

DIMENSIONS

Newsletter of the New Jersey Builders Association



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Dimensions newsletter is produced by the New Jersey Builders Association (NJBA). NJBA is a housing industry trade association of builders, developers, remodelers, subcontractors, suppliers, engineers, architects, consultants and other professionals dedicated to meeting the housing needs of all New Jersey residents and facilitating 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 housing market. Additional information is available at www.njba.org.

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

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A MESSAGE FROM PRESIDENT TOM TROY

Dear NJBA Members,



Tom Troy
NJBA President

I am pleased to have this opportunity to address the membership in my first Dimensions article as President of NJBA. My company has been a member

of NJBA since 1987 and during the years since then, it's been a privilege to come to know and work with so many fine men and women who share our passion and commitment for the homebuilding industry.

Over the next year, I will continue to build on Immediate Past President John Kirkenir's three-point plan which focused on engagement, education and efficiency. We also have an aggressive agenda for the association and I will touch on just a few items which are on the immediate horizon.

Legislative and Regulatory Affairs

The Murphy administration has brought a new political environment to Trenton that may pose new challenges for our industry, and we must remain extremely vigilant with our legislative and regulatory affairs initiatives.

Our Fire Safety Task Force has been meeting regularly and we have developed a strategy to deal with the multitude of bills that have been introduced dealing with mandates that will affect single family, townhome, multi-family and mixed-use projects. We are also actively monitoring legislation concerning Payments In Lieu of Taxes (PILOTs). PILOTs are a major component to many re-development projects and our PILOT Task Force will continue to be vigilant in its defense of these programs.

NJBA is also actively engaged in the stakeholder's process on a bill pending in the legislature, S1073 (Smith), that would

allow for the creation of stormwater utilities. Historically, NJBA has supported the establishment of centralized management of stormwater facilities and therefore supports the goals of the bill, which include addressing the State's water pollution, flooding and aging water infrastructure problems. While these utilities can help facilitate regionalization of infrastructure and become a useful tool in both urban and suburban redevelopment, we believe certain amendments are necessary to more appropriately address the significant water quality issues that are the subject of the bill and the scope of stormwater utility's authority over stormwater management systems. On May 10th, I testified before the Senate Environment Committee to communicate these concerns and we will continue working with our industry partners and Legislators to advocate for amendments.

On the proactive agenda, NJBA's sewer connection fee bill, S1247/A2779 (Rice/Greenwald), which passed the legislature last term but was pocket vetoed by Governor Christie, has passed out of its first legislative committee and has been second referenced. We are actively advocating to get the bill to Governor Murphy's desk.

NJBA has been carefully monitoring the effects of the new federal tax law and its \$10,000 cap on State and Local Tax (SALT) deductions. Numerous bills were introduced in the NJ Legislature to address the potential harms of the SALT cap and NJBA recently supported A-3499/1893 (McKeon/Sarlo), which was signed into law by Governor Murphy on May 4th, as P.L.2018, c.11. This law allows municipalities and local governments to set up charitable funds for a specific purpose and to give contributors credits toward their property tax bills. Effectively, this law would enable New Jerseyans to make a charitable contribution in lieu of paying property taxes and to subsequently deduct the charitable contribution from their income. Charitable

contributions are not subject to the new \$10,000 SALT deduction cap. Regulations are expected to be released this summer, though it remains to be seen if the Internal Revenue Service will allow these charitable contributions to be recognized as such.

NJ's Building Industry & Workforce

On the industry front, the economy is showing continued strength and building permits are being issued at a steady pace of just under 30,000 per year. The new federal tax law presents major uncertainty and could prove damaging to NJ's building industry and the demand for higher priced homes. On the positive side, I am pleased with the favorable affordable housing decision by Judge Jacobson in Mercer County. Should the decision be precedent setting, as many predict, the effect should be increased development opportunities in numerous regions as municipalities look to meet their affordable housing obligations.

One of my primary concerns facing our industry is the labor shortage. Builders are experiencing labor shortages not just in NJ but nationally as well. Not only do our members have trouble finding qualified trade professionals to build homes, but shortages are also influencing government processes, particularly when it comes to plan review and building inspections.

It was recently reported that there are 40,000 job openings in NJ that are unfilled due to the lack of qualified labor. The problem does not have a simple solution and for decades our schools have been advocating that four-year college degrees were the only path to earning a decent salary. However, data from the Bureau of Labor Statistics indicates that mean construction industry wages are higher than the mean salary in NJ. This suggests that the cause of our labor shortage is not based on pay. We need to do a better job of messaging to improve our ability to attract students to enter the skilled trades as an alternative to the college track, and most

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PAYMENTS IN LIEU OF TAXES

A Look at the Long-Term Tax Exemption Law, Problematic Pending Legislation and the School Funding Issue

By: Michael A. Bruno, Esq. and Brian Shemesh, Esq.

The use of PILOTs (payments in lieu of taxes) as promulgated under N.J.S.A. 40A:20-1 et seq., commonly known as the “Long Term Tax Exemption Law,” is a critically important financial arrangement between municipalities and developers for use in blighted areas throughout the state found to be in need of redevelopment. The power given to municipalities to provide this special financial tool comes from Article VIII, Section III, of the New Jersey Constitution. The law recognizes the valuable public purpose of redeveloping and restoring blighted areas, and its express goal is to encourage private capital and private enterprise to restore these deteriorated and neglected areas pursuant to the law’s criteria.

Despite their importance, PILOTs have increasingly been labeled as an unfair economic benefit to private developers at the expense of local school districts and the community at large. And if certain recently proposed legislation to revise PILOTs is adopted, municipalities will be hurt in their ability to attract private investment to blighted areas. Without PILOTs, downtown areas most in need of private investment would be significantly restricted, and the important re-purposing of abandoned corporate campuses would stop.

This memo outlines commonly misunderstood facts regarding the Long Term Tax Exemption Law, issues with the proposed legislation, and a brief analysis of a commonly misunderstood discussion point, school funding.

I. PILOT Facts

- PILOTs under the Long Term Tax Exemption Law are limited to areas designated by the host municipality as

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blighted and in need of redevelopment. The designation process requires public hearings before the municipal planning board and governing body, during which certain findings must be made to support the redevelopment designation.

- Criteria for a municipality to find blight and designate an area in need of redevelopment are set forth in the Local Redevelopment and Housing Law. The municipal designation must withstand heightened scrutiny, especially if challenged by an interested party. This heightened standard protects communities from abuse and unsubstantiated redevelopment designations.
- PILOTs provide a term and annual rate of payment (most often based on the project’s annual gross revenue) that offers certainty to developers with regard to real estate taxes, thereby making private investment feasible in areas that otherwise are viewed as not

economically possible or too risky.

