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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 Padraig Ryan at pryan@njba.org.
Dear NJBA Members,

The 70th annual Atlantic Builders Convention will be held April 2-4 at Harrah’s in Atlantic City and I am hoping to see you all there to celebrate and take part in the largest industry trade show in the Northeast.

The convention will mark the culmination of my term as President of the New Jersey Builders Association – an experience that has been very rewarding on both a personal and professional level. I am extremely grateful to the numerous members who have worked with me over the past year to protect the interests of our industry in the legislative and regulatory arenas. Members and staff have been actively engaged in critical policy making discussions and it is crucial our membership remains vigilant as the political environment continues to pose challenges for our industry.

Most recently, NJBA has been heavily engaged with fire safety legislation. In November, I testified in front of the Senate Budget and Appropriations Committee against S1261 (Stack), which would require all multi-family residential buildings to be equipped with NFPA 13 sprinklers, horizontal separation and fire partitions of non-combustible materials, and a 24-hour fire watch warden during construction. After strong pushback from NJBA and other industry partners, a significantly scaled backed version of the bill was ultimately released from committee and the sponsor agreed to meet with the interested parties before any further movement of the bill. In December, I participated in the stakeholders’ process to identify the major concerns and to work toward a reasonable, workable alternative and we await the outcome of that discussion.

In January, I also testified before the Assembly Housing and Community Development Committee against A3974 (Quijano), which would require fire suppression systems in all new single and two family homes. The Assembly Committee voted to release the bill, but NJBA is urging the sponsor and legislative leadership to forego this unreasonable mandate and instead work on more focused, cost-effective fire safety initiatives.

Over the past year, our members and staff have been working with the legislature on S1073/A2694 (Smith/McKeon), that attempts to addresses the state’s compromised stormwater infrastructure through the establishment of stormwater utilities. While NJBA supports the centralized management of stormwater facilities, we worked diligently to secure amendments that ensure a property owners’ right to maintain their own stormwater system and to clarify credit provisions in the bill. On January 31, S1073/A2694 (Smith/McKeon) passed in both houses of the Legislature and awaits final consideration by Governor Phil Murphy.

NJBA has also been working with lawmakers and lobbying against other legislative initiatives that could create burdens on our industry including “environmental justice” legislation, public access legislation, a constitutional amendment on the right to clean energy, a number of bills regarding landlord-tenant issues and bills dealing with solar panels and electric vehicle charging stations in common interest communities.

In addition to playing defense on harmful legislation, NJBA is also engaged on several proactive legislative proposals to enhance the housing economy in NJ. NJBA is pushing policies through the legislative process that would reform liquor licenses, facilitate the repurposing of stranded assets and address NJ’s foreclosure process through the Residential Foreclosure Transformation Act.

On the regulatory front, members have also been extremely active, working on reforms to ensure a reasonable regulatory environment. Members have been meeting with the Department of Environmental Protection to review numerous regulatory issues including the Flood Hazard Area Control Act, CAFRA center designations, the Site Remediation Reform Act, Coastal Rules and the recently proposed green infrastructure Stormwater Rules.

To conclude, I’d like to provide an update on one of my core initiatives as President of NJBA – helping to address the ongoing labor shortage in the skilled trades. I am pleased to report that we made a major stride forward with the passage of a ballot initiative in November that will provide $500 million for public education, vocational and technical schools and county colleges for new programs. NJBA was strongly supportive of this initiative led by Senate President Stephen Sweeney and I am proud to have been a part of the campaign. The passage of the initiative will provide the resources necessary for training the next generation of workers.

We also partnered with the National Association of Home Builders (NAHB) and Lowe’s on a public relations campaign to encourage students to enroll in skilled trades programs and our members are connecting with the NJ Council of County Vocational-Technical Schools as well as the County Career and Technical Education Advisory Committees. Lastly, we launched a scholarship trust which will distribute

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AN UPDATE ON REDEVELOPMENT AND PILOTS
By: Craig M. Gianetti, Esq. and Nicole Magdziak, Esq.

Over the past several months, there have been court decisions, municipal action and proposed legislation involving redevelopment in New Jersey and the payments-in-lieu-of-taxes (PILOTS) that typically run with them. The following is an update on these recent developments.

1.) The Use of Eminent Domain for Redevelopment Projects ("Necessity" Test)

In the case of Borough of Glassboro v. Grossman, (App. Div. Jan. 7, 2019), the Appellate Division clarified what a municipality must demonstrate to acquire property in a redevelopment area through a taking under the Local Redevelopment and Housing Law ("LRHL"). The court established a two part analysis. A municipality seeking to condemn property by exercising its power of eminent domain must (1) articulate the purpose of condemning the property, tied to a specific redevelopment project and (2) present evidence to substantiate said purpose.

