

By: Thomas F. Carroll, III, Esq.

Two and one-half years ago, the New Jersey Supreme Court issued its opinion, commonly known as Mount Laurel IV, taking Mount Laurel compliance out of the hands of the Council on Affordable Housing (COAH), and instructing that the trial courts should now adjudicate such exclusionary zoning issues through the filing of declaratory judgment (DJ) cases. While the passage of time is generally troubling for those advancing the production of affordable housing, there is a silver lining for builders – in those cases that are still active, builders can still seek to participate in them, seeking favorable rezonings. This article summarizes where things stand.

The Mercer County Fair Share Trial

Between January and June of this year, the Mercer County Assignment Judge, the Hon. Mary C. Jacobson, A.J.S.C., presided over a trial of statewide significance concerning municipal fair share obligations. That trial consumed some 46 days of trial testimony. The parties to the trial included the NJBA, various individual builders, the Fair Share Housing Center (FSHC), and municipalities. Testimony was presented by the fair share numbers experts produced by the various interest groups, and the “numbers master” appointed by Judge Jacobson, Richard Reading, sat through the entire trial, toward the end of which Mr. Reading issued his report and recommended fair share numbers.

The parties to the Mercer County cases, as well as others throughout the State, are awaiting Judge Jacobson’s opinion, which is expected shortly. That opinion will address all fair share numbers issues, including fair share obligations for the “gap years” (1999-2015), and for the period of 2015 through 2025. Although the opinion will technically be binding only in Mercer County, trial court judges in the other counties are also awaiting the decision, and it is envisioned that the decision will carry considerable weight with all judges as the DJ cases get adjudicated throughout the State.

Status of Cases in the Various Counties

The cases in the various counties have been handled in different ways. However, it is fair to say that most judges throughout the State are awaiting Judge Jacobson’s opinion before making any renewed effort to move the cases in their counties. In Essex County, for example, the judge handling the Essex cases has expressly rescheduled case conferences for that reason. While some judges in other counties have not expressly said so, it is clear that they are keeping their cases on hold until Judge Jacobson’s opinion is released. Some judges are starting to schedule things in anticipation of the release of that decision.

In Atlantic County, the judge handling DJ cases arising in that county has released a report from Richard Reading formally recommending fair share numbers in the following counties: Atlantic, Cape May, Salem and Cumberland. Case management conferences throughout the State are being scheduled, and more should be scheduled shortly.

The South Brunswick Case and Judge Wolfson’s Opinions

All Middlesex County cases were settled, except for the case involving South Brunswick. In that case a fair share methodology trial was held, with Judge Wolfson accepting the fair share numbers proposed by the FSHC and its expert (with the exception of the “filtering” calculations). Many months after Judge Wolfson released that opinion, along with other significant court orders, South Brunswick Township filed a motion in the trial court to vacate those rulings, with the Township arguing that Judge Wolfson was biased. The trial court denied that motion, and the Township then filed a motion with the Appellate Division seeking leave to appeal that trial court decision. As of this writing, the Appellate Division has not yet decided whether it will hear that appeal.

Settlements

Over 100 of the 300+ filed DJ cases have been settled, or are in the process of settling. The settlements are typically reached with the FSHC and often individual builders as well.

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CHANGES COMING TO DEP LAND USE PERMITTING PROGRAMS

By: Steve M. Dalton, Esq.

The New Jersey Department of Environmental Protection (DEP) recently proposed amendments to rules applicable to its Division of Land Use Regulation permitting programs. The rule proposal was published July 17, 2017 and the public comment period expires September 15, 2017. The New Jersey Builders Association submitted comments to DEP regarding several provisions of the proposed amendments. Builders, developers and land owners should consult with their environmental professionals to assess what impact the proposed rule changes may have on planned development.

The bulk of the proposal relates to DEP’s Coastal permitting program. The proposal follows DEP’s earlier July 2015 amendments that consolidated the procedural Coastal Permit Program Rules and the substantive Coastal Zone Management rules into one comprehensive set of regulations applicable to coastal development. The 2015 amendments focused primarily on procedural provisions of the Coastal rules. The current proposal addresses substantive provisions of the rules, though the scope of the proposal is fairly limited. In addition to the proposed amendments to the Coastal Rules, amendments to certain provisions of the Freshwater Wetland and Flood Hazard rules are also proposed.

Of note, DEP acknowledges that water-dependent use may not be feasible at certain Filled Water’s Edge sites. The Filled Water’s Edge Rule is proposed to be amended to allow applicants to demonstrate that water dependent use is not feasible enabling DEP to authorize non-water dependent development. Feasibility factors include the length of waterfront on the site; corresponding area of upland to support water dependent use; the presence of special areas between the upland and navigable water that may preclude approval of a water dependent development; compatibility of surrounding development; the existence of contamination that may prevent implementation of a water-dependent use; and factually-specific conditions unique to the property that may result in peculiar or exceptional practical difficulties in development of water-dependent use. The rule summary clarifies that the feasibility criteria set forth in new subsection N.J.A.C. 7:7-9.23(e) are meant to apply to development or redevelopment where there is not already an existing water dependent use. If there is an existing water dependent use, development with a non-water dependent use will not be permitted.