- During a PILOT term, the school district continues to receive its share of real estate taxes for the assessed value of the land. Importantly, where the property is vacant or existing improvements are of little or no value, the district receives no less revenue than before the development. Usually, the revitalization increases land values and assessments, which serves to increase revenue to the school district.
- Minimum annual PILOT payments cannot be less than the property’s annual real estate taxes in the year prior to the PILOT commencement.
- The PILOT revenue paid to the municipality most often meets or exceeds that received by the municipality for its portion under conventional taxes.
- PILOTs are structured as a public-private partnership, where the municipality receives no less than 10 percent of the project’s annual gross revenue; thus, the municipality receives more revenue as the project becomes more successful.
- Qualified developers must incorporate with the state as a limited-dividend entity. Among other requirements, this guarantees that the entity (i) provides annual audited statements to the municipality and state to ensure proper accounting of PILOT obligations and (ii) limits its net annual profit to an allowable rate, with any excess payable to the municipality as additional real estate taxes.
- Redevelopment of an area serves to encourage more redevelopment and

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UNDERSTANDING NEW JERSEY'S NEW BATHING CODE REGULATIONS

By: Steven G. Mlenak, Esq.

Builders and property managers should be aware of recent amendments to the New Jersey Public Recreational Bathing Facility Code, which regulates the maintenance and lifeguarding requirements of pools at multi-family developments. While most of the changes are minor or technical in nature, some have already been shown to significantly impact the operating budgets of housing developments throughout New Jersey.

First, it is important to note that despite the fact that it is entitled the "Public Recreational Bathing Facility Code," the Code applies to all housing developments of more than two living units. Nonprofit common interest communities (including most condominium and homeowners associations) can qualify as a "specially exempt facility" under the Code. As long as the pool(s) do not have a diving board, water slide or other risky pool appurtenance, this will exempt them from certain lifeguard requirements. Rental housing with more than two units will be required to comply with all Code regulations. Certain private lakes, bays and rivers, as well as certain campgrounds, hotels, motels, mobile home parks, retirement communities or marinas could also qualify for "specially exempt facility" status.

Lifeguard Requirements

Perhaps the most significant amendments to the Code are those concerning lifeguards. Under the new regulations, pools which are greater than 2,000 square feet must have at least two certified lifeguards. The local health authority can increase the number of lifeguards required based on pool configuration, number of bathers,

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and other factors. Lifeguards must keep watch over the pool based on a "zone of protection plan," so pools with unique configurations may find that the local health authority requires a greater number of lifeguards. Further, as one lifeguard cannot watch more than one pool, facilities with more than one pool (including children's pools with depths of greater than 2 feet) will need to staff one or more lifeguards at each pool. Finally, lifeguards may not assume any other duties which may distract from their lifeguarding duties. Facilities that have historically had their lifeguards check-in guests and/or check badges will now have to hire separate staff to serve that function. These changes have already shown to significantly increase costs for facilities with pools greater than 2,000 square feet.

Pool Inspection & Maintenance

Pool inspections are no longer required before a pool opens for the season (except for new pools). Instead, each pool's owner or operator must submit a checklist certifying compliance with the Code to the local health authority at least 21 days prior to the opening

of the pool season. Facilities must also have a water sample analyzed prior to opening for the season. Year-round pools must submit the checklist at least 30 days before the approval expires. Thereafter, there will be at least one inspection during the pool season (twice per year for year-round pools). Following the inspection, the pool's owner or operator will receive a placard containing an evaluation of "Satisfactory," "Conditionally Satisfactory," or "Unsatisfactory." The placard must be posted near the public entrance to the pool facility.

Changes have also been made to requirements concerning pool maintenance. Under the new regulations, a trained pool operator (TPO) must visit the pool at least once per week. The TPO is tasked with ensuring regulatory compliance and must document each visit in writing. Pools over 2,000 square feet must be under the supervision of an individual with a pool director training certificate (this requirement must be met by January 16, 2019). Hot tub/spa suction outlet covers must now be inspected daily. Further, new water sample testing processing requirements mean that test results must be expedited, which could result in surcharges related to the increased costs for owners and operators related to testing and reporting.

New Equipment – Signage

The Code now specifically provides that a lifeguard stand that adheres to the Code be provided for each lifeguard on duty, that an automatic external defibrillator (AED) be provided, and that one or more throw lines that can reach the other side of the pool be

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UNEARTH THE NO. 1 CAUSE OF STRUCTURAL FAILURES

By: **Walt Keaveny, Risk Manager, MS, PE, PG**

What is the leading cause of residential structural failures? Did you guess expansive soils? Soft organic soils? Improper drainage? How about inadequate engineering design? Low-strength concrete? Poor framing practices? Nope, none of those. What may surprise you is that the leading cause of structural failures is avoidable. Warnings to avoid this significant construction liability are found in project specifications, common codes, and industry standards. What then is this real hazard that is misunderstood and overlooked? Improperly compacted structural fill material.

2-10 Home Buyers Warranty® (2-10 HBW®) is the national leader in new home structural warranties, who has nearly 40 years of forensic analytics and investigations that concludes fill material is the leading cause of residential structural failures. These failures can occur anywhere that existing or new fill material is used to support a foundation. Since 80% of all structural failures are due to soil movement beneath the foundation, proper use of structural fill is every bit as critical as determining building location, selecting trade partners, and a sellable home design.

Structural fill material must be of sufficient quality and density, or else it can consolidate causing excessive settlement which may result in damage to foundations, framing, and interior finishes. Structural distress resulting from improper fill is likely to begin soon after construction is completed. Due to common over irrigation of the new landscaping and concentrated roof drainage, the fill quickly consolidates under the new foundation load and it is saturated and further weakened. Less than a one foot thickness of improper fill



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may cause serious distress. The damage caused by fill is typically more severe and costly to repair than other causes of structural failures. This is because the entire foundation is commonly underlain by fill.

The average cost to investigate and repair a qualifying fill claim is about \$50,000.

This does not include the cost of the home builder's reputation for quality construction practices.

To avoid structural failures caused by fill material, builders should confirm that prospective land to be developed with "existing" fill was properly compacted and tested. Developers typically sell land "as is", leaving the home builder liable for any existing fill. "New" structural fill to be placed by the home builder should be properly compacted and tested to verify the density. This is an industry standard practice, and a requirement of the local, state, and International Building Codes, the building department, plans and specifications, geotechnical engineer, and Department of Housing and Urban Development (HUD).

HUD's requirements are specified in their

Data Sheet 79G Land Development with Controlled Earthwork which states, "For any development in which buildings are to be placed on graded areas, all earthwork shall be designed, engineered, and constructed in such a manner that there will be no adverse differential movement which may cause damage to the structure..." HUD further specifies that, "Field density tests shall be made by the Soils Engineer..." Structural fill material should be placed in relatively thin lifts at, or near, optimum moisture content. Just the right amount of moisture lubricates the fill which allows it to achieve optimum density. Optimum moisture and density for a particular fill are determined using a Proctor test in a soils laboratory. Each lift should be properly compacted. It is important to note that the weight of the bull dozer or front-end loader used to place the fill is typically not sufficient to compact the fill.

