



Winter 2021

# 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](http://www.njba.org).

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

## A Message From NJBA President Michael Canuso



Like many of you, I am pleased to have put 2020 behind us and to begin a new year. I know however that many of you, your families and businesses still face unprecedented challenges as we deal with the global pandemic. As we enter 2021, we are cautiously optimistic this year will be better for all of us. NJBA has been instrumental in protecting our businesses despite the economic turmoil occurring throughout the world. We fought diligently to have home building designated an essential business and worked with the Murphy administration to ensure our members were able to safely remain at work, providing opportunities for NJ residents. We also fought to have the Permit Extension Act of 2020 signed into law, ensuring that qualified projects retain their government approvals for duration of the public health state of emergency.

We expect 2021 to also be extremely active with many matters coming before the NJ Legislature and regulatory agencies. Most noteworthy on the regulatory front, the Department of Environmental Protection will be unveiling its new Protecting Against Climate Threats rules which seek to regulate new development and improvements in new climate

adjusted flood hazard areas, along the shore and inland. In the legislature, NJBA is already active, fighting against harmful legislation that would mandate prevailing wage on projects utilizing tax abatements or PILOTs. We are also busy advocating for the passage of NJBA's initiatives to provide greater protection to approvals which involved virtual public meetings.

There are so many members that helped guide the association through a tumultuous year and who continue to support our staff as they advocate on our behalf. However, one deserves special recognition for not only being the author of the Permit Extension Act but also for taking the lead in writing the virtual public meetings legislation. At our January Board of Directors meeting, I presented Robert Washburn with the Presidential Award for Meritorious Service, a new award I created to honor NJBA's best and brightest. Sadly for us, but joyfully for him, Bob will be stepping back after 47 years of membership with NJBA and as our general counsel for 16. Bob embodies everything we want in a member...He has won basically ever award, represented us before the Supreme Court, testified in Trenton, and has supported the Association in countless ways. Bob has always been a phone call away and I could not be more appreciative for what he has helped our industry and association achieve.

With Mr. Washburn vacating the NJBA General Counsel position, NJBA was left with the difficult decision of determining who might replace him. Ultimately, we determined that it would be a disservice to NJBA and our Master Sponsors to appoint

only one new counsel. Accordingly, we have created several new counsel positions to help bring our Master Sponsors greater exposure and to provide the NJBA staff and Officer's with specialized expertise in specific issue areas. I'd like to welcome Andy Norin of Faegre/Drinker as our new General Counsel, Rick Hoff, of Bisgaier Hoff as our new Affordable Housing Counsel, Steve Mlenak of Greenbaum, Rowe, Smith & Davis as our new Redevelopment Counsel, and Daniel Kluska of Wilentz, Goldman and Spitzer as our new Construction Counsel. Our new Counsel positions will not only help fill Mr. Washburn's shoes but complement our current counsel positions which will remain unchanged with Tom Carroll of Hill Wallack as Land Use Counsel, Mike Gross of Giordano, Halleran and Ciesla as Environmental Counsel, and Ted Zangari of Sills Cummis and Gross as MXD Counsel.

Our new counsel, combined with the expertise of our members and staff, leave NJBA well positioned to tackle the challenges ahead in 2021. I am certain that our association will continue to weather the pandemic and remain a force in Trenton as we seek to carry out our mission to provide New Jerseyans with shelter. Our industry has been a bright spot in the economy this past year and I am certain that strength will continue to propel us into 2021 with renewed optimism that the woes of 2020 may soon be behind us.

Wishing you the best,

Michael Canuso



## NJ PACT Heating Up

By: Steven M. Dalton, Esq. and Michael P. Castore, Esq.

The poet Bob Dylan wrote “Try imagining a place where it’s always safe and warm. Come in, she said, I’ll give ya shelter from the storm.” NJDEP provided its first glimpse of New Jersey Protection Against Climate Change (“NJ PACT”) in response to the storm believed to be coming – increased flooding and negative environmental impacts from climate change. Glaringly absent from NJDEP’s vision is any indication of where people will shelter.