Limitations in the existing rule related to the size of Filled Water’s Edge sites are also proposed to be relaxed. N.J.A.C. 7:7-9.23(d)3 currently provides that larger sites of 10 acres or more may be developed with a mix of water-dependent and water oriented uses with other development. DEP is amending this rule so that it applies to any Filled Water’s Edge site not just “large” sites, recognizing that size is just one factor in determining whether a mix of uses is appropriate for a site. Applicants will need to demonstrate that the non-water related uses do not adversely affect access to or use of the waterfront portion of the site for water dependent use.

The Scenic Resources and High-Rise Structures rules will be combined into a single rule. High-rise structures will continue to be more strictly regulated, and DEP has stated that the amendments are being made in recognition that some standards in the current rules are applied across the board in a one-size-fits-all approach, which is not appropriate in all circumstances. However, some provisions currently only applicable to high-rise structures, such as the requirement that development be in character with surrounding development heights and residential densities or be in character with municipal comprehensive development patterns, will be made applicable to non-high-rise structures if the rule proposal is adopted. Thus, an enhanced justification and analysis will be required to demonstrate compliance with the rule in the context of non-high-rise structures.

New subsection 16.10(c)3 will include standards applicable solely to high-rise structures. High-rise structures will be encouraged in areas that already have such structures or other intense development. The rule will require that high-rise structures be set back by one public road or at 50 feet from

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FOOD TRUCKS – MORE THAN JUST A DESIGNATED PARKING SPACE

By: Matthew Robinson, Principal

Food trucks have been an exciting new trend over the past few years and have grown from the construction site grease truck to the fantastic gourmet offerings from “mobile restaurants” like Nomad Pizza out of Princeton and Nettuno based in Bayhead and Asbury Park. While many of us have enjoyed offerings from this booming segment of the food industry without thinking much about the logistics of these businesses, their success is starting to drive changes in how we design projects to enhance the food truck experience beyond simply grabbing a sandwich from a truck parked on the side of the road.

For example, for the past few years Asbury Park has hosted a dedicated food truck park “North Eats” at the north end of their boardwalk. The park provides a dedicated location for vendors to serve patrons who know that whenever they are enjoying a day at the beach they can grab a nice casual bite conveniently located steps from their beach umbrella.

MidAtlantic Principals Matthew Robinson & Louis Zuegner have been actively working in the City of Harrison’s Waterfront Redevelopment District for more than 12 years resulting in approvals for almost 2,000 apartment units and 45,000+ SF of retail space with more to come! The urban redevelopment area includes multiple mixed-use apartment buildings anchored by the Red Bull Stadium home of the New York Red Bull soccer team and host to many other stadium events.

MidAtlantic recently teamed with Heyer, Gruel & Associates and was tasked with designing a new public waterfront park along the Passaic River in Harrison across from the City of Newark and obtained $4.8M in grant funding for the project. When the opportunity arose to design the new park adjacent to both the stadium and mixed-use residences, MidAtlantic was excited about the many interesting options for amenities beyond the obvious tie in of soccer fields, jogging trails & kayak launch, etc.

The team immediately started to consider incorporating food trucks into the design as they would be a great feature both during stadium events as well as an added amenity for the many residents who live nearby and will enjoy utilizing the park.

Initially this seemed like an easy endeavor, perhaps put up a few signs and some designated parking and call it a day. However, the “food truck” has come a long way and these spaces should be thought of as intermittent / mobile outdoor restaurant space and more than just a parking lot. Upon deeper reflection and some online research, a food truck park can and should be so much more. Questions were raised, for example, should we provide oversized parking for the trucks, should it be along the street or incorporated into the park, should we have seating, what about shade structures and lighting… the list goes on and on.

In the end, all of these factors are important considerations in providing for a vibrant food truck park, specifically:

- Trucks are generally oversized and so adequately over-sized parking is important
- Trucks should be able to come and go independently and so access to pull in/out without waiting on other vendors to leave is preferred
- Direct access to pedestrian routes is critical (with appropriate safety controls)
- Close proximity to a seating / picnic area is preferred
- Shade structures & attractive landscape features provide a more comfortable environment
- Lighting, both standard light poles and more decorative string lighting add to the atmosphere
- Adequate and appropriately placed trash cans are required
- All areas where trucks may travel (i.e. sidewalks) must be designed to handle the increased loads

Every food truck park will be unique but these key design attributes should be considered along with factors like; should the township require permits and how much should they charge, are additional costs triggered such as increased insurance premiums, trash

About the Author:
We are a full service consulting firm operating in NJ, PA, DE, & NY to provide Civil Engineering, Environmental Engineering, Survey / Stakeout, & Marine Engineering / Diving services to both the home building industry & beyond. Our staff are focused on providing the high level of service and response required to get our clients’ projects to the finish line as quickly as possible.

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A NATIONAL MANUFACTURERS’ ARCHITECTURAL REPRESENTATIVE CAN SAVE YOU TIME AND MONEY
By: Michael S. Kornegay

Developers/Builders should always look to have their design team seek input from a national manufacturers’ architectural representative early in the design process. Getting a national manufacturers technical expert involved early will help ensure your project is delivered on time, under budget, without sacrificing your design intent.

When looking to source products, how many times have you heard, “you cannot get that product in a particular size or color” or if it is unavailable, “it will be a special order for an extra charge with an extended lead-time”. How often have you found yourself in situations where the installation contractor is blaming the manufacturer and the manufacturer is accusing the installer? These situations leave you the builder/developer or your client caught in the middle. Getting an architectural representative from a national manufacturer involved early in the process will help eliminate or minimize this situation.