Dozers and loaders spread their weight over wide tracks, or tires, to avoid getting stuck and are not designed to impart sufficient compactive effort like a true soil compactor. Density testing, conducted by a representative of the geotechnical engineer, should be used to confirm and document if proper compaction has been achieved to protect the home builder's liability.

Home builders can rely on the expertise of a geotechnical engineer, as needed in order to identify existing undocumented fill, specify proper cut and fill methods, specify fill quality and compaction criteria, identify onsite and offsite fill sources, and test for proper fill density. The engineer can also assist the home builder to avoid

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About the Author:

Walt Keaveny is the Risk Manager for the national leader in new home warranties, 2-10 Home Buyers Warranty®. He is licensed as both a Professional Engineer and a Professional Geoscientist, and has almost 30 years of diverse engineering experience.

For over 37 years, 2-10 Home Buyers Warranty (2-10 HBW) has been a market leader in helping people protect one of life's biggest investments with new construction structural warranties new homes. 2-10 Home Buyers Warranty has covered over 5.8 million homes and continues to partner with thousands of the nation's finest real estate professionals, home builders and service contractors to help mitigate risk, save money and prepare for the unexpected. For more information, visit 2-10.com.

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FINANCING YOUR NEXT PROJECT: RECENT CHANGES TO BANKING REGULATIONS AND HELPFUL TIPS FOR A SPEEDY AND EFFICIENT LOAN CLOSING

By: Louis Seminski

Anyone involved in a recent financing transaction can attest to the significant additional efforts required to reach a loan closing. Most are quick to place blame on the lenders. However, it is really the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") that has wreaked much of the havoc thanks to its recent release of some new Anti-Money Laundering ("AML") rules, regulations and enforcement measures.

These AML rules and regulations govern all F.D.I.C. protected financial institutions. As such, whether you are seeking financing for a new construction or redevelopment project, a new acquisition, or simply refinancing an existing credit facility, you will likely encounter FinCEN's enhanced rules.

In sum, FinCEN now requires banks and other covered financial institutions strengthen their due diligence in opening accounts for legal entity customers by identifying and verifying each entity's beneficial owners, and revamp their internal AML procedures for collecting, preserving, and monitoring this information. Much of the same body of law regulating banks and their account-opening practices now also applies to the underwriting and closing of all conventional loans and credit facilities.

Acronyms like "CIP" (Customer Identification Program), "CDD" (Customer Due Diligence), "EDD" (Enhanced Due Diligence) and "KYC" (Know Your Customer), once the vernacular of only financial services executives and lawyers, have become the parlance of lenders and even bank

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tellers alike. Thanks to FinCEN's new regulations, all financial institutions have over the past few years begun to educate, train and enforce specific procedures with regard to these once-foreign AML concepts. Now it is time for everyone else to catch up.

It all starts with the CIP, a process in which banks gather identifying information and assess customers for risk (KYC – no, not the fast-food fried chicken restaurant), followed by CDD and EDD as necessary. The idea behind the recently enhanced AML rules is to force financial institutions to better know their customers and identify their "beneficial owners."

The new "Beneficial Ownership Requirements for Legal Entity Customers" requires financial institutions to collect specific personal identifiers and information of any individual who

holds, directly or indirectly, 25 percent or more of the legal equity interests in, and at least one individual who has managerial control of, that legal entity customer. See 31 U.S.C. § 5318(h); 31 CFR 1010.230(a).

This is a minimum threshold, so do not be surprised if lenders collect beneficial ownership information also from those holding a lower percentage of equity interests, especially if Enhanced Due Diligence has been triggered. Many of these requirements go beyond just verifying your identity; for example, financial institutions are now required to keep records of other identifying information and even check customer names against terrorist lists.

These changes, combined with more rigid lender underwriting and multi-faceted closing procedures (prompted by the new requirements) have significantly increased the time frame within which loans close- in some cases causing delays of weeks, and even months.

Most attorneys representing lenders and financial services clients have already seen significant revisions to loan closing checklists to incorporate new CIP, CDD, EDD, and KYC protocol. If properly understood (and complied with) these changes do not add much to the process, but it is only natural to recognize the additional requirements as being somewhat burdensome. Borrowers in particular have been quick to question the changes, asking "why" they have never been asked to do all of this before.

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About the Author:

Louis Seminski, a Shareholder of the firm Giordano, Halleran & Ciesla, P.C., ("GHC") and Co-Chairman of the Firm's Business and Banking Law Group, has sixteen-plus years' experience in litigating and documenting a variety of credit facilities on behalf of both borrowers and lenders. GHC is a New Jersey based, full service law firm headquartered in Red Bank, New Jersey, with offices in Trenton and Holmdel, New Jersey, as well as Manhattan, New York.

Note: For a comprehensive summary of FinCEN's changes, see the official FinCEN Guidance bulletin issued April 3, 2018 (FIN-2018-G0001).

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BIG CHANGES TO NATIONAL FLOOD INSURANCE PROGRAM

By: Anthony Bevilacqua

Way back in July 2012, Congress passed the Biggert Waters Flood Insurance Act. The Act had a threefold objective:

1. move flood insurance rates up to reflect full flood risk actuarial rates
2. phase out subsidies and discounts for some residential and commercial properties that are subject to high flood risk factors or repetitive losses
3. fund a large deficit the National Flood Insurance Program (NFIP) incurred mainly on the heels of Hurricane Katrina

The effects of the Act were to trigger January 1, 2013. But that same year, Superstorm Sandy struck the east coast in October 2012. With significant rate change looming only three short months after Sandy, pressure from congressional representatives, particularly from NJ and FL, pushed off those changes indefinitely. Then, in March 2014, the Homeowner Flood Insurance Affordability Act was passed. That law effectively punted many of the major rate changes that were supposed to be implemented as of January 2013 to a first round of increases effective April 2015, then a second, more substantial round of rate changes beginning April 2018.

The April 2015 changes established rate caps for certain types of properties at around 15%, with sight of the full intent to march the Program toward full flood risk actuarial rates as required by Biggert Waters Act of 2012. One of the more significant changes that hit policies at that time were the Program mandated policy surcharges that moved from mostly \$25 per policy type to \$250 per policy type.