On January 27, 2020, Governor Murphy, coincident with the issuance of an updated Energy Master Plan, issued Executive Order No. 100 (2020), directing NJDEP to amend its regulations to “integrate climate change considerations, such as sea level rise and chronic flooding” and “prevent further increases of harmful greenhouse gas emissions and other climate pollutants that could prevent the State from reaching its clean energy goals and exacerbate the current climate crisis”. On the same day, NJDEP Commissioner McCabe issued Administrative Order 2020-01, directing NJDEP to produce various climate change reports and incorporate climate change considerations into NJDEP’s various permitting rules.

In response, NJDEP commissioned and produced several reports, each adhering to the conclusion that a 17% probability exists that sea level rise (“SLR”) will exceed 5.1 feet by Year 2100. It also informally released contemplated regulatory changes to the public for discussion via two stakeholder sessions in December 2020 and January 2021. The proposals are extensive and, if adopted as presented, will have Statewide impacts on development and redevelopment.

The NJ PACT amendments will implement a “watershed based” approach to regulation,



intended to address environmental impacts of development “holistically” rather than incrementally. NJDEP’s rulemaking will be guided by its conclusion that SLR, extreme weather, and chronic flooding are “unavoidable impacts of climate change”, justifying reliance upon future projected “expectations” of SLR instead of past flood event data in the regulatory framework. Brief highlights are provided below.

- A new regulatory **inundation risk zone (“IRZ”)** will be established consisting of land expected to be tidally flooded based on the NJDEP-sponsored Rutgers report which estimates a 17% chance of 5.1 feet of SLR by Year 2100, characterized as the “moderate” SLR risk”. The limits of the IRZ are established by adding five feet to the mean high water elevation.
- Development within the IRZ zone will be subject to severe restrictions. New buildings (including redevelopment) will require a hardship exception. New and substantially damaged residential buildings would be required to construct to one foot above the to-be-created **Climate Adjusted**

**Food Elevation** (“CAFE+1”). Nonresidential and non-critical buildings may be flood-proofed to CAFE+1 if elevating is impracticable.

- Many roadway improvements within the IRZ zone will require a hardship exception and submission of a climate impact statement.
- To account for projected SLR, the tidal flood hazard will be expanded to the CAFE (100-year elevation plus five (5) feet).
- NJDEP proposes a new fluvial CAFE relying upon one future rainfall study not specific to New Jersey. NJDEP presented several options: an additional foot of elevation above the FEMA 500-year flood; the addition of 2 feet of elevation above NJDEP’s design flood; or, 3 feet above the FEMA 100-year flood. Alternatively, hydrologic and hydraulic calculations may be used to calculate fluvial CAFE based on 125% of the future 100-year discharge.
- The rules will implement technical changes regarding flood hazard area and net fill / flood storage displacement calculations.
- Projects that have not commenced work in a flood hazard area within 180 days of approval will need to register on-line before starting work to re-certify consistency with the NFIP.
- Residential and critical buildings must have a first floor elevation of CAFE+1. Other buildings may flood-proof to that elevation. New and redeveloped roads must be elevated to CAFE+1 as practicable taking into account existing conditions. However, applicants will need to demonstrate the existence of an “evacuation” route meeting CAFE+1

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Steven M. Dalton, Esq. is a shareholder with Giordano, Halleran & Ciesla (ghclaw.com). His primary practice is in Environmental Law. He can be reached at sdalton@ghclaw.com and (732) 219-5486. Michael P. Castore is an Associate in the firm. He focuses his practice on a variety of environmental and land use matters. Michael can be contacted at (732) 741-3900 or mcastore@ghclaw.com.

## Construction Contracts During And Post-Pandemic: It's No Time For A "Jersey Contract"

By: Daniel J. Kluska, Esq. and Donald E. Taylor, Esq.

In one of music's most storied deals immortalized in the Broadway hit "Jersey Boys," Frankie Valli partnered with songwriter Bob Gaudio. Gaudio suggested to have a lawyer write a contract. Frankie extended his hand, "You want a contract? Here. A Jersey contract."

What makes for compelling Broadway drama, however, creates turmoil on the construction site, and headaches in the courtroom. Construction projects are, by their nature, complicated, involving layers of designers, project managers, and contractors working each system in coordination with other layers of workers on other building systems. While all parties are united in executing a conflict-free construction project, misunderstandings inevitably occur. Clear, thorough contracts keep projects on track and minimize disputes. The pandemic has introduced more uncertainty into contracting parties' respective responsibilities. This is the first of a two-part article exploring a few of the provisions that owners, designers and contractors should consider in contracting during and post-pandemic.