None of us are as smart as we are collectively. No matter how experienced or gifted your design team is, they cannot possibly know everything about every product being installed in your building. An architectural representative is an expert within his or her industry and more than likely they have seen nearly every condition your design team will face. In fact, the architectural representative position exists to provide this type of support to the industry and in most cases they will provide this service for free. Of course they are hoping that you will specify their product, however the true professional architectural representative understands that they have an obligation to help your team meet your budget as well.

A good architectural representative will supply information that is brand neutral to ensure your team has maximum flexibility in selecting the manufacturer(s) they wish to use ensuring your project is competitively priced.

So when should you get a manufacturers architectural rep involved? Let me state emphatically there is no such thing as getting the architectural rep involved too early. If you have just a sketch on a napkin, get the manufacturers’ architectural representative involved, all that’s needed is some basic information; the approximate height of the building, the buildings location, its proposed use and a very general elevation view. The manufacturers’ architectural rep can then begin to dig in his or her files to provide examples of details used on similar buildings. This upfront work will save you time and money. You should consider your manufacturers architectural representative as a member of your design team, who you don’t have to pay, however is tasked to handle all aspects of design for his/her particular area. Architectural representatives know the market pricing for their products, so in addition to specifications they can also provide accurate budgets.

Although they are not code officials, a manufacturing architectural representative has a good understanding with regards to codes pertaining to their product lines and they have many resources that can provide more in-depth design analysis for your building. Manufacturers’ architectural representatives’ can provide standard CAD drawings, which can save your team drafting time. These CAD drawings can easily be modified and will show how products should be properly integrated with adjacent materials to best meet your architects design requirements.

Manufacturers’ architectural representatives can provide product testing support that is recognized by most local code bodies. These tests could cost as much as several thousand dollars. This is one reason why when your team is looking to select a manufacturer, only national manufacturers should be considered. Most national manufacturers have been in business long enough and have compiled an extensive library of product tests that are recognized by most testing agencies or code bodies. They will also have the relationships and resources to conduct any additional required tests. The architectural representative has resources to help in the selection of companies for field testing. If you Google companies that perform field testing you will find quite a listing. Many of these companies may not be certified. Manufacturers architectural representatives can provide testing companies which are recognized by most testing/code bodies. In addition, the manufacturers’ architectural representative can also provide the pertinent specification and

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GET YOUR HEAD OUT OF THE SAND

By: Cathy Coloff

Many people believe that ostriches put their head in the sand to hide from danger. The reality is that they are using their beaks to turn their eggs in the nest they’ve dug in the ground. So, they aren’t hiding, they are protecting their valuable eggs.

Are you hiding from the security dangers that prey on your business computer network? At IT Radix, when we identify security risks, quite often there is always a reason why they aren’t addressed from “It’s not in our budget,” to “It’s not a priority” to “It won’t happen to us.” Sadly, we’ve seen this approach backfire too many times. What are the biggest security risks facing businesses today?

Careless or Uninformed Employees

We can’t say it enough. Train your employees on cybersecurity best practices and offer ongoing support. Employee awareness is a major part of the problem. In 2015, 72% of breaches originated from within the extended organization (includes contractors and former employees). A CITI report recently found that less than 35% of employees felt it was their responsibility to keep company data safe. It is critical to drive home internal data security as a core business objective. There are many options on how to do this including Security Awareness and Training programs like the ones that IT Radix offers. Our recommendation... get started on developing good data protection habits within your organization today.

Make sure employees use passwords on all devices. Make sure they are strong and changed regularly—just like those ostrich parents rotating their eggs in the nest. We can assist with a password management system to help automate the process and reduce the need for your staff to remember multiple passwords.

Mobile Devices

The rapid rise of Bring Your Own Device (BYOD) has not only brought convenience and cost-savings but also introduced a host of security concerns. Over two thirds of global organizations have been affected by mobile security breaches. Have a carefully spelled out BYOD policy. Consider how you share data and allow access to data and email. Here again, education and password policies can help reduce your risk. Consider adding mobile device monitoring to help quickly pinpoint exposures if mobile devices are lost or stolen.

Cloud Applications

Carefully evaluate the cloud solutions you are using in your business. This includes applications such as file sharing and social media apps. Develop some security guidelines and policies around the use of cloud applications within your business especially as more and more line-of-business applications are being converted to cloud applications. Review the access rights and permissions not only of your staff but also of the cloud application provider. Many cloud applications are now supporting encryption at the data level to help provide even greater protection.

Unpatched Devices or Devices That Cannot be Patched

Most businesses know that they need to patch their end-user machines (even if they don’t have processes in place to ensure it’s happening). However, just like the misunderstood ostrich, many forget network devices such as routers and printers also need to be updated and patched. In July 2015, Microsoft stopped updating Windows 2003 servers. There are still millions of these servers in use. The list of unsupported technology doesn’t stop there. Are you still using outdated tech?

By providing security awareness education, being knowledgeable about security threats, and being transparent at all levels about the consequences of a data breach, you can get your head out of the sand and protect your valuable data head on.