In Glassboro, the defendants’ owned property located within a redevelopment area and subject to a redevelopment plan. The redevelopment plan contemplated the construction of substantial mixed-use redevelopment a block away from defendants’ property. The borough sought to acquire defendants property. Unable to agree upon terms, the borough initiated a condemnation action to acquire the property. The borough claimed that it required the property for two purposes: redevelopment and increasing the availability of public parking. The trial court found the proffered need of public parking was sufficient to show that the taking was “reasonable and necessary to effectuate the redevelopment plan.”

The defendants appealed the trial court decision, arguing the borough failed to show a valid public purpose making it “necessary” to obtain the property as required under the LRHL. The Appellate Division, citing its decision in Vineland Constr. Co., Inc. v. Twp. of Pennsauken, qualified the required necessity by stating the acquisition of a property for redevelopment must be “reasonably necessary.” Such reasonable necessity does not require absoluteness or indispensability, but is evaluated in the light of all the facts and circumstances and balancing all interests. The Appellate Division ultimately ruled that such necessity must be supported by evidence that “articulate[s] a definitive need to acquire the parcel for an identified redevelopment project … [which] must be more specific than the mere ‘stockpiling’ of real estate that might, hypothetically, be useful for a redevelopment project in the future.”

The Appellate Division offered suggestions on the type of evidence that could be used including an expert planner, engineer, or traffic consultant report, architectural plans or a market study or economic forecast. The Appellate Division made it clear that a property owner has the burden to disprove the municipality’s evidence of necessity by a preponderance of the evidence.

2.) Compliance With the Terms of a PILOT

The New Jersey tax abatement programs are used to attract commercial, residential and industrial development to areas in need of redevelopment. As part of a redevelopment project, a municipality may grant a PILOT, whereby a developer pays an annual service charge in lieu of property taxes. The Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 (LTTE Law), allows a PILOT for up to 35 years (or 50 years in the case of a phased project based upon recent amendments to the LTTE Law).

Many municipalities effectively used PILOTs to transform themselves, such as Jersey City and Long Branch; however, such municipalities are reevaluating whether they “need” to give PILOTs anymore. Those opposed to redevelopment generally argue that PILOTs are “corporate welfare”, despite not recognizing the significant cost and risk in redeveloping blighted areas. Without PILOTs, many of these projects would not be financeable.

Most PILOT agreements are voluminous and impose obligations and other requirements on the redeveloper. Given the length of time these PILOTs are in effect, the PILOT will live through multiple local administrations. A change in administration could change how a redevelopment project and its PILOT are viewed.

For example, Jersey City has created an “office of compliance” to review each existing PILOT for compliance with its terms. In one recent instance, Jersey City rescinded a PILOT for an existing redevelopment project claiming the redeveloper failed to hire the required number of local workers for construction as required by the PILOT and redevelopment agreement.

Losing a PILOT could not only impact the economic viability of a project, but could also create a default under existing financing documents. Developers should have the proper system in place to ensure...
In March of 2015, the New Jersey Supreme Court released its opinion in the case that has come to be known as Mount Laurel IV. In Mount Laurel IV, the Court declared the Council on Affordable Housing (COAH) “moribund” and authorized the filing of declaratory judgment (DJ) cases so that municipalities are required to satisfy their affordable housing obligations under the Mount Laurel doctrine. This article summarizes where things stand, and highlights the remaining development opportunities presented by the Mount Laurel doctrine and its limitation on exclusionary zoning.

The “Case Count”

In the wake of the Mount Laurel IV opinion, approximately 330 DJ actions were filed in 2015. Some of those cases were soon dismissed without being decided, and others have been filed since that time, with the net number of such filed cases being about 340. Since being filed, approximately 270 DJ cases have been settled, leaving about 70 cases that remain open. In the cases that have been settled, the settling municipalities typically enjoy prospective immunity from suit for the duration of the “third round,” i.e., until July of 2025. However, this immunity is qualified, as discussed further below. As to the 70 or so cases that have not yet been decided by the trial courts, those cases typically involve more troublesome municipalities, and opportunities to seek rezonings within those cases remain. Some towns that have not yet settled are recalcitrant, while others are “vacant land” towns, as described further below.