### Specific Scope of Work

Even in the best of times, a comprehensive scope of work is the heart of any construction contract. Consensus on the roles and responsibilities over each task serves to avoid disputes (e.g., whether materials and tasks are within the scope or constitute compensable extras). Specific scope keeps a project on track and minimizes conflicts regarding impacts upon the project schedule.

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The challenges arising from the pandemic reinforce the importance for all involved to agree on precisely who is responsible for what. Only after the roles and responsibilities for each task on the project schedule are outlined may schedule impacts be identified and resolved.

### Schedules and Force Majeure Provisions

The pandemic and resulting government orders have caused delays to construction schedules. New safety protocols, workforce reductions, staggered schedules, physical distancing, absences, supply chain disruption, and material shortages will continue to impact timelines. Any significant delay to a task on the critical path to completion creates a ripple effect throughout the project.

One way to address responsibility for pandemic-related project delays is via a force majeure clause, which serves to identify uncontrollable events that through no fault of either party make it difficult or impossible to perform under

the contract. The parties insert a force majeure clause to absolve them from liability in the event either cannot fulfill its contractual obligations or where attempting to do so will result in loss or damage for reasons beyond their control. A force majeure clause is a bit of an enigma, meaning "superior force;" it describes an "event or effect that cannot be reasonably anticipated or controlled." Thus, its goal is to anticipate events that cannot be reasonably anticipated.

Whether a force majeure clause absolves responsibility if the impact of COVID-19 renders it impossible or impracticable to perform under the contract depends, in large part, on its language. For example, the regulation governing federal construction contracts provides that contractors shall not be in default if the failure to perform arises from, inter alia, "epidemics" and "quarantine restrictions." By contrast, Section 8.3.1 of AIA Document A201-2017, widely used in non-government contracts, recognizes certain enumerated unforeseen conditions including "other causes beyond the Contractor's control," but does not specifically list epidemics, pandemics or quarantine restrictions. Case law interpreting whether this catch-all provision would include epidemics, pandemics or quarantines is relatively sparse, but sure to evolve. Thus far, courts tend to narrowly interpret force majeure provisions to those circumstances listed, and those of a similar nature.

Parties entering into construction contracts during and post-pandemic should address whether they intend to include stoppages or delays caused

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## The Era of the Eerily Silent Car is Upon Us

By: Michael R. Butler, Esq.

I am an environmentalist, but I have to admit there is something satisfying in turning a key and cranking a gas engine to life. It is the sound and feeling of an engine roaring awake. The feeling is not quite the same when an electric car can be turned on with a push of a button, greeting the driver only with a beeping reminder to buckle up. Despite my feelings, electric cars will continue to be an integral part of our landscape into the future. Recently, Governor Murphy reaffirmed his commitment to the goal of 100 percent clean energy usage by 2050 by signing two pieces of legislation fostering the increased use of plug-in electric vehicles and the development of supporting infrastructure in New Jersey. The legislation directly impacts the building industry by encouraging the installation and use of electric vehicle charging stations ("EVCS") in new developments and in existing communities.

First, on September 14, 2020, Governor Murphy signed S349, which became N.J.S.A. 52:27D-141.10. The legislation mandated that a "developer offer to install, or to provide for the installation of, an [EVCS] into a dwelling unit when a prospective owners enters into negotiations with the developer to purchase a dwelling unit." The requirement only applies to new construction of residential homes in a development containing twenty-five (25) or more homes. If an EVCS is not being installed as part of the construction, then the developer must disclose the cost for the optional installation of an EVCS to a prospective buyer in the sales contract and provide the buyer with a

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link to the website for the Department of Community Affairs, containing general information on the environmental benefits of using an electric vehicle and on any applicable credits, rebates, and incentives for the installation of an EVCS. Lastly, the legislation confirmed that a homeowner in a common interest community (condominium association, homeowners association, etc...) is responsible for all costs related to the installation and maintenance of the EVCS.

The legislation provides at least two items of note for the building industry. First, because the act does not distinguish between types of construction (single family, townhome, condominium, etc...), the developer of any new residential development containing twenty-five (25) or more units has to plan for where EVCS will be located in future projects and must know the costs associated with such installations. Second, all residential developers have to update their existing sales contracts to reflect that a homeowner now has the option to have an EVCS installed as part of the construction.