About the Author:
Cathy Coloff is a Managing Member with IT Radix. Recognized as one of the 2015 Top 25 Leading Women Entrepreneurs in NJ, Cathy has 25+ years of experience in network systems. With extensive corporate experience at Exxon and Bear Stearns, Cathy works with IT Radix clients to develop their IT best practices without the big corporate price. She can be contacted at 973-298-6908 or itsales@it-radix.com.
THINK YOU WON’T QUALIFY FOR A MORTGAGE? DON’T GIVE UP TOO EASILY

By: Kenneth R. Harney

NJBA Members - please see the following article by Ken Harney, Executive Director of the National Real Estate Development Center. This article is an excellent look at how financing for first-time buyers and others depends on more than just your FICO score. - Michael Borodinsky

So what does it take to get approved for a mortgage to buy a house or condominium this year, whether you’re a first-timer, planning to move up or downsize? Maybe not all that you think.

For most people, the key requirement is that you’ve got the right package of stuff — acceptable credit score, down payment, financial reserves, debt-to-income ratio — to get an acceptable grade from the automated underwriting systems or “black boxes” installed at the dominant investors in the market, Fannie Mae and Freddie Mac.

Though the intricate webs of algorithms and big data spun inside Fannie’s and Freddie’s black boxes are kept under tight security, we do get monthly read-outs on some of the characteristics of loans they’re approving.

For example, in June the average FICO credit score for home purchase loans at Fannie and Freddie was 754. That’s a big reach for millions of would-be buyers. It’s well above the national average FICO score of 700 and considerably higher than what was typical during much of the previous two decades. (FICO scores range from 300 to 850, with higher scores indicating lower risk of default.)

But that’s not the whole picture. According to data newly compiled by Ellie Mae, a mortgage origination software and analytics firm that tracks loan characteristics, substantial percentages of applications are receiving approvals from Fannie and Freddie with lower FICO scores than you might imagine. Nearly 13 percent of their approved loans in June had scores between 650 and 699. Scores like these are typical of consumers who have moderate dings in their national credit bureau files or are recovering from credit woes suffered during the Great recession but are now bouncing back. Another 4.3 percent of loans approved had even lower FICOs, ranging from the low 500s to 649.

Mortgages backed by the Federal Housing Administration (FHA) closed in June spanned an even broader range of scores. FHA’s average score for home purchase loans was 683, but more than one out of four (26 percent) of its borrowers had scores from 550 to 649. Just under 2 percent had scores below 500.

Mortgages approved by Fannie and Freddie during June was 39 percent. FHA, which tends to be more forgiving on debt matters, had average DTIs in June of 43 percent. But Fannie, Freddie and FHA recognize that even solid, creditworthy applicants can be carrying high debt loads in the current economy, and they are open to higher DTIs than the monthly statistics suggest. In an important policy change taking effect this month, Fannie raised its permissible maximum DTI to 50 percent. A study released recently by the Urban Institute predicts that this change alone could open the mortgage door to 95,000 additional home buyers. That’s potentially a big splash.

Freddie Mac has had flexibility on DTIs built into its underwriting system for years and also can go to 50 percent, ideally for borrowers with compensating factors such as a higher down payment or high bank reserves. FHA is by far the most liberal of the three on DTI, funding loans with total debt loads in excess of 50 percent. Debt-to-income (DTI) ratios are another major factor hard-wired into the black boxes — and can be deal-breakers in mortgage applications that otherwise look pretty good. DTI refers to the ratio of your monthly credit-related expenses — including current rent, mortgage payments, credit cards, student loans and the like — compared with your monthly gross income. If you have $6,000 in income and $2,500 in total debt payments, your DTI is 42 percent.

Fannie’s and Freddie’s average DTIs look strict, but there’s actually more wiggle room for mortgage applicants this summer than any time in recent years. The average DTI for Fannie and Freddie during June was 39 percent. FHA, which tends to be more forgiving on debt matters, had average DTIs in June of 43 percent. But Fannie, Freddie and FHA recognize that even solid, creditworthy applicants can be carrying high debt loads in the current economy, and they are open to higher DTIs than the monthly statistics suggest. In an important policy change taking effect this month, Fannie raised its permissible maximum DTI to 50 percent. A study released recently by the Urban Institute predicts that this change alone could open the mortgage door to 95,000 additional home buyers. That’s potentially a big splash.

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THE TRAJECTORY IN NEW JERSEY’S WATER SUPPLY PLANNING: 1996 - 2017

By: Joseph J. Hochreiter, Jr., CGWP

In a state that receives 46-inches of precipitation annually (www.usclimatedata.com/climate/new-jersey/united-states/3200), it is interesting that we occasionally battle for access to sufficient potable water needed to support new construction. In New Jersey, the Department of Environmental Protection (NJDEP) is responsible under the Water Supply Management Act (N.J.S.A. 58:1A-1, PL. 1981, c.262, and as amended in 2007) to ensure, among other things, that proper scientific planning is performed to ensure the availability of a reliable supply of potable water to meet both current and anticipated future demand.

Some may recall that in September 2002, statewide drought (below-normal rainfall) conditions prompted then-Governor James E. McGreevey to issue Executive Order 32 (reiterated by the NJDEP’s Administrative Order 2002-22), which prohibited water purveyors from selling water for use in new construction in three specific municipalities in Atlantic County, which also happened to comprise Atlantic County’s designated Pinelands Regional Growth Area. On behalf of The Builders League of South Jersey (BLSJ), a NJBA affiliate, Bob Washburn sued both the Governor and the NJDEP Commissioner over the appropriateness of these orders (wherein I served as the technical expert for the litigation). These orders caused understandable hardship in the building community, and when these orders were eventually reversed, the NJDEP was required to develop a comprehensive water supply plan for southeastern NJ, to be initiated by the NJDEP “in the very near future”.