The “Vacant Land” Towns

Municipalities are assigned numerical fair share obligations that they ordinarily must meet, with those fair share numbers resulting from an opinion issued by the Honorable Mary C. Jacobson, A.J.S.C., in the Mercer County DJ cases. While Judge Jacobson’s opinion is not technically binding outside of Mercer County, the judges throughout the State are treating the fair share numbers resulting from that very comprehensive opinion as being more or less sacrosanct. Many of the DJ cases that have not yet settled concern towns that claim to have insufficient land (or other resources) to satisfy their fair share obligations. These cases can become complicated, raising issues such as “realistic development potential” (RDP) and unmet need plans (typically overlay zoning), that do not arise in DJ cases not involving “lack of vacant land” scenarios. The nuances surrounding these issues are beyond the scope of this article, but suffice to say that the bargaining position of builders involved in such “vacant land” towns is stronger than in the ordinary DJ case, where municipalities have greater latitude in deciding which sites should be rezoned to meet their obligations. Each such case must be carefully analyzed, aided by experienced professional planners and legal counsel.


As to the DJ cases that have settled, the settlement agreements often contain “look back” provisions that can provide additional rezoning opportunities. Those settlement agreements typically include somewhat dubious compliance techniques, such as market-to-affordable plans that propose the buying of existing market rate housing, with the hope being that such units will then be deed restricted and ultimately provide credits toward a town’s fair share obligations. It is envisioned that most market-to-affordable plans will never pan out, due to a variety of logistical reasons. Another example of questionable compliance techniques is overreliance on 100% affordable municipal projects, which may or may not become realistic depending upon the availability of tax credits or some other contingency.

Because it is recognized that such dubious compliance plans may or may not become realistic compliance measures, settlement agreements sometimes include “look back” provisions that require a post-judgment assessment on milestone dates as to whether such plans have actually created affordable housing. Some of those “look back” milestones have already passed in older settlements, and some such milestones will be reached in the near future. At that time, if the

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When acquiring property in New Jersey for development, purchasers typically undertake significant and expensive environmental due diligence. Most sophisticated purchasers have experience in this area and may be very comfortable with the issues and problems that arise. However, environmental due diligence must be viewed as a constantly evolving tool, not a stagnant concept. This article will discuss the need to consider an additional group of compounds often referred to as contaminants of emerging concern, which have begun to garner much regulatory and public attention. As scientific studies result in the development of information on compounds that may be harmful to human health or the environment and analytical methodology provides for the detection of these compounds at very low levels, developers must continue to adjust due diligence activities to identify whether these compounds are present in air, soil or groundwater and assess the impact on value if detected.

Land development in New Jersey is rarely easy. There is often a history of industrial or manufacturing use at or near a property. In the case of the emerging contaminants of concern discussed below, an unrelated event such as a fire, which occurred in the past, at a nearby property may be enough to require evaluation beyond what has been typical. At the same time, consumers are becoming increasingly aware of, and concerned about, the environmental conditions in their living areas and outdoor spaces. While many hazards are well-known and routinely analyzed as part of a real estate purchasers’ due diligence efforts, new environmental threats, i.e. contaminants of emerging concern, continue to be identified.

Substances known as polyfluoroalkyl substances or PFAS, have been identified as a threat to the health of New Jersey residents. While no longer in use, PFAS were utilized in past years in products such as non-stick cookware, textiles, food packaging and fire-suppression materials (e.g. foam). These PFAS substances are highly water soluble, do not easily break down, and can cause serious harm to humans if ingested. A statement issued by the New Jersey Department of Environmental Protection (“DEP”) on February 14, 2019 provided:

“New Jersey continues to lead the nation in comprehensively protecting residents from the risks posed by the PFAS family of chemicals. In September 2018, the New Jersey Department of Environmental Protection established the nation’s first-ever MCL for perfluorononanoic acid (PFNA). By this spring, the DEP will propose the nation’s first MCLs and ground water quality standards for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). In addition, the DEP is currently accepting public comments on interim rules that will enable the state to compel clean-up of groundwater contaminated with PFOA or PFOS.”

Why do we care? Exceedances of groundwater standards detected during due diligence become the responsibility of the new property owner. Groundwater remediation can be both expensive and lengthy.

New Jersey’s population density means that new development will continue to be in demand. However, as new environmental threats are identified and technologies allow them to be detected at minute concentrations, even more stringent standards may be enacted in the future. Therefore, land purchasers and their environmental consultants should monitor these standards closely and take the appropriate steps to ensure they are included as part of routine due diligence efforts.

This article is for general information only and is not legal advice or counsel.

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On February 14th of this year, the USEPA announced it would be studying these compounds until the end of the year, raising the specter of federal standards that are inconsistent with New Jersey’s...