The second piece of legislation, signed on October 19, 2020, is N.J.S.A. 45:22A-48.4 (A3367). This act focused on the installation of EVCS in common interest communities. Much of the legislation's impact on the building industry will be determined by individual communities and developers as the act is interpreted and applied in practice, but there are a few salient points to be aware of. First, the legislation proscribes the adoption or enforcement of regulations that would prohibit or unreasonably restrict the installation or use of an EVCS in a designated parking space, even if that space is part of a common, or limited common, element. Second, the legislation requires an association to act on an application to install an EVCS within sixty (60) days from its submission. Third, homeowners that install an EVCS are responsible for all costs associated with the installation, use, and maintenance of the unit and must provide insurance covering the unit. And, fourth, the legislation provides the association with the authority to grant licenses to unit owners to exclusively utilize common parking areas for the installation of an EVCS, the authority to install EVCS for the general use of the association's community, and the authority to create new parking areas to facilitate the use of EVCS.

These two pieces of legislation dovetail to help create a network of EVCS throughout New Jersey that will, hopefully, lift us into a cleaner future. Electric vehicles will be part of our lives in the future and I will just have to get used to the eerie silence.

### About the Author:

Michael R. Butler is an attorney in New Jersey, a member of Eckert Seamans Cherin & Mellott, LLC, and really has no qualms with electric vehicles. He focuses his practice on land use, community association's law, and real estate. Michael can be reached by e-mail at: [mbutler@eckertseamans.com](mailto:mbutler@eckertseamans.com); and by telephone at: (609) 989-5023.



## NJDEP Green Infrastructure Regs to Affect Land Development

By: Steve Gomba, PE, CFM

In 2020, New Jersey Governor Murphy signed [Executive Order 100](#) a sweeping Energy Master Plan to protect against the threat of climate change. This plan was developed partially in response to a 2019 report “[New Jersey’s Rising Seas and Changing Coastal Storms](#)”, prepared by Rutgers University for the Department of Environmental Protection. Part of this plan requires the New Jersey Department of Environmental Protection (NJDEP) to develop new regulations integrating climate change considerations regarding sea level rise into its regulatory and permitting programs.

Developers need to be prepared to change tactics prior to March 2, 2021 as the latest round of stormwater management and land use permitting regulations becomes operative to address climate change impacts.

### Translation

Responsible stormwater management is essential to a successful land development project and oftentimes, runoff systems are over-engineered to satisfy the NJDEP while protecting the client’s investment. While massive detention basins, above or below ground, can prevent flooding they can also occupy valuable land which can limit the size of the property build-out.

Sparked by Superstorm Sandy in 2012 and frequency of other large-scale weather events trending across the US, Executive Order 100 led to the NJAC 7:8 revisions addressing how stormwater runoff is managed close to its source through:

- Infiltration into subsoil
- Filtration by vegetation or soil
- Storing for reuse

The new regulations target the



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composition of motor vehicle driving surfaces for filtration (including parking lots) and support using Green infrastructure Best Management Practices (BMP) for stormwater infiltration, filtration and/or water reuse.

Managing stormwater runoff is dependent upon a combination of the land uses, topography, soil composition, groundwater conditions and ability of soil to infiltrate. Portions of the guidelines are based in mathematical standards but one of the anticipated benefits is a more predictable and efficient permitting and approval process. The standards will also enable stormwater management designs to be efficiently sized, as designs will be allowed to take credit for reduced surface discharges due to runoff that is infiltrated into the soil. Site development will need to take a more wholistic approach in the design process to ensure soil and groundwater conditions throughout the sites are considered from the beginning of the process. It’s complicated, but it’s also anticipated that climate change and resiliency will become a more significant factor at all levels of government as regulations continue to evolve.

### The Solution?

Developers must be prepared to see a different site design process and end result worked into construction and

landscape design. Increased geotechnical soil investigations will need to be performed at the project’s onset. There’ll be less large stormwater basins and more smaller ones that will infiltrate or filter runoff, or store runoff for reuse.