While a brief compilation report was produced a year later by NJDEP, it offered no new science to support water supply planning. In fact, the 1996 Statewide Water Supply Plan, which was supposed to be updated every 5-years or so, had not yet been revised by 2003. In reality, it took the state an additional 14 years to produce a draft revision to that 1996 plan. Fortunately, as I testified at Stockton University in July at a public hearing for this new plan (http://www.pressofatlanticcity.com/dep-seeks-advice-on-statewide-water-supply-plan/article_e588a114-522f-540d-9a91-3dc4cf672db.html), once adopted in the Fall we will finally have a scientifically credible blueprint – for all to see – guiding the sustainable development of water to meet New Jersey’s needs.

Following the 2002 litigation with the State, and with occasional supplemental grant support from the NAHB, SEC has worked with BLSJ/NJBA to provide specialized hydrologic support for:

- Review and oversight of the Pinelands Commission’s 2003–2013 Kirkwood-Cohansey Aquifer Study, intended to ‘assess and prepare a report on the key hydrologic and ecological information needed to determine how the current and future water supply needs within the Pinelands Area may be met while protecting the Kirkwood-Cohansey Aquifer System and avoiding any adverse ecological impact on the Pinelands Area’ (authorized by NJ Public Law 2001, Chapter 165). Our efforts, represented by both written and oral testimony on all aspects of this study (from work plan through to final reports), assisted the technical staff at the Commission in developing realistic and defensible conclusions from this study; and

- Participation during 2008-2011, initially as a Water Supply Advisory Council (WSAC) observer and eventually as a formal member of the Public Advisory Council, in the creation of a draft Water Supply Master Plan. That draft plan was intended to update the obsolete 1996 plan, and while it represented a significant improvement in the application of water-supply science, we found the plan to be deficient in a number of areas. We continued to work with the WSAC members and with NJDEP personnel after the shelving of that 2011 draft, such that most of our comments and concerns were properly addressed in the final draft plan (July 2017) referenced above.

Today, our membership can be proud of the advocacy that the Association has brought to the conclusion of these two regulatory-driven projects. Regarding the Pinelands Commission Study, while we await any policy recommendations that the Commissioners may consider adopting, we’ve been able to work with the science staff at the Commission to reach a better understanding of the outputs of that study, including recognition of what could not be credibly accomplished based on their 2003 study workplan.

With the NJDEP’s 2017 draft Water Supply Plan having addressed most

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About the Author:
With over 40 years of experience, including the U.S. Geological Survey (Hydrologist, Water Resources Division) and prior experience as Principal Scientist at two leading environmental consulting firms (ERM and BBL), Mr. Hochreiter has directed the design, management, and technical oversight of a number of regional aquifer studies, significant site assessments, environmental remediation, and brownfields redevelopment projects in the eastern United States. He has been a Certified Ground Water Professional by the National Ground Water Association since 1988. Authoring over 40 citations in the scientific literature, he served on the editorial board of the scientific journal Ground Water from 1988 - 1991. For the past 12 years he’s been Principal Scientist of his own consulting firm, Senior Environmental Consulting, LLC [SEC, see www.seniorenvironmental.com] and can be reached at 215-493-0343 or hochreiter.sec@gmail.com
START SPREADING THE NEWS: LET PRESS RELEASES TELL THE STORY OF YOUR COMMUNITY

By: Randy Kershner

Over the years at Pace, we’ve used just about every imaginable tool in the never-ending quest to get results and drive traffic for our many builder clients. One of the most consistently successful tactics has been to develop a robust press release campaign for a new-home community.

Press releases are often an underused and undervalued tool in a homebuilder’s marketing kit. But with the right strategy and a commitment to a campaign of consistently distributed releases, builders can reap valuable exposure and traffic for their communities. Press releases are a great way to tell the story of your community in an unfolding way— but it’s not always easy coming up with topics for an ongoing campaign. So we thought we’d share some specific topic recommendations here—think of these as potential chapters in the story of your community—along with some key insights about using press releases.

Press Releases as Part of a Content Strategy

Today, it’s all about “content marketing.” There are so many ways and different places to share created content— and press releases are just one piece of the puzzle. Telling the story of your community should include a content strategy that includes social media, blogging, sponsored content, and other avenues. But there’s still a strong role for the traditional press release: that news-oriented, informative article that’s distributed to a variety of media outlets and contacts. In addition to disseminating news about your project, press releases provide a well of information you can draw from to use in other content marketing efforts. We repurpose every press release we write, to create additional tools for our clients: paid content; blog posts; social media updates, etc.

Keep Telling the Story!

It’s important to be consistent and frequent in distributing your press releases. If you send out one release every few months, it’s probably going to get overlooked, trashed, filed away, or forgotten. You never want to badger a media outlet or contact by sending too many press releases. But one a month, maybe even two a month, is not a bad schedule. Your name (as a builder/developer and the name of the project itself) will regularly be before the eyes of media outlets, including editors and writers. Maybe they won’t have interest the first, second, or third time they get one of your releases. But they will come to recognize the name. They will be aware that something always seems to be happening at that community; that there is constant activity going on; and eventually, they may run your story, use your release as impetus to develop their own story about your project, or choose to include you in one of their features.