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Read the DEP’s announcement here: https://www.nj.gov/dep/dsr/ISGWQC_Public_Comment_PFOS_PFOA.html

Due to the fact that PFAS have and continue to be detected in water sources throughout New Jersey, the DEP has taken action to adopt new regulations requiring drinking water to be tested for perfluorononanoic acid (PFNA). Because the standards for these emerging compounds are so low, if even seemingly very small concentrations of PFNA (the current standard for PFNA is 0.014ppb) are detected, remediation will be necessary. New Jersey was the first state in the nation to begin to regulate PFAS despite the fact that there are currently no federal standards in place for these substances.1

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1 On February 14th of this year, the USEPA announced it would be studying these compounds until the end of the year, raising the specter of federal standards that are inconsistent with New Jersey’s.
Is your business living in the Stone Age like the Flintstones of Bedrock? While it’s humorous to watch Fred and Barney get into minor scrapes and conflicts, we doubt you want your business to go through similar incidents when it comes to your business technology. The risks of living in the technological “Stone Age” with outdated or legacy systems may be costing you more than you realize, and that’s no joke.

Most businesses these days need technology to run smoothly and efficiently and be competitive. However, with this technology comes the need for ongoing investment of both time and money to maintain your competitive edge and avoid business disruptions. So, what’s the big deal about keeping outdated technology?

Maintaining legacy systems can become both a financial burden and support risk. As time goes on, finding technical support or replacement hardware for older legacy infrastructure can become essentially impossible. There will come a point where you’re spending more money to maintain your legacy systems than you would have had you upgraded them initially.

Upgrades can become more difficult. The longer you wait to upgrade makes moving your data or business critical information from one platform to another more difficult and, in some cases, impossible to transfer. Sometimes, user training requirements are greater too.

Security becomes a huge concern with legacy systems. When a system goes off support, the developer of the system stops creating security patches leaving your business vulnerable. Often things like backup and disaster recovery become huge challenges when legacy systems remain in place. For example, Microsoft has announced the end-of-life for Windows 7 on user desktops and Windows Server 2008 on servers. This means that security patches will no longer be available for both operating systems. Additionally, backup vendors will stop supporting these older operating systems making it impossible to back up your data.

If your business has any compliance requirements, using outdated technology can have serious repercussions. Compliance standards, like HIPAA, PCI, SOX and more, require that your technology be supported. By continuing to use unsupported technology, you could be subject to fees and penalties if you experience a data breach (which are more likely due to security holes in your legacy system).

When you have older systems, the failure rates tend to increase resulting in downtime. As a reminder, downtime means the following costs:

- Expenses for IT recovery and data restoration (if even possible!)
- Dissatisfied customers (who may leave for the competition)
- Lost sales
- Brand/loyalty damage
- Lost employee productivity
- Potential employee overtime costs to meet deadlines after the failure
- Low employee morale and turnover due to stress

Another problem with outdated technology is that “old” and “new” technology often don’t work together. By using older technology, you cannot take advantage of new or advanced capabilities. This potentially limits your business’ mobility, scalability and growth. Even if you’re not staying current with technology, it’s likely that your competitors are—this puts your clients and revenue at risk.

So, while Fred Flintstone’s “foot-powered” car is great for driving around Bedrock, we encourage you to review and plan your technology upgrades today. If you need help getting out of the Stone Age, give IT Radix a call. We’ll help you stay competitive with peak-performing technology solutions for your business success.

About the Author:
Cathy Coloff is the Managing Member with IT Radix. Recognized in 2018 as one of New Jersey’s Best 50 Women in Business by NJBIZ and in 2015 as one of the Top Leading Women Entrepreneurs in NJ, Cathy has 25+ years of experience in network systems. With extensive corporate experience at Exxon and Bear Stearns, Cathy helps IT Radix clients to harness the power of technology to stay up and running, maximize productivity, be secure, reach their goals and achieve success. Cathy can be reached at 973-298-6908, itsales@it-radix.com or www.it-radix.com.
It’s late on a stormy Friday night and you’re out having a nice dinner with the family when your cell phone rings in an eerie tone. You don’t recognize the number but reluctantly answer. “Hello…Dreamy Custom Homes,” Bob speaking.

You’re immediately met with a raspy voice in an angry tone…”This is Fred Brueger.” You recognize the name but can’t quite place it.

“How may I help you?”

You hear several deep breaths and then the caller proclaims…”You need to come over now to fix my house!” You suddenly remember Fred as an odd private fellow with a distinct leathery complexion, and vaguely recall building him an unusual custom home about 8 or 9 years ago.