In the right configuration, these allowable off-sets can be as efficient as they are attractive, while satisfying NJDEP regulations. Some means of mitigating stormwater runoff in larger surface areas include:

- Small-scale Infiltration & Bio-retention basins
- Pervious Pavement
- Green Roofs
- Grass Swales
- Forested Bioretention

### The Before & After Rule

The images below demonstrate the intent of these new stormwater rules. The image labeled Before Rule Change depicts a conventional multiuse commercial site as having one large detention basin located at the rear corner of the property. The After Rule Change image shows the same site with multiple small-scale stormwater BMPs scattered throughout the site. Due to the infiltration of runoff and ability of these small-scale BMPs to work within the site as opposed to pushed to one side, this scenario shows the benefit of one additional commercial building on the site compared to the conventional design layout on the left. *(Illustration: page 15)*

### Conclusion

Executive Order 100 is one small step toward more in-depth, ever-evolving guidelines slated for the future of

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#### About the Author:

Stephen Gomba, PE, CFM, Project Manager/Maser Consulting. Steve has over 15 years of experience as a design engineer performing project design, plan and report preparation, stormwater management design, hydrologic and hydraulics analyses, and environmental permitting for both private and public projects.

## 2020: A Look in the Rearview Mirror

By: Cathy Coloff

Certified driving instructors have a plethora of rules and advice for proper use of a motor vehicle—including how to use your mirrors. They advocate checking your rearview mirror every 5-8 seconds because what is behind you, can certainly affect your way forward. Considering how 2020 transpired, many may not want to even spend any time in reflection. However, we feel it is important to highlight a few lessons gained from this turbulently unexpected annum.

### Expect the unexpected.

If business owners and managers learned anything this year it is that unexpected environmental, public safety and governmental issues can have a huge impact on how and if you can conduct your business. The Boy Scout motto of “Be Prepared” certainly applies here. Those with plans in place that lay out how to keep delivering value to clients are the winners. Also, it sure helps to have a financial cushion in place as well. Maybe it is time to re-name the good old “Rainy Day Fund.”

### Security is paramount.

IT professionals have been proselytizing for years about the importance of layers of security protecting all organizational hardware, software and most importantly—data! With “remote work” becoming the norm for many in 2020, security is even more essential. Enterprises that put in place strictures to ensure that all hardware that accessed their networks had adequate security



in place—such as ensuring personal machines were Windows 10 and had adequate anti-virus, and/or accessed the office network solely through a secure Virtual Private Network (VPN) with Multi-Factor Authentication (MFA)—reduced their cyber risks significantly.

### Mobility and agility are vital.

Being able to move/work freely and easily anywhere (mobility) as well as quickly (agility) is vital going forward. Those firms that had an executable disaster recovery plan in place, along with the needed devices and knowledge on how to use them in the hands of their staff, were the ones who sailed much more swiftly through the initial months of the pandemic. To facilitate staff to be able to produce work from almost anywhere anytime—and then do it from somewhere else quickly if need be—is the new lifeblood of many businesses.

### Overcommunication is impossible.

Interactions with staff, vendors, and clients on a frequent basis via all forms— email,

calls, virtual meetings, distanced personal visits—are vital in critical situations such as what 2020 delivered. Focusing in those communications on “how” things will proceed, not “if” things will proceed, separated the winners from the losers. While many employees have enjoyed working from home, it is imperative to minimize any feelings of isolation through frequent and positive communications of all types.

### Double up.

Duplicating resources is the new normal post the 2020 experience. Having data backups is just part of that, but also having spare laptops and access to temporary office space and stockpiling key resources is the lesson here. Replicating servers in the cloud so downtime is minimized in a disaster is another way to double up. A rule of thumb is that, if it is vital, be sure you have at least two of it!

### Stay goal focused.

The final lesson is this: Do not let yourself or your business get caught up in the swirl of craziness that can take over in turbulent times. You got into this business for a reason, stay focused on it. Your customers need you and your services. You may have to reinvent your “how,” but you do not have to reinvent your “why.” Onward and upward!

IT Radix is here to help you navigate your IT journey and keep your eyes on the road ahead.

#### About the Author:

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

## The Pitfalls of Litigation to the Bitter End

By: Ed Dunham, Esq.