Subject Matter

Back to the idea of “what to write about.” The story topics we’re suggesting here are appropriate for traditional press releases, as well as other forms of content marketing. These are essentially the “chapters” of your community’s story. Every chapter may not “fit” or be appropriate for every community, but generally these topics have stood the test of time for new-home projects. They typically prove to be “newsworthy”—or content-worthy—topics to write about. At the very least, they are a good guide for developing your own campaign. You can always add to this list with customized chapters and information specific to your community.

Potential Topics:

- Initial Announcement: Community Introduction
- VIP List Now Forming
- Now Open for Sales
- Community Ground Breaking
- Grand Opening
- Muddy Shoe or Hard-Hat (Under Construction) Tours
- Ribbon-Cutting Ceremony (typically with mayor and/or town officials)
- Home Designs and Pricing Now Available
- Community Features: Latest Home Design Trends
- Lifestyle (focus on community amenities)
- Location (focus on area amenities)
- Model Home Sneak Preview
- Model Home Grand Opening
- Model Home Grand Opening Success
- Clubhouse Grand Opening (if applicable)
- Clubhouse Opening Success (if applicable)
- Homesite Section Release
- Introduction of New Phase
- Testimonials (first homebuyers)
- Community Events (could be multiple stories over time) including special incentives, seasonal promos, Meet the Builder-type events
- XX% Sold Out (success story)
- Final Phase / Final Opportunities
- Grand Close Out

All of these make valuable, credible, and newsworthy topics to consider for your community. One final note about testimonial stories: they are extremely powerful; especially for an active-adult

About the Author:

Founded in 1949 and acquired in 1986 by WPP, the world’s largest communications services group, Pace is a full-service branding and marketing agency with a venerable track record of innovation in developing successful campaigns for residential and commercial real estate clients. Randy Kershner joined Pace in 2006 and today serves as PR Director and Associate Creative Director, responsible for overall messaging for the agency and many of its key clients.
CYBERSECURITY RISK IN CONSTRUCTION BUSINESSES

By: Anupam Goradia, CPA, CISA, CITP

Cybersecurity is a risk that has permeated all businesses and individuals alike. The construction industry has its own set of circumstances that companies need to take into account when dealing with this highly sophisticated peril of globally connected economy.

What makes an attractive target for a cyber-attack is the amount and types of data, not the size of the business. Let’s first take a look at a peculiar scenario of a construction business that would make it attractive to cybercriminals.

1. Construction companies hold sensitive and safety related information

Construction businesses, in addition to having confidential data for its employees, likely have engineering specs and diagrams which are of great value, including utilities, chemical plants, security installments, warehouses etc. There is always a market for such information across the world.

2. Construction projects involve a number of players, hence a cluster of IT systems

The construction industry has one of the most dispersed business environments. A typical construction project involves the general contractor, a number of subcontractors and professionals, such as architects. The IT systems of one of these contractors can be targeted and used to penetrate the systems of another contractor within the project. Simply put, the system is as weak as the most negligent IT system of all the players on the project. The “floating” nature of temporary workers, different businesses all working on a construction site, bring in its own challenges as to how one can ensure the security of the multiple IT systems being used. Security over systems should be viewed in the same light as you think of security over the use of heavy equipment on the job.

3. Increased use of remote connectivity

Job sites are now remotely connected through wireless technology with the general contractor’s offices and the payroll department. Consider the following trends:

a. Camera-mounted unmanned aerial vehicles (UAVs) are increasingly being used to obtain real-time data on job progress, identify potential hazards or quality issues, and help acquire other useful information especially on large, complex projects.

b. On-site data collection occurs for payroll and is transmitted for processing right from the job site.

c. Real-time progress monitoring by architects is increasing the speed of billing and how cash is flowing between all parties involved.

d. Huge technological advances have been made around energy conservation as we aim to lesson our carbon footprint and decrease costs. There is a documented cyber attack regarding Smart Light Bulbs that were connected digitally and not secured. The hacker was able to gain access through the Smart Bulb and make their way to other systems.

e. Several personnel on-site use their own mobile phones to communicate and apps on the phone to conduct business. Mobile phones can also be hacked into and manipulated especially when the owner of that phone does not have a password or an enhanced password to secure it!

All these data collection and channels of transmission are prone to cyber attack which can disrupt the flow of data or make data unavailable at a job site through ransomware attacks. Ransomware attacks can prevent access to company’s information systems.

Imagine being in the middle of a construction project and suddenly the systems are being controlled by an unknown remote computer. This could halt the construction when systems are down as electronic project plans are no longer available on the job site. To regain access to the systems, a required sum of digital money is paid to the criminal. Per the Federal Bureau of Investigation (FBI), ransomware is on pace to be a $1 billion crime this year.

4. Increases in electronic payments

More and more businesses, driven by the convenience offered by banks, are accepting and making electronic payments. “CEO Fraud” or “Phishing Emails” fraudulently send unauthorized information and change beneficiary details for wire transfers. This has siphoned off millions from businesses. Case in point, a Withum construction client’s end client was spoofed into sending a progress payment to a new bank account that was established in the construction company’s name. We suggest that with the movement of money, there be a human touch point in the process.