Now, the changes that took effect April



2018 removes some of those caps. The rate changes effective April 1, 2018 look like this

- + 5% for a primary residence (primary residence is defined as one that is occupied more than 50% of the year)
- +24% for a non-primary residence (seasonal residence)
- +5% for most condominium and multi-family property policies built before 1974
- +11% for all V Zone properties built after 1974 (V Zone means coastal properties subject to high velocity water surge)
- +23% for most commercial properties built before 1974
- +1% to +2% for most A-zone properties built after 1974

Then, effective January 1, 2019, separate rate changes apply to these types of properties

- +8% for Preferred Rate Policies (X-zone designated properties)
- +15% for newly constructed properties in high hazard V or A zones

Circling behind the scenes is the current Administration's desire to revamp the

structure and funding of the National Flood Insurance Program. As of 2016, the program was over \$34 billion in debt once Superstorm Sandy claims were tallied. That initiative has been underway since mid-2016 with NAHB keeping careful watch on developments in Congress. Much of the initiative's steam was curtailed because of rancorous opinions concerning the 2018 budget process. In the end, Congress passed a \$1.3 trillion budget package that carries through to September 20, 2018. However, the budget limited funding for NFIP only through July 31, 2018. NAHB believes de-coupling NFIP funding from the budget process is actually an advantage, as it gives greater ability for NAHB to focus congressional attention on the Program to achieve goals important to its members.

Even still, more changes are coming to the flood insurance marketplace. Private insurers are beginning to step a toe in the water, pun intended, to write flood insurance separate from the government program. We recently had an example where private insurance coverage saved a condo association \$16,000 over the cost of NFIP coverage. Further, new flood map elevations initially prepared by the Army Corp of Engineers in 2012, which were subsequently suspended, are now reaching approval by most municipalities.

An evolving flood insurance marketplace has both positive and negative implications. Let's hope the 2018 Atlantic hurricane season, that runs from June 1 through November 30, does nothing extraordinary to make the negatives even more challenging to accept.

About the Author:

Anthony Bevilacqua, CPCU is President of Anthony & Company, Inc., an independent insurance agency with special insurance and risk management services tailored to the needs of the commercial and residential development community. You can reach Mr. Bevilacqua at (908) 806-8844 or email him at anthony.bevilacqua@anthonycompany.com.

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LEGISLATURE LOOKS TO IMPOSE FIRE SAFETY MANDATES

By: Richard W. Arzberger, AIA, PP

On January 21, 2015, a maintenance worker doing plumbing work accidentally started a fire which spread out of control, leading to the destruction of a 240 unit apartment complex in Edgewater, New Jersey. There were no injuries or loss of life resulting from this event, however property loss was extensive and a significant number of residents were displaced.

Spurred by the news media, local officials and activists, lawmakers in the New Jersey Legislature subsequently introduced six bills attempting to address concerns raised by the fire. Proposed solutions went so far as to include establishing a moratorium on multi-family construction. None of the bills received a committee hearing.

On February 2, 2017, two years after the Edgewater fire, a 238 unit apartment complex under construction in Maplewood, New Jersey was destroyed by fire. Once again, there were no injuries or loss of life, however this event intensified the efforts of the legislature. Attention was focused on perceived deficiencies in New Jersey's Uniform Construction Code and the underlying national model codes upon which it is based. Advocates for code change argued that the goal should go beyond its current focus, life safety, and be extended to include enhanced property protection.

Criticism of the code focused on three primary areas:

1. Requiring the provision of a more extensive fire sprinkler system. The most commonly used system in multi-family construction, built to the NFPA 13R standard, does not require sprinkler protection in concealed combustible spaces such as attics and within floor assemblies.

2. Reducing the allowable height and area of buildings of combustible (wood frame) construction. Included in this would be the elimination of the "Special Provisions" section of the code which permits "Podium Style" buildings.
3. Increasing prescriptive requirements for various building assemblies. This would include both an increase in minimum required fire resistance ratings as well as prohibit the use of combustible materials (i.e. wood) in the construction of certain building components such as floor assemblies, fire walls and dwelling unit demising walls.

The Prieto Bill

On April 7, 2017, then Assembly Speaker Vincent Prieto introduced Assembly Bill A-96. Speaker Prieto described the measure as a "middle-of-the-road approach that increased fire protection" yet "minimized the impact on construction costs."

The Bill directed the New Jersey Department of Community Affairs to conform code adoptions to the following provisions for multi-family buildings of combustible construction:

1. It required such buildings to be measured in number of stories above the "grade plane". This eliminated the exception for "Podium-Style" buildings which permitted an extra story if the lowest level was built of three hour fire resistance rated non-combustible construction. This "four over one" prototype has been widely used for mixed use/residential structures and is commonly used in redevelopment areas.

2. It limits use of currently used NFPA 13R sprinkler systems to buildings of up to two stories in height and an area of 10,000 square feet per story. For structures exceeding that allowable area, a minimum two-hour masonry or concrete fire wall must be constructed between each 10,000 square foot area.
3. For buildings in excess of two stories or 10,000 square feet in per-story floor area, the equivalent of an NFPA 13 fire sprinkler system must be provided. This would extend coverage to attics and to within concealed combustible spaces such as floor assemblies.

In addition, Prieto offered a concurrent Bill, A97, mandating the use of a "fire watch" for all eventual multi-family use construction regardless of size or type of construction. The "fire watch", a dedicated individual with expertise in fire safety, would solely monitor the construction site while there is no construction activity taking place. The requirement of a fire watch would begin at commencement of framing and cease at the issuance of a certificate of occupancy.

The NJBA presented testimony on the Bill at an Assembly committee hearing. It was the Association's position that lawmakers should not write their own code provisions but instead rely on and participate in the model code development process done on a national level through the International Code Council. Industry experts and code enforcement officials from across the country participate by offering new code provisions, collecting data, analyzing, then voting on adoption.

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About the Author:

Sonnenfeld + Trocchia Architects is a New Jersey based firm that provides a range of architectural services for multi-family communities and mixed-use projects including site planning, design, construction documentation and construction administration. Richard W. Arzberger, AIA, PP is a member of the NJBA Codes Committee and serves on the Monmouth County Construction Board of Appeals.

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TOP 10 ESSENTIAL SEO RULES: THE BASICS OF SEARCH ENGINE OPTIMIZATION

By: **George Aslanian**

It's pretty clear the Internet has become the primary source for buyers searching for a new home. According to the NAR, 44% of buyers looked for properties online first¹; and 51% of buyers report the Internet is where they found the home they ultimately purchased². For home builders, Search Engine Optimization (SEO) is critical to a successful online marketing campaign; for their communities and projects, as well as their own company website. A solid SEO strategy can result in increased organic web traffic and leads—and ultimately more sales.

Much has been written about SEO best practices. It's tough to sift through all the information to find simple rules that actually work. Making matters worse, search engine algorithm evolutions have turned once-successful SEO schemes into punishable offenses, yet many of these tactics continue to be touted as smart optimization.

To combat this misinformation in the ever-changing world of SEO, we've compiled a list of the top 10 SEO Rules that have been, and likely will continue to be, the bedrock of any solid SEO strategy. While this isn't a definitive guide to everything SEO, it will outline the rules you should follow to improve your SEO strategy.