Two recent cases from opposite ends of the country underscore the pitfalls of litigating to the bitter end. There is an old adage that one of the main benefits of settlement is that the parties get what they bargained for, but nobody really knows what they are going to get at a trial. These two cases illustrate the wisdom of that adage.

*Lakehill Investments, LLC v. Rushforth Construction Company*, Docket No.: 79116-8-1, Court of Appeals, Washington (2020) concerned a rather typical construction dispute between an owner and a construction contractor. The owner filed suit for breach of contract in October 2015 alleging construction defects and delays. The contractor defended, arguing that the defects were the result of non-buildable plans and the delays were largely caused by the owner. The contractor counterclaimed, alleging that the owner had failed to pay it in full.

What was not typical, however, was the scope of the dispute. Before trial, the parties produced more than 1 million documents. They took 59 depositions, and participated in 6 days of mediation. The trial lasted 2 months and the jury heard from two dozen witnesses, one of whom testified for 6-1/2 days. Ultimately, the Court awarded a net award to the contractor of \$9,624,695.80, of which more than half (\$5 million) was attorneys' fees. The owner appealed and the contractor cross-appealed. The central point of the appeal was three jury instructions that the owner argued were erroneous. The Appellate Court found that one of those instructions was erroneous and prejudicial. The erroneous and prejudicial claim was limited to the owner's defective work claim. On the

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basis of that error, the Appellate Court reversed and remanded for a new trial.

The damages originally sought by the parties are not set forth in opinion, but the amount of discovery taken and the length of trial alone indicates an expensive legal undertaking. We know from the attorneys fee awarded that the contractor alone spent at least \$5 million in legal fees.

*Site Enterprises v. NRG Rema, LLC*, Docket No. A-1852-18T4 (App Div. 2020) is a New Jersey Appellate Court case concerning enforcement of a construction lien claim involving the demolition of the Werner Generating Station. The general contractor hired the plaintiff to perform demolition work under a lump-sum contract. No schedule of values was provided.

The plaintiff commenced work, but the project was subsequently suspended and then terminated. The plaintiff was not paid and filed a construction lien claim asserting that it had completed 15% of its work. The owner and general contractor refused to pay, and the plaintiff filed an enforcement action.

The defendants argued that in light of the lump-sum nature of the contract

and no agreed-upon schedule of values, the plaintiff's figure of 15% completion was speculative and therefore overstated. The defendants produced an expert to substantiate their position. From an owner's perspective, the position does not seem unreasonable.

The plaintiff's expert had worked exclusively for demolition companies as an estimator/project manager for 25 years. He testified that his opinion that the plaintiff had completed 15% of its contract was grounded in his experience as an estimator and his familiarity with the jobsite. He explained at trial his methodology.

The plaintiff also produced the general contractor's own project manager, whose daily reports estimated that the plaintiff had completed 16% of its work. The project manager had ceased employment with the general contractor after the project stopped. Although the defendants attacked the daily reports as inaccurate, at trial, the court found that the project manager credibly testified as to how he arrived at the percentage.

The trial court found the lien claim valid and enforced it. Moreover, it assessed the defendants \$80,188.26 in attorney fees, consisting of the legal fees that the plaintiff had incurred *from the date it notified the defendants that it had located the project manager and that he would appear at trial to authenticate his daily reports*. The basis of the sanction was the Court's determination that the defendants should have known that their defenses had no basis under the statute once they knew that their own employee was going to appear for the plaintiff and authenticate his daily reports.

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### About the Author:

Ed Dunham, an attorney with the Princeton, NJ office of Eckert Seamans, practices in the area of commercial litigation, with an emphasis in construction law. He counsels contractors, subcontractors, and owners with the negotiation and administration of construction contracts and in dealing with the claims that arise on major construction projects. He can be reached at 609-989-5021 or [edunham@eckertseamans.com](mailto:edunham@eckertseamans.com).