“What seems to be the problem?”

“For starters, the sewer is backed up and the plumber said it’s due to foundation movement. The basement is dripping in moisture and has large foundation cracks and a putrid stench. The floor slopes so much that my guest has to use the brakes on his wheelchair. Timely escape is unlikely with several inoperable doors, and the house often makes faint sounds like knives on a chalkboard.”

Your heart races as you try to find the right words to get out of this horrible predicament. Then it hits you in delight; you only offer a one-year home warranty and that expired years ago. You politely share this revelation with Fred, at which point he abruptly cuts you off and growls…”You’ll hear from my attorney…and furthermore I’ll share with you that several of your homes on our street have similar problems.” He abruptly hangs up, and as you put the phone back in your pocket you glance at your family in disbelief. You wonder how you could have avoided this nightmare.

Two weeks later you receive a hand-carried letter. You anxiously open it to find out that the legal firm of Lecter, Meyers, and Bates, PC, is demanding that Dreamy Custom Homes immediately make extensive repairs, compensate for the diminished value of the home, pay the homeowner’s living expenses and cover all attorney fees, or “we will see you in court.” Much to your surprise the letter embellishes that there is a 10-year implied structural warranty in your state. As you wonder what an implied warranty is, panic sets in because there are no funds in the company to pay for this home or any of the other homes you built in the last 10 years. The excruciating thought of bankruptcy crosses your mind. You worry about your hard-earned reputation in the community. A few days later this horror plot only continues as you learn that Fred’s thirsty attorney knocked on all the doors on Overwhelmed Street.

Let’s rewind and replay this exact same scenario, with the only change being that Bob had originally enrolled the homes in an insurance-backed, structural, new home warranty.

“Hello…Dreamy Custom Homes, Bob speaking.”

“This is Fred Brueger.” After calmly and patiently listening to Fred, you sympathize and sincerely apologize. You explain that despite a builder’s best efforts, sometimes foundation problems do occur due to unforeseen soil conditions. Then you confidently inform Fred that the home is covered by a 10-year structural warranty. You provide the warranty company’s phone number and calmly rejoin your family dinner. That is the last you hear from Fred.

Fred calls the warranty company and reaches Tina. Tina is a warranty administration expert that has reconciled thousands of these types of difficult calls. In a warm, reassuring voice, Tina converses with Fred and listens to his complaints, then validates the information against the warranty coverage standards. Quickly recognizing the severity, Tina transfers the call to Mary, a seasoned claims adjuster with the warranty insurer. Mary continues to comfort Fred by informing him that a local independent professional engineer will be dispatched to investigate.

After the engineer’s investigation is reviewed by the insurer’s engineering team, Mary informs Fred that the cost to make structural and cosmetic repairs will be $43,000, which is about average for a foundation problem. In short order, the repairs are made and Fred is thrilled with the results. Mary kept Bob in the
THE CHANGING LANDSCAPE OF STORMWATER MANAGEMENT: NEW RULE WILL REQUIRE INNOVATIVE TECHNIQUES

By: Peter Kasabach and George Vallone

(Originally published in Real Estate NJ on Jan. 7, 2019)

On Dec. 3, 2018 the New Jersey Department of Environmental Protection published amendments to the state’s Stormwater Management Rule (NJAC 7.8) that, when adopted, will change fundamentally the way stormwater management systems are designed in New Jersey. The key amendment will replace the existing requirement, which asks developers to incorporate so-called non-structural strategies “to the maximum extent practicable,” with a firm requirement to use a technique known as green infrastructure in new development.

What is green infrastructure? It’s an approach to managing stormwater and snowmelt in ways that return water to the ground near where it falls, or that collects water for non-potable uses such as irrigation or external cleaning. Examples of green infrastructure installations include rain gardens, bioswales, rain barrels and cisterns, green roofs, pervious pavements and constructed wetlands. The objective with all green infrastructure installations is to keep stormwater from running off into storm drains or sewer systems, picking up pollutants along the way and sometimes flooding the system and nearby neighborhoods before carrying those pollutants out into local waterways.

Green infrastructure has been proven as a stormwater management strategy, and has become mainstream in many U.S. communities large and small, including Philadelphia, Seattle, Milwaukee, Chattanooga, Syracuse, Fort Worth, Cincinnati and Washington, D.C. Green infrastructure is flexible and incorporates redundancy by distributing stormwater management facilities around a site. For builders and property owners it is often cheaper to install and maintain than traditional gray infrastructure, it lowers energy costs, it makes commercial areas more attractive for foot traffic, and it adds to a property’s value. Communities and the environment reap the benefits of green infrastructure through reduced flooding, cooler and cleaner air, more beautiful neighborhoods, better physical and mental health outcomes, greater and cleaner groundwater recharge, and less pollution in our rivers, lakes and streams. Green infrastructure can also help to mitigate some of the effects of a changing climate.