5. Lack of dedicated IT personnel

Most companies in the construction industry, especially the subcontractors

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MONITORING WELLS – LOST, BUT NOT FORGOTTEN
By: Candace Baker, LSRP

Out of service wells must be decommissioned by a New Jersey licensed driller in accordance with N.J.A.C. 7:9D (Well Construction and Maintenance; Sealing of Abandoned Wells) as administered by NJDEP’s Bureau of Water Allocation and Well Permitting (BWAWP). Until recently, there was no official process for administratively closing out monitoring wells that were not decommissioned according to the BWAWP rules. Individuals could submit information to BWAWP to document the condition of these wells; however, they would forever remain listed as “active” in NJDEP databases.

The June 2017, NJDEP “Guidance for Damaged, Destroyed, or Lost Wells”, provides a path to closure for these wells. The well owner or their agent initiates the process by providing some basic information about the monitoring well to BWAWP in writing. This information includes the well owner’s or responsible party’s contact information, program interest number, location information, well permit number, and construction details. In addition, applicants must submit information about the circumstances leading to the loss of the well or, if a well can’t be found, the efforts taken to locate it. Applicants are encouraged to provide photos, drawings, reports, agency correspondence, and other forms of documentation to support the narrative.

BWAWP will then evaluate the information and provide the applicant with a response letter. If BWAWP determines that further action must be taken to find or decommission the well, instructions for doing so will be provided in the letter. However, if BWA determines that sufficient action has been taken, the letter will serve as closure documentation for the well in lieu of a decommissioning report. It is important to factor this process into your timeline for issuance of final closure documents (RAO). We don’t yet have data on the BWAWP’s turnaround for these reviews.

Proper management may prevent monitoring wells from being lost or damaged in the first place. Accordingly, NJDEP has included recommendations in the guidance for protecting and maintaining wells. Recommendations include using proper well markers, installing barriers against damage, and keeping an accurate well inventory. In our efforts to protect human health and the environment, every LSRP should take steps to properly maintain monitoring wells on the sites that they manage. However, if our best efforts fail, there is now a well-defined way to address it.

About the Author:
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A MESSAGE FROM NJBA PRESIDENT
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pertinent information to builders to help them navigate the remediation process. On September 14th, NJBA held an information exchange with Weyerhaeuser, DCA and affected home builders to help expedite the process of remediating homes. If you have been affected by the problematic TJI Joists, please do not hesitate to contact NJBA for information.

NJBA continues to host educational programs and provide access to affordable continuing educational training for professionals. On October 20th, NJBA will host its next educational program, a Legal “Hot Topics” Seminar, which will examine the latest legal issues affecting land use and development in NJ. I encourage you to visit NJBA.org/events to learn more and register.

In conclusion, I thank our membership for their outstanding efforts in supporting our Association over the first 5 months of my Presidency and I look forward to leading the Association to new heights over the remainder of my term.
collection and lighting costs, who will coordinate with vendors to ensure that the park is actively used on a regular schedule, or just for special events, how will they impact existing restaurant / retail space, etc.

When designing a food truck park, we should also consider what else might utilize this space, i.e. would it be suited to host stalls at a weekly farmers markets or town fair etc. The options are endless but a great design will provide for an interesting, attractive “destination” for residents to utilize in many different ways that will enhance the surrounding community and provide for something that stands out as being just a little different than everywhere else.

**Interventions**

In those active cases that have not yet settled, builders can still seek rezonings as part of the municipalities’ fair share plans. Such builder participation usually comes in the form of intervention in the cases, but it can also be done on a less formal basis, such as seeking “interested party” status or otherwise seeking rezonings through negotiation. Any such efforts should be made quickly, given the likelihood of accelerated handling of the cases after Judge Jacobson’s opinion is released.

It must also be recalled that many towns have not filed DJ actions, and do not enjoy the immunity from builder’s remedy suits that typically accompanies the filing of a DJ case. Builder’s remedy suits can be filed against towns that do not possess such immunity.

**Conclusion**

We are about to see an acceleration of the handling of DJ cases in the wake of Judge Jacobson’s anticipated opinion on fair share numbers. Builders interested in seeking rezonings are well-advised to quickly explore the opportunities presented by those cases.

Once the bidding process is completed, an architectural representative can draw on company resources to ensure your design criteria is met by providing detailed installation shop drawings for your installer. Some manufacturers provide project management services. These are periodic site visits and documentation to ensure the products are being installed as specified. The manufacturers’ architectural representative can advise if their company can provide these services.

In conclusion, for the reasons stated above and many more you can see why it is in your best interest to have your design team engage an architectural representative from a national manufacturers as early in the design process as possible.
coastal waters for both visual and physical access. Subsection 16.10(e) relating to views in the context of development on oceanfront and bay front areas and requiring views to be considered when designing oceanfront or bay front development, will be made applicable to the Northern Waterfront region and Delaware River as well as other development. Only Atlantic City is proposed to be excepted from the rule whereas currently, the Northern Waterfront region and Delaware River region are also excepted.

The Coastal High Hazard rule is proposed to be amended to provide a limited allowance for development in V-Zones, applicable primarily to development in existing densely developed areas such as the Hudson River Waterfront Area and Atlantic City. DEP is also proposing to amendments to its Definitions section of the Rules to replace FIRM with "FEMA flood mapping". The new definition will be made consistent with the Flood Hazard Rules to provide that preliminary or advisory maps will be utilized in place of existing, current FEMA mapping if the advisory or preliminary maps would result in a higher flood elevation.