1. Use canonical URLs.

While XYZ.com and www.XYZ.com appear to be the same, search engines view them as two different sites, therefore splitting your site traffic and creating duplicate content. Whether or not you choose the www or non-www version is irrelevant – just make sure you direct both URLs to only one of those versions.

Luckily, this is probably taken care of automatically if your site uses a CMS like WordPress.

2. Keep your URLs clean and keyword rich.

At its best, a URL structure would look like this: domain.com/keyword-phrase

If yours is muddled with 'index.php?page=articles' and other clutter, replace it with your keyword phrase or page title, minus stop words like 'a,' 'but,' and 'or.' Also, use hyphens instead of underscores to separate words. Since search engines can't read underscores, they'll consolidate keyword_phrase into keywordphrase, therefore eliminating the benefits of a keyword in your URL.

3. Find what users are really searching for.

Don't use what you think people search for; find what they really do. Through various paid and free tools, you can find what phrases users actually type into their search engines, as well as how much competition exists for that phrase.

4. Focus on one keyword phrase per page.

You should use similar words throughout the body copy to aid in readability and searchability, but pick just one phrase to focus on. Trying to accomplish too much on one page will only dilute your efforts. It's better to rank in the top five for one phrase, then to rank on the second page for 30.

5. Utilize this keyword phrase appropriately.

Make sure the keyword is used in the

URL, page title, headline (use the H-1 tag), opening paragraph, sub-headlines (H-2, H-3, etc.), and closing paragraph. It's best if the phrase is towards the front of the headline and sub-headlines, but the most important part is that it sounds natural.

6. Optimize images.

Search engines cannot read images. The same applies for the visually impaired who use a screen reader to dictate information from your website. That's why it's important to optimize images, by using the keyword phrase in the image title, alt attribute, and description.

7. Use internal links.

You need search engines to find the pages on your website in order for them to be indexed, so linking to your own pages is a natural way to help search engines. By placing links within your text to other pages, you not only help search engines navigate your site, but you provide value to users by enabling them to easily access more pertinent information.

8. Build quality backlinks.

A search engine study found that over 40% of a website's SEO success comes from building quality backlinks: links to your website from other websites. Probably the most important aspect of SEO, quality backlinks, especially from sites that outrank you for related keyword phrases, are necessary to tell search engines that your site is a valued authority on that particular topic. Ensure your backlinks are from legitimate sources and garnered through ethical methods.

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1. NAR Home Buyer and Seller Generational Trends Report 2017 & 2016 Profile of Home Buyers and Sellers

2. 2017 National Association of REALTORS® Profile of Home Buyers and Sellers

About the Author:

George Aslanian is a Copywriter and SEO Manager at Pace, a full-service marketing and branding agency with offices in New York, New Jersey, Philadelphia, Boca Raton, and Miami. For nearly 70 years, Pace has been creating successful campaigns for residential, commercial, and mixed-use projects in NJ and nationwide. Contact: hello@paceadv.com or 212.331.8825.

DIMENSIONS

REAL ESTATE DUE DILIGENCE IN NEW JERSEY: WHY DO I NEED BOTH A PHASE I AND A PRELIMINARY ASSESSMENT?

By: **Chemie Sokolic**

I'm buying a commercial or industrial property in New Jersey, and I've been told I need an ASTM Phase I Environmental Site Assessment (Phase I ESA). However, I've also been told I need a NJDEP Preliminary Assessment Report (PAR) as well. Do I really need both? Won't the Phase I ESA provide me adequate *innocent purchaser protection*?

Short answer: **No.** Here's why:

Federal and State Laws

Chances are, you're conducting a Phase I ESA to satisfy one of the requirements to qualify for the *innocent landowner, contiguous property owner, or bona fide prospective purchaser* limitations on CERCLA liability (Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601)), and the Environmental Protection Agency (EPA) All Appropriate Inquiry (AAI) Rule, Subsection 312.10 of 40 Code of Federal Regulations 312 (40 CFR §312).

However, CERCLA is a federal law, and provides landowner liability protections under that particular law. What a Phase I ESA does not necessarily do, however, and as is made clear in the Phase I standard itself (ASTM E1527-13, section 1.1.4), is address requirements of state or local laws; users of a Phase I ESA are cautioned that *federal, state, and local laws may impose environmental assessment obligations that are beyond the scope of [the Phase I standard itself]*.

New Jersey "Spill Act"

Like many other states, New Jersey has enacted its own innocent purchaser defense that requires a property owner to demonstrate that, at the time they

acquired the property, they did not know and had no reason to know that any hazardous substance had been discharged at the property, by performing an "all appropriate inquiry" prior to purchase of the property. As stated in the New Jersey Spill Compensation and Control Act (Spill Act), *any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred* [N.J.S.A. 58:10-23.11g(c)(3)].

All Appropriate Inquiry in New Jersey – Why a Phase I ESA Isn't Enough

However, contrary to most states, New Jersey has not adopted the federal All Appropriate Inquiries rule (which can be satisfied by performing a Phase I ESA) but instead has its own unique definition for satisfying "all appropriate inquiry." Under N.J.S.A. 58:10-23.11g(d)(2), an "all appropriate inquiry" is defined as the performance of a preliminary assessment, and site investigation, if the preliminary assessment indicated that a site investigation is necessary.

As was again made very clear during a January 14, 2016 court ruling, a party buying property in New Jersey after 1993 must obtain a PAR in accordance with NJDEP rules in order to have a chance of obtaining innocent purchaser protection in the state of New Jersey. The decision was affirmed regarding environmental contamination at the Accutherm mercury

thermometer manufacturing property in Salem County, that later became a Kiddie Kollege daycare. *DEP v. Navillus Group*, App. Div. Dkt. No. A-4726-13T3. In this case, despite advice of counsel, the defendants merely relied on various environmental reports, instead of performing a PAR; thus, no innocent purchaser protection was afforded them under the Spill Act, and they were liable for the contamination identified at their property.

Federal and State Protection – Why a PAR Isn't Enough

Although performance of a PAR (and site investigation, if the PAR indicated one is necessary), constitutes all appropriate inquiry in New Jersey, it does not satisfy the requirements to qualify for the *innocent landowner, contiguous property owner, or bona fide prospective purchaser* limitations under CERCLA.

Therefore, in summary, if you're performing real estate due diligence in New Jersey and want to qualify for both federal and state innocent purchaser liability protections, both an ASTM Phase I ESA and a NJDEP PAR should be performed. With careful consideration of the above, in many instances, a combined PA/Phase I report can be generated that, if prepared correctly, satisfies both Federal and New Jersey innocent purchaser protection requirements.

Know Thy Limitations

It's essential to understand both the purpose and the limitations of the due diligence scope, and to know what protections these assessments offer, and, sometimes more importantly, what protections they don't offer.