The change to New Jersey’s Stormwater Rule will bring with it a variety of benefits. But developers need not wait for the new rule before designing projects with green infrastructure. The Developers Green Infrastructure Task Force, a partnership between New Jersey Future and the New Jersey Builders Association, has produced the New Jersey Developers Green Infrastructure Guide. It’s a full overview of the “what, why and how” of incorporating green infrastructure into any project, and it’s available at no charge for any builder or developer who wants to start using it. (There is also a recently introduced companion guide to help municipal officials who want to incorporate green infrastructure into public projects.)

An excellent example of effective incorporation of green infrastructure into a development project can be seen at the New Jersey Manufacturers’ corporate campus in Hammonton. Stormwater management for the project had to comply with the stringent requirements of the Pinelands Comprehensive Management Plan, but the NJM Insurance Group wanted to go further, and aim for handling nearly all stormwater on site. Engineers designed a fully integrated system consisting of a number of biofiltration basins, parking lot bioretention swales, a wetland basin, and a bioretention island, with the combined ability to treat and infiltrate large volumes of runoff.

In addition, a 120,000-gallon belowgrade rainwater capture and reuse system was constructed that harvests roof runoff for use in onsite irrigation, thus reducing the facility’s demand for water from the sensitive Kirkwood-Cohansey Aquifer.

There’s no question, this holistic approach to water management is the wave of the future — and for good reason. Green infrastructure makes a project look better and work better, and it adds value. It makes good business sense. When the state rule change goes into effect and everyone is required to build green infrastructure into their projects, the competitive advantage will go to those who got a head start.

About the Author:

Peter Kasabach is the executive director of New Jersey Future, a nonpartisan nonprofit organization that promotes policies and practices for sustainable growth and development in New Jersey.

George Vallone is president of The Hoboken Brownstone Co., a Hudson County-based developer, and a member of the Developers Green Infrastructure Task Force.
THE CASE.... FOR MORE LANDLORDS

By: Bill Asdal

There is a well-documented shift in housing patterns of homeownership vs tenancies as consumers evaluate the costs of accessing housing. The trend is accelerating as is the argument that the savings a renter can find over home ownership can be deployed to grow their cash and hence increase the tenants net worth. The swing may continue past the norms to even more renters in the coming years.

There are about 127,500,000 homes in America. Every 1% shift from owners to tenants means we need somebody to buy and manage 1,275,000 homes. As vacancy rates drop so does the risk of owning rental properties.

As a capitalist country we always need entrepreneurs to drive our economy. The self-employed enjoy the independence of their daily schedules as well as certain tax advantages for their businesses. The tax act of 2018 includes a provision of a 20% deduction on the income of all pass-through entities. This alone is a terrific incentive to create a small business. And if the incentive of smaller historical risks is at the doorstep, so is the trend line to higher rents. The median asking price for rents has doubled in the last two decades.

Five positive factors help your balance sheet when investing in real estate:

1. Ideally, buy under market
2. Rents should increase
3. Home should appreciate
4. Principal is paid down monthly if you have a mortgage
5. You can depreciate the building, and if the result if a negative number you can shelter active income.

By the way, there is no self-employment tax on passive income. Look carefully at how you structure your purchases.

The tax advantages of real estate investing can be simple to navigate and powerful to incent individuals to carry out national policies of support for small business and housing solutions. Our citizens will need places to live. Our government needs entrepreneurs, and your focus can be on your balance sheet instead of your income statement. Most of our workforce looks at how much they are paid. The national debate is sharply focused these days on the minimum wage. Few folks talk about, much less focus on, their balance sheets. Investing in real estate will give you a nudge to do just that. Look at your total assets, tally your liabilities and the difference is your net worth. Likely the last time you crafted this figure was when you applied for a car loan or a mortgage. A balance sheet tally should be often, and regularly monitored. Are you worth more today than one year ago? I hope so, but hope is not a plan, and you need a strategy and plan to garner assets while pumping up passive income.