The incorporated list of CAFRA Section 10 requirements will be amended with respect to public access requirements under the Public Trust Doctrine. In the aftermath of the Hackensack Riverkeeper decision that declared DEP’s public access rules invalid, the Legislature took action to amend CAFRA requiring public access to be addressed in connection with CAFRA coastal applications subject to rules to be adopted by DEP. A separate DEP proposal is pending to amend the public access provisions of the existing rules, which DEP has never recognized as being invalidated given the action taken by the Legislature following Hackensack Riverkeeper. NJBA has consistently taken the position that any action taken by the Legislature or DEP to implement the Public Trust Doctrine and require public access must be consistent with the Public Trust Doctrine as developed and implemented under well-established case law, taking into account private property rights and due process interests protected under both the State and Federal Constitutions. A concern exists that that proposed subsection 1.4(b)8 could be interpreted in a manner that is inconsistent with the Public Trust Doctrine to require on-site or off-site public access to be provided as a mandatory condition in connection with approval of all Coastal applications, regardless of whether public trust interests are implicated, or whether public access is necessary based on the specific factual circumstances involving the property that is the subject of the application. Such an interpretation and application of the rule would contravene the Public Trust Doctrine.

The proposed amendments will also affect permitting involving dune walkovers and trails, paths and footbridges. At grade dune walkovers will continue to be exempt, but permitting will be required for elevated dune walkover structures. DEP is also proposing to update and add to its rules Rationale discussions. The Rationale provisions are sometimes useful in resolving questions of interpretation in the context of factually specific issues.

With respect to the Flood Hazard Rules, the amendments will facilitate certain residential redevelopment in inland fluvial flood hazard areas. Under the current Rules, such sites developed with multi-residence buildings (building serving 3 or more units) must be served by an existing or new roadway elevated one-foot above the applicable flood hazard area design flood elevation. The proposed amendments if adopted will create an exception allowing applicant’s proposing to redevelop a site with multi-residence buildings to demonstrate that it is not feasible to construct an access roadway that meets the elevation requirement. All multi-resident buildings that are not a part of redevelopment must have at least one roadway with a travel surface that is one foot above the flood hazard area design flood elevation. Additionally, whether redevelopment or new development, roadways or parking area serving a multi-residence building in a fluvial flood hazard area cannot be more that 1-foot below the flood hazard area design flood elevation. DEP’s stated justification for having an absolute bar against roadways more than one foot below the DFE is to allow emergency vehicles access to the building.

**START SPREADING THE NEWS**

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Testimonials take more time and effort to develop, but they have proven extremely valuable. Potential buyers can relate to these stories, identifying with the homeowners who are featured, and consequently envisioning themselves living there, too. We have heard story after story from different builders over the years who told us that whenever testimonial stories have run, sales representatives at the community have noticed an increase in traffic. Visitors and new prospects mention that they read the story and sometimes even visit with a copy of the story in hand. Now that’s a successful press release – and a builder’s dream!
who operate locally and regionally, outsource their IT management. While these outsourcing arrangements are good for day to day up-keep of IT services, how does a business owner know whether the services provided cover all required tools to combat a cyber-attack?

What can be done?

Cybersecurity is an ongoing risk and needs to be managed as the threats are changing frequently. There are a number of measures that a construction company can take to mitigate this risk:

1. Create awareness and strengthen the human firewall:

   Educate and train your employees and ask your subcontractors if their employees undergo such training. Educate everyone on how you store information, how to keep it secure through complex passwords to your systems and how to secure the vault of data!

2. Conduct a “cyber drill”

   Just as you have fire drills and safety drills, conduct a “cyber drill”. Have ethical hackers conduct phishing email tests and see which of your subcontractors and employees fall prey. Then use the results of the tests as an educational tool. Also conduct external penetration tests of your systems and devices.

3. Spend money where it is needed

   It’s a never ending game - there is always new malware. As soon as there is a solution out to defeat a particular malware (i.e. malicious program code used by cyber attackers) a new one is created. Hence, managing cybersecurity risk requires continuous awareness and expenses. Perform a risk-based analysis of your systems and identify all critical information and systems. Determine the extent of security and testing required for each of these systems so that there is more focus on most vulnerable systems. If you do not have an in-house IT person, have these discussions with your IT provider.

4. Know where the fire hydrant is!

   Have a written action plan to address an attack in progress or post-attack in place with detailed roles and responsibilities of your team. Companies not only need to invest in resuming their operations and controlling damage to their reputation, they also have legal costs of any lawsuits that may follow.

5. Talk to your insurance broker!

   Talk to your insurers and learn exactly what risk-based scenarios (i.e. events) related to cybersecurity are covered, if any. Many insurance companies have limitations on their general commercial liability coverage and require a specific cyber insurance risk policy to be put in place.

55 percent.

Down payment requirements also are super low at the moment. Fannie and Freddie both have programs that permit just 3 percent down, VA mortgages allow for 100% financing, and FHA’s minimum down is 3.5 percent. And that’s not all. Other programs are emerging that offer even more flexibility to qualifying and forgiveness of past adverse events (bankruptcy, foreclosure, short sale).

Bottom line: Get rid of preconceived notions you may have about how tough it is to get approved. Standards are more flexible and not as tough as you probably thought. At the very least, speak with a mortgage professional.