About the Author:

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DIMENSIONS

NEW JERSEY'S RESIDENTIAL NEW CONSTRUCTION PROGRAM AND ITS BENEFITS

By: President Joseph Fiordaliso

New Jersey's Clean Energy Program™ (NJCEP) has provided hundreds of millions of dollars to businesses and homeowners to implement energy-efficient measures. These rebates are available to energy consumers that pay into the societal benefits charge, a utility surcharge which helps fund these programs.

NJCEP's Residential New Construction (RNC) Program provides builders and contractors rebates for building energy-efficient homes and multifamily apartments. These dwellings not only typically save energy and its associated costs, but are more comfortable for their occupants. Under RNC, prospective homes can receive considerable rebates, which may be found at NJCleanEnergy.com/RNC. RNC pairs builders and contractors with program raters, who help guide you through the program process, including filling out paperwork, completing inspections and offers ongoing assistance throughout the project.

The Residential New Construction Program includes rebates for ENERGY STAR® homes, which can be considered the second tier of the program. The rebates are determined by a Home

Energy Score (HERS). HERS is a scale used to measure the energy efficiency of a building. A home with a HERS score of 0 is the most efficient and equivalent to a net-zero-energy home. A score of 100 would be similar to the least efficient rating on the IECC 2006 scale, which is a much earlier code standard.

The most progressive homes incentivized in Residential New Construction are the Zero Energy Ready Home and Zero Energy Ready Home with 100% renewables. Zero Energy Ready Homes promote innovation in building design, materials, techniques and operations. These homes are designed to save energy, money and create a comfortable and safe environment for its occupants. Zero Energy Ready Homes typically have a more comfortable air temperature, better indoor air quality and less sound pollution than an average dwelling. Rebates are available for this level of the program, as well.

The RNC Program has been beneficial to professionals in the building industry whether they are designing their own new home or building homes for others. An Architect participated in the RNC program when she decided to design her own home. "The ENERGY STAR Program

was part of my incentive to pursue a high-performance house design when I designed my own home four years ago. As a result of our work to reduce energy costs, our annual electric and gas bills are about the same as our water bills!"

"I'm now working on designing spec houses with the same commitment to energy efficiency, and the ENERGY STAR and Zero Energy Ready Home incentives have been an important component in my decision to use technologies like ERV's and tankless hot water heaters that I would not have otherwise. I also believe that a house carrying these labels will distinguish themselves in the market when it comes time to sell."

New Jersey Clean Energy Program's Residential New Construction Program is designed to create energy-efficient homes, that are more comfortable, throughout the state. Rebates are available for those who are looking to build homes to code, or those who wish to go above and beyond with an ENERGY STAR or Zero Energy Ready Home. If you are interested in participating in the program or have any questions, please email us at: RNCNJCEP@NJCleanEnergy.com or call 866-NJSMART.

About the Author:

President Joseph Fiordaliso, Board of Public Utilities

New Jersey's Clean Energy Program, which is administered by the Board of Public Utilities, is a statewide program that offers financial incentives, programs and services for New Jersey residents, business owners and local governments to help them save energy, money and the environment.

A MESSAGE FROM NJBA PRESIDENT

Continued from page 2

of all, to make that training easily available. Last year, approximately 30,000 people applied to vocational school districts in NJ and only 11,000 were accepted, mostly due to space constraints.

I have directed NJBA to focus on identifying and partnering with organizations which can help us train our industry's workforce and to support legislation that will assist in funding those initiatives.

NJBA has already engaged with the Department of Labor's Construction-Utilities Talent Development Center and its educational partner, the New Jersey Institute of Technology (NJIT). NJIT is currently offering grant funded employee training in the Construction industry. I encourage you to contact Grant Lucking at NJBA grant@njba.org for more information about this free training.

NJBA is also speaking with the National Association of Home Builders, the Home Builders Institute, county colleges, vocational school districts and other educational institutions to advocate for and assist in furthering construction and skilled trades education.

On the legislative front, NJBA strongly supports S2293 (Sweeney) which proposes \$1 billion in bonds to finance vocational school districts and county colleges. The bill was overwhelmingly approved by the Senate and has been referred to the Assembly Education Committee for further review and consideration along with its Assembly companion measure, A3902 (Benson). NJBA also supports S2303 (Sweeney) which requires the establishment of Work and Learn Consortiums by certain educational institutions to establish certificate and degree programs identified in high labor-demand industries, including the construction industry.

In summary, we will be working diligently to increase our labor pool and address the industry's labor shortage through a multitude of approaches. I look forward to working with our four local associations

to organize outreach and "jobsite visits" to connect those trades and builders who have job openings with prospective employees. Any member interested in participating in these events is invited to contact Lisa Obolsky at NJBA, at lisa@njba.org.

Conclusion

Our association will be very busy over the next year. I know that we will only be able to accomplish our mission of building a more affordable, sustainable and vibrant housing market in NJ with the support of all our members, builders, associates and trades. I thank you all in advance for the cooperation and support I know you will continue to provide to me throughout my tenure as President.

I could not be more proud and appreciative of the opportunity that you've given me to lead the association and to help NJ's residents realize their American dream. I look forward to seeing you all on June 27th at NJBA headquarters in Robbinsville for the Business Operations Seminar, Board Meeting and President's Picnic. Visit www.njba.org/events for more information.

UNDERSTANDING NEW JERSEY'S NEW BATHING CODE REGULATIONS

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readily accessible. Posted bathing code rules will also need to be amended to capture the new rules regarding swim diapers. In the past, plastic pants with snug-fitting elastic waists and legs were required for any child that has not been toilet-trained to swim in a pool. The new regulations provide that any diaper specially designed for immersion in water will be acceptable.

Aquatics Facility Plan Changes

New information is required to be kept in each pool facility's written standard operating procedure aquatics facility plan. This includes the location of the emergency shutoff switch for suction outlets, hours of operation, schedule of operational activities, such as water

testing and record keeping, and a zone of protection plan for the lifeguards.

The above represents some of the noteworthy changes to the Code. It is important, however, that builders and property managers familiarize themselves with the entirety of the Code. Managers and pool operators should ensure that they are in compliance with the regulations to avoid fines, and should also ensure that contracts with pool maintenance and lifeguard vendors are up-to-date. Likewise, builders should give careful thought as to how the pools at their multi-family project are designed (with respect to both size and configuration). For example, a 1,990 square foot pool can yield significant operational savings over a 2,000 square foot pool with little impact to bather load.

As evidenced by the fact that the Department of Health has already released two Frequently Asked Questions sheets, the Code amendments have apparently created confusion among property owners, managers and pool contractors, as they fail to answer several questions and certain contradictions can be found. As noncompliance can result in fines and other liability, owners and managers should consult with their attorney on any issue which is not readily answerable by reviewing the text of the Code.

FINANCING YOUR NEXT PROJECT

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The fact of the matter is that these changes protect citizens, consumers and financial services and bank customers alike, all from financial crimes (and to prevent the financing of terrorist operations and money laundering). And it is likely that these risk assessment procedures will only become more cumbersome in the future.