There are four steps to animating this vision. Firstly, you need to hone your view of the overall market, sub-markets and trends. The better your view of the present the more likely you can minimize risks into the future. Second, you will need to set in place a plan (business plan anyone?) that is reflective of your view and you need to understand the tools that help you make market and property decisions. Third, you get to execute on the plan and manage the properties. All of what we do in our portfolio is looked at with a 10-year horizon, though we have property that has been productive and in our possession for 45 years! The case being made is for landlords, NOT flippers who only create taxable active income. The fourth consideration is how to get out. This is not limited to a sale of the property converting it to cash. There are plenty of ways to think this through and shift the asset to the next generation and beyond.

To date there is no wealth tax in the

About the Author:
William “Bill” Asdal, CGR, owner of Asdal Builders, LLC, of Chester, New Jersey, is an award-winning residential remodeler and custom builder with over 40 years experience. Asdal is the former chairman of the National Association of Home Builders’ Remodelors Council and was a driving force behind the creation of Professional Remodeling magazine to address the business needs of the industry.

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As we enter 2019, the nation’s economy appears to have its ups and downs due to many moving parts. With regards to the Real Estate industry in particular, there are many variables that have shaken things up, and I believe we will not understand the full impact of change until the dust has settled.

I am neither an economist nor fortune teller, but with more than 30 years of experience in the Real Estate industry and as an advisor to clients in the market, it is my duty and passion to have my finger on the pulse of trends and forecast the coming future.

The Impact of TCJA on Real Estate

It has now been over a year since our industries saw sweeping tax changes enacted by the Tax Cuts and Jobs Act, but we are now beginning to see what this means for the Real Estate sector.

For example, the limit on state and local tax deductions (SALT) continues to impact the single-family home market in states with high real estate taxes such as New Jersey. Recent studies have reported that 30% of homeowners in NJ are unable to fully deduct their taxes, and many first-time buyers have been hindered to enter the market because of that. The good news is that we have seen mortgage rates drop in the last quarter after trending up in 2018.

Also incorporated into the tax reform legislation was “The Opportunity Zone Program” enacted to incentivize real estate investment and development in low-income communities across the country. Opportunity Zones are designated tracts allowing investors to provide capital for projects in exchange for certain tax breaks, and 75 municipalities representing every county in NJ have at least one opportunity zone designated.

Current Trends & Expectations

The retail landscape continues to be a challenge as consumers are turning more and more to online shopping than physical stores. The number of retailers filing for bankruptcy continues to rise and the result of these bankruptcies is not just reorganization, but total liquidation. Combining entertainment and food with retail continues to be a way to draw consumers.

Industrial space demand and pricing continue to be strong. We are experiencing a shortage of available space because of demand generated by e-commerce and the need for warehouse and shipping facilities. 2019 will show no sign of softness in this area and the legalization of cannabis will only increase demand.

In the resale market, inventory remains low because of many factors. While the demand for product for empty nesters (individuals moving after their children have moved out) remains high, new products are limited by NJ’s difficult entitlement process and the high cost of acquiring land. This coupled with the continued increase in material costs and shortage of labor has driven up asking prices for this type of product and many empty nesters have decided to stay put and renovate their existing homes – leading to a boom for those in the home remodeling arena.

We have seen the millennial generation delay the move to suburbia and have stayed in cities and in rental spaces. Trulia, a site for buyers and renters continues to be a way to draw consumers. Industrial space demand and pricing continue to be strong. We are experiencing a shortage of available space because of demand generated by e-commerce and the need for warehouse and shipping facilities. 2019 will show no sign of softness in this area and the legalization of cannabis will only increase demand.

On the local level, many communities continue to embrace multifamily development to both increase their tax base and meet the ever-growing need for affordable housing. Over 60% of the building permits in NJ continue to be allocated to multifamily units, and many of the aging communities have seen a surge in new development as a result. Demand seems to be keeping up with supply, however, because New York City is making only small increases to rent, NJ cities that are lower cost alternatives to NYC (Jersey City, Hoboken, etc.) are feeling the pressure to stop increasing rent as well to stay competitive.

Challenges Facing New Jersey

New Jersey has not made the state very friendly for taxpayers of any kind. In 2018, New Jersey instituted its millionaires’ tax which taxes income over $5 million at 10.75 percent. The state also raised the corporate business tax to 11.5% which is the second highest corporate business tax in the country. Some recent statistics also indicate that over 3 billion dollars in tax is paid annually from NJ residents to

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A MESSAGE FROM NJBA PRESIDENT
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$2,500 annually to each of our four locals over the next five years. I will continue my involvement in this initiative after I step down as President, and we will continue to bring dozens of young men and women to various job sites and show them how beneficial a career in the building trades can be for their future, their family and their community.

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

I hope to see you at Harrah’s in Atlantic City on April 2 for my final Board meeting as President and for the installation of President-elect Corey Wescoc as the 66th President of the New Jersey Builders Association. I have worked with Corey on various regulatory and legislative committees and know that he will continue to make positive contributions to the housing industry and wish him much success in his new role.

AN UPDATE ON REDEVELOPMENT AND PILOTS
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Affordable housing units have not actually been provided, the municipality will be required to “fill the gap” with more realistic compliance techniques. Such new compliance techniques could be in the form of inclusionary development rezonings. Thus, builders are encouraged to become familiar with the settlement agreements applicable to towns of interest, and to monitor whether the promised affordable housing credits have actually been provided when the milestone dates are imminent. If not, such builders can become involved in proceedings concerning such towns, seeking favorable rezonings accordingly.

Builder’s Remedy Opportunities

Towns that filed DJ cases were issued immunity from builder’s remedy suits. That immunity is to stay in place so long as the municipality continues to seek Mount Laurel compliance in good faith. However, the courts have terminated immunity in certain cases and, when that immunity is terminated, a builder’s remedy suit can be filed. Builder’s remedy suits are superior to participation in DJ cases because the builder is presumed entitled to the proposed inclusionary development if the town’s ordinances are, in fact, not in compliance with the Mount Laurel doctrine.

In addition to towns whose immunity has been terminated (or lapsed), approximately 200 municipalities either never filed DJ cases, or they dismissed them before acquiring a judgment of compliance. The vast majority of those towns are vulnerable to builder’s remedy cases as well. Many such towns are located within weak housing markets, but that is not always the case. In fact, some towns located in very attractive housing markets have chosen not to take any preemptive action because they have concluded, often foolishly, that they cannot be successfully sued by a builder, either because there is not much vacant land available or for some other reason. Builders interested in exploring such opportunities should inquire as to the status of particular towns.

Conclusion

The current “round” of DJ cases is starting to wind down, with the next full round beginning in 2025. However, that is not to say that rezoning opportunities do not currently exist as a result of the Mount Laurel doctrine. Summarized above are some of the opportunities that may be currently explored.
loop every step of the way, and let him know that two other new claims on the street are being processed in a similar manner.

With warranty protection, Fred’s claim doesn’t cost Bob a penny. Furthermore, in a worst case scenario, had Fred not accepted the $43,000 settlement and sued, the mandatory arbitration clause in the warranty would have protected Dreamy Custom Homes. Arbitration is commonly used in most industries in all fifty states. The process is fair and reasonable for both parties, since the arbitration takes place in the home with an experienced construction arbitrator. Arbitration is much quicker and less expensive than a court proceeding, and the outcome is legally binding.

Unfortunately, Bob’s nightmare with his many unprotected homes plays out all too often in real life. It is not common knowledge that every state has implied warranties (5- to 10-year terms) established by court rulings. The courts are choked full of construction litigation. For this reason, some states have even resorted to mandatory warranties for every new home. The typical cost to protect an average home is about $500 paid at closing, which amounts to just $50 per year for 10 years. Don’t risk living an all-too-common nightmare; let the experts take your warranty calls. Sleep well at night by protecting your business and hard-earned reputation with an insurance-backed new home warranty.

U.S. Building your net worth through asset acquisition and management is a classic play and the times could not be better when looking at mega trends. Local markets will need more scrutiny, but all the pieces are in place for a strong play into being a landlord for the coming decades. Create your view, draft your plan, execute, monitor and enjoy a frequent look as your balance sheet grows. It’s good for consumers who need well managed housing and it will be good for you financially when well executed. Capitalism works and the door is currently wide open.

NY because they work in NY. While this benefits New York greatly, it continues to be a challenge for New Jersey as it tries to raise more tax revenue through means like legalizing sports betting and pending legislation to legalize cannabis.

While there are many factors impacting real estate and the NJ economy in general, the ability to grow job opportunities in the state may have the greatest impact. Gov. Phil Murphy recently signed a bill that pushed a historic increase to the state’s minimum hourly wage. New Jersey will now see a $1.15 increase this July, which will increase each year until 2024 when the hourly minimum wage will hit $15. Opposers of the law argue this mandate will put stress on small businesses already struggling to make ends meet, while labor advocates argue the current minimum wage of $8.85 it too little to afford even basic needs.

Looking ahead in 2019, New Jersey needs to focus on controlling the cost of doing business, managing its tax structure and allowing for an easier process to obtain development approval. During this time, Real Estate professionals such as I will continue to forecast the effects of change within our industry and focus on new opportunities to capture the competitive advantage.