Prudence, therefore, requires every consideration to streamline this evolving process. The following is a helpful (non-exhaustive) list of tips to consider:

1. Retain the services of an experienced local attorney. With his or her assistance, and through their familiarity with local procedures and practice, you can better ensure an efficient information-gathering and exchange process to expedite closing. Counsel will also be able to act as an advocate to negotiate certain provisions in the loan documents as applicable, saving you time and money in the long run.
2. Consider using a Licensed Broker. Aside from advising you (as borrower) as to specific loan products available, brokers can help you compare and obtain the most competitive interest rates and favorable terms. A broker may also assist you in gathering the requisite information, with an eye towards certain underwriting items, even before a prospective lender requests it.
3. Be proactive and stay involved in the transaction, even after you agree upon the relevant business terms. It is your deal (and your money). Do not wait for the week before a closing to raise any concerns that you may have about the pre-closing process or requested items. (In fact, obtain your lenders' form pre-closing checklist early on and provide a legal entity organizational chart listing). Also, gather all of the requested information and provide it to your

attorney and the lender at one time, to the extent practicable, rather than in a piecemeal fashion). By doing so, you can prevent the majority of otherwise costly delays.

4. Cooperate with your attorney, lender's counsel and the lender. Be attentive to the lender's pre-closing checklist. Don't fight the items requested, as it is more productive (and many times easier) to just comply with requests and to provide the items sought. For example, providing early on the borrowing entity's formation and governing documents (including all beneficial ownership information) is suggested. Something as easy as providing your identification (with the correct spelling of your name as a signatory) for the preparation of loan documents will prevent unnecessary revisions, delays and expense.
5. Shy away from closings by mail; request an in person, live closing instead. This will not only eliminate the chance of last minute impediments to closing, but afford you an opportunity to understand the documents you will be required to execute. (It will also allow you to obtain a complete set of executed loan documents for your own records). You will likely need them down the road.

Reach the finish line! With the help of experienced professionals, and some cooperation, you can get the job done. Rather than ignoring all the new acronyms (or fighting the process) focus on accepting the recent changes so that you can close your loan and move on to your next project...\$\$\$.

TOP 10 ESSENTIAL SEO RULES

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9. Create quality content.

The most important way to gain backlinks is through consistent quality content. By creating useful, informative and engaging blogs, e-books, videos, and infographics, you provide useful information for users and shareable content for social media and other websites. It's the natural spreading of quality content that leads to the most high-quality backlinks. Incidentally, linking back to other informative, relevant websites within your blog posts can provide helpful information to users and help your search engine ranking.

10. Keep the endgame in mind.

Always consider where search engines are heading, not where they are. The goal of the leading search engines is to provide the highest quality, most relevant content. As search engines get closer to this goal, technical SEO will become much less relevant, with the creation of useful content and user-friendly design becoming the key to dominating search engines.

When in doubt, do what's best for the user, not for the search engines. That way, no matter what Google algorithm changes come down the line, you should be able to avoid the lost page rank that many sites experience.

FIRE SAFETY MANDATES

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This process engages those most knowledgeable on the issues and does so in a way which ensures thorough consideration of relevant aspects.

Although the Bill was voted out of committee in December of 2017, it eventually stalled and was not taken up for a vote by the legislature prior to the end of the legislative session. It is considered effectively dead. It's sponsor, Assembly Speaker Prieto, is no longer a member of the State Assembly.

The DeAngelo Bill

Despite the demise of the Prieto Bill, advocates for legislative action nevertheless continued in their efforts. In addition to a group of citizen activists, fire safety associations and local officials, an additional interested party renewed a more aggressive effort to influence fire safety requirements. The National Ready Mixed Concrete Association made no secret of their intention to expand their market share in multi-family construction by influencing legislation aimed at eliminating wood frame construction as a viable construction alternative. They commenced a massive, well funded nationwide campaign to influence lawmakers, with their first target being New Jersey.

With the departure of Assembly Speaker Prieto, Assemblyman Wayne DeAngelo picked up the cause, introducing Assembly Bill A 5196 in the current legislative session. The Bill represents the latest direction on the part of lawmakers with respect to fire safety. Its provisions include the following:

1. The Bill addresses all residential structures utilizing wood construction containing more than two dwelling units. Unlike the Prieto Bill, townhouses are also included.
2. All covered residential structures are required to provide an NFPA 13 standard sprinkler

system. The NFPA 13R sprinkler system will no longer be permitted. Sprinkler protection will be required to be extended to all concealed combustible spaces, including attics.

3. The "Special Provisions" section of the code, which allows "Podium" prototypes is eliminated and the number of stories shall be measured from grade plane.
4. Walls separating dwelling units as well as corridor walls must be constructed of non-combustible materials (i.e. steel, concrete or masonry), have a minimum two hour fire resistance rating, and be continuous from foundation to the roof.
5. Floor assemblies which separate dwelling units shall be constructed of non-combustible materials (i.e. steel or concrete) and have a fire resistance rating of two hours. All supporting structural elements, including both interior and exterior bearing walls shall also have a two hour fire resistance rating.
6. Fire walls shall only be constructed of noncombustible materials and not "adversely affected by moisture."
7. If any framing is unprotected (does not have a minimum fire resistance rating of 1 hour) the structure may not exceed three stories or 60 feet in height. If the framing is protected, the maximum height is four stories and 70 feet.
8. Any residential structure of wood frame construction exceeding two dwelling units shall require a "Fire Watch Warden" present 24 hours a day to monitor construction from commencement of foundation construction until a certificate of occupancy is issued. Only active or retired firefighters or fire inspectors are

eligible to serve as "fire watch wardens" and may not be assigned any other responsibilities. It is doubtful whether the pool of eligible individuals who are available and willing to serve as "fire watch wardens" will be sufficient to satisfy industry demand.

9. Most wood framed residential structures, including single family homes, shall be required to post prescribed signage at their exterior entrance, "communicating the structure is combustible and known to the State to pose a fire hazard."

This Bill, should it be enacted, will undoubtedly have a chilling effect on residential construction in the state by significantly increasing construction costs. In addition, certain building types, such as podium buildings, will be prohibited or in the case of wood framed mixed use residential buildings, no longer feasible to construct.

Considering the impact such legislation would have on the home building industry and the State economy, the NJBA and its Fire Safety Task Force will continue its efforts to oppose this legislation in its current form.

PAYMENTS IN LIEU OF TAXES

Continued from page 3

investment in surrounding areas.

II. Common Criticisms of PILOTs

The most common criticism of a PILOT grant is that the redeveloper often eliminates taxes, thus enabling higher profit at the expense of the municipality and its residents. However, the Long Term Tax Exemption Law explicitly provides that a for-profit developer utilizing a PILOT must be a limited-dividend entity, meaning that retained profit is restricted to the greater of (i) 12 percent or (ii) 1.25 percent plus such developer's APR on the initial permanent mortgage. Excess profits must be remitted to the municipality as an additional tax. This inherent limitation ensures that the municipality and its residents receive any such windfall from the redeveloper.

Another common criticism is that a redeveloper utilizing PILOTs is not subject to state oversight. However, each redeveloper must first have its Certificate of Formation (or similar document) approved by the New Jersey Department of Community Affairs. Such approval ensures that each redevelopment entity has agreed to certain covenants, which, among other things, (i) subjects the redeveloper to municipal regulation, (ii) requires that the entity is organized to serve a public purpose and (iii) limits its operations to the redevelopment project. In addition, the applicable statute requires that PILOT recipients deliver annual audited statements to the municipal governing body, as well as to the Director of the Division of Local Government Services in the Department of Community Affairs. Thus, the law as currently drafted provides layers of municipal and state oversight.

Critics of tax exemptions also contend that a conflict of interest arises when a municipality is deciding to grant a PILOT. Since the municipality often receives payments in excess of conventional taxes, critics suggest the municipality is likely to approve a PILOT without fully

considering the effect on residents or its school district. However, a municipality and its governing body are required by statute to include in the financial agreement with a PILOT recipient certain findings regarding (i) the benefits of granting the exemption, relative to costs to the municipality, and (ii) an assessment of the importance of granting the tax exemption in obtaining development of the project and influencing locational decisions of potential project occupants.

III. Pending Legislation

Despite the success of PILOTs in encouraging redevelopment, two pending bills seek to amend the Long Term Tax Exemption Law in ways that would drastically reduce the program's efficacy. S867 would require any redeveloper that avails itself of a PILOT to pay prevailing wage rates for the project's construction. S59 would require that municipalities split certain portions of payments with their school districts. That amount would be determined by the number of school children residing in the developer's project. S867 and S59 each pose challenges that could stunt future redevelopment.

S867 is inherently problematic as it adds significant project costs. Remember that a PILOT is only offered to incentivize developers to come to a blighted, and therefore riskier, area. The PILOT is designed to make a project economically feasible, because without the PILOT, dilapidated areas would likely not be rehabilitated. Adding a burdensome cost (such as a prevailing wage rate) minimizes the PILOT's benefit, if not negating it.

While S59 seeks to rectify the important issue of inadequate school funding, it does not address the key issue: fixing the formula that determines school funding allocation at the state level. Governor Murphy has indicated he expects formula changes, and his newly released budget significantly increases

school funding. To amend the Long Term Tax Exemption Law based on a formula that will be changed creates the possibility of (i) future conflict and (ii) lack of efficacy. In addition, the law already includes safeguards aimed at ensuring a municipality does not grant a PILOT that harms its school district funding. Finally, we note that S59 is unworkable for projects that include units for sale to third-party purchasers.

IV. The School Funding Issue

As mentioned above, pending legislation would require municipalities to disburse a portion of PILOT revenue to its local school district as well as its regional school district to which it sends pupils. While it is true a municipality currently receiving a PILOT is not required to disburse those funds to the district (relative to the new improvements), the solution proposed by S59 seeks to address a symptom of the problem, not the underlying issue.

First, a word on school funding in New Jersey is instructive. Pursuant to the New Jersey Constitution, the legislature is required to "provide for the maintenance and support of a thorough and efficient" public school system. The legislature passed the School Funding Reform Act ("SFRA") in 2008 to satisfy this obligation. While the law is extremely complex, in short the state is charged with determining each district's budget to ensure a thorough and efficient education, which is referred to as the Adequacy Budget. Funding to achieve that budget is derived from three sources: (1) Local Cost Share, (2) Equalization Aid and (3) Categorical Aid. The Local Cost Share represents the portion of the Adequacy Budget for which a municipality is responsible, while Equalization Aid and Categorical Aid are state-funded. It is important to note that SFRA has not been adequately funded by the state in many districts since its initial adoption.

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PAYMENTS IN LIEU OF TAXES

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Now, understanding that a municipality is aware of its SFRA obligation to meet the Local Cost Share portion of the Adequacy Budget, one can see the Long Term Tax Exemption Law takes steps aimed at preventing abuse of PILOTs at the expense of school districts. As mentioned above, the law states that agreements granting a developer a PILOT must include certain findings by the municipality, including its determination as to “the relative benefits of the project to the redevelopment of the redevelopment area when compared to the costs, if any, associated with the tax exemption[.]” This cost-benefit analysis clearly should involve some thought by municipal representatives as to SFRA budgetary obligations. Non-residential developments would not impact the Adequacy Budget or Local Cost Share; thus, a non-residential development should not affect a municipality’s ability to budget appropriately to meet SFRA requirements. Further, the increase to the Adequacy Budget or Local Cost Share caused by a residential development could be reasonably estimated based on the prior year’s per-pupil average, which again, allows a municipality to budget appropriately to meet SFRA requirements.

Where a failure of a municipality to budget appropriately occurs (whether or not due to a PILOT grant), it is possible that the town could not fund its Local Cost Share, which would result in an increase in municipal taxes (subject to the 2 percent property tax increase cap). However, the solution is not to inhibit redevelopment that rehabilitates and invigorates the economy, but to ensure that municipal budgets use all sources of revenue appropriately. This becomes a municipal government issue, which should be addressed by local officials.

Critics also suggest that the grant of PILOTs has two negative effects on state taxpayers as it relates to school funding. First, because PILOT revenue

is not accounted for in the town’s ratable base, the town’s wealth is artificially deflated, which increases the amount of state aid for school funding, thus harming statewide taxpayers. Another criticism is that when a town fails to fund its Local Cost Share, the state becomes responsible for the shortfall (through what is called Adequacy Aid), a burden (which again) ultimately falls to taxpayers. However, in each of these instances, requiring that a portion of the PILOT be directed to the school district does not solve the issue, only a symptom of the problem. That is because there is no guarantee that a municipality will be able to fund its Local Share Cost based on a per-pupil payment out of the PILOT.

Finally, we reiterate that in light of the imminent amendment to the school funding formula to be proposed by Governor Murphy’s administration, a wait-and-see approach is most appropriate before seeking to change the Long Term Tax Exemption Law. The new formula may eliminate this issue entirely, or in the alternative, create new problems that would not be addressed by S59 or other legislation proposed in advance of the new funding formula.

THE NO. 1 CAUSE OF STRUCTURAL FAILURES

Continued from page 5

other common problems associated with improperly compacted fill such as slope failures, retaining wall failures, and drainage problems.

In summary, diligent practices regarding structural fill material include:

1. Check prospective land for existing undocumented fill
2. Check fill quality and use proper fill placement methods
3. Use the proper equipment for fill compaction
4. Test and document fill density
5. Utilize a geotechnical engineer as needed

Structural failures caused by fill material are avoidable. Proper fill placement will help protect a home builder’s liability and hard-earned reputation.