## Federal Tax Incentives for Homebuilders and Building Owners Extended in COVID Relief Bill

By: Matthew Kaplan

Amidst many economic stimulus measures in the recently enacted Consolidated Appropriations Act, 2021, are the following:

- Section 45L Tax Credit for Energy Efficient Homebuilders extended until the end of 2021
- Section 179D Tax Deduction for Energy Efficient Buildings made permanent

### Section 45L

This tax credit is for developers of new single-family homes, townhomes, and apartments in buildings three stories or less. The credit is in the amount of \$2,000 per qualified dwelling unit. The primary requirement is to demonstrate energy savings of 50% or greater compared to a dwelling unit built to the standards of the 2006 International Energy Conservation Code (IECC).\*

A Residential Energy Services Network (RESNET) accredited professional such as a Home Energy Rating System (HERS) Rater must approve a dwelling unit as qualified. The process to qualify a unit involves energy modeling in software (typically during design) as well as rough and final stage inspections/testing during construction. Most of the energy modeling software used for the tax credit can also be used to demonstrate compliance with NJ energy construction code. Reports generated from the energy modeling software can be submitted to municipality in lieu of a REScheck software report. The inspections to confirm compliance with the tax credit overlap with required inspections for energy construction code compliance. By following the HERS

Rating process, which includes all energy modeling and inspections for both the tax credit and energy construction code compliance, residential developers can streamline both efforts.

Legislation has been introduced in Congress to extend the tax credit beyond the end of 2021, while increasing both the requirements and the amount. Historically it has always been renewed and has remained in effect since it was first established in 2005.

### Section 179D

This tax deduction is for developers and owners of new and existing commercial buildings, as well as apartment buildings four stories or more. The deduction is up to \$1.80 per square foot. It can be earned for the construction of new buildings or improvements to existing buildings. The requirement is to demonstrate energy savings of 50% or greater when compared to an ASHRAE Standard 90.1 baseline. As part of making the deduction permanent, it now requires the comparison to be made to the most recent version of ASHRAE in place two years prior to the start of construction.

Savings can be claimed based on the energy efficiency of the Envelope, HVAC and Hot Water, and Lighting systems. The total deduction is \$1.80 per square foot, but partial deductions of \$0.60 per square foot are available for meeting each category independently. In order to qualify for partial deductions a minimum savings threshold is set for each category. You must achieve a minimum of 10% savings from envelope measures to take the partial

envelope deduction, 15% savings from HVAC and Hot Water, and 25% from Lighting.

Separately, the deduction can be earned through the "Interim Lighting Rule" by lowering the overall lighting power density. All project teams installing high efficiency lighting should examine if they qualify for this credit because it is often achievable. This rule works on a sliding scale, offering up to \$0.60 per square foot.

A licensed design professional must approve a building as qualified. The process to qualify a project involves energy modeling in software as well as onsite inspections. For a new building, the energy modeling software used for the tax credit can also be used to generate reports showing compliance with NJ energy construction code. The reports can be submitted to the municipality in lieu of COMcheck software reports.

### Conclusion

While it may not always be cost-effective for every new home to qualify for the tax credit nor for every large building to qualify for the tax deduction, there are opportunities to leverage NJ's Clean Energy Program rebate programs to offset costs to qualify for both. This is because a) the efficiency requirements for the tax credit and deduction exceed the minimum efficiency requirements of NJ's Clean Energy Program rebate programs; and b) NJ's Clean Energy Program rebate programs use the same energy modeling software and inspections used for tax credit and deduction.

\*Please note there are different requirements and amounts for manufactured homes (e.g., trailers). This article does not discuss such homes.

#### About the Author:

Matthew Kaplan is the CEO of ReVireo an energy efficiency and green building services company that provides analysis, consulting, and verification services to help clients determine and achieve target levels of energy efficiency and sustainability for building projects throughout the Northeast and Mid-Atlantic. He can be reached at [mkaplan@revireo.com](mailto:mkaplan@revireo.com) or 888-568-5459.

## Impacts of COVID-19 on Real Property Taxes in New Jersey

By: Anthony F. DellaPelle, Esq., CRE®

New Jersey real property owners will receive notice of their 2021 property tax assessments by early February, and many will consider whether the economic impacts of COVID-19 should cause them to seek property tax relief due to a decline in their property values. In New Jersey, retail, hospitality and office properties have likely suffered the most to date, while the market for industrial properties has generally been strong, and residential properties have seen mixed consequences in different parts of the state.

These changes in the market are likely to continue or become more significant for the foreseeable future, signaling that property owners may be paying more than their fair share in property taxes. Where an assessment does not reflect a property's true market value, the taxpayer may file an appeal to reduce the assessment and the property tax expense but, before so doing, make sure you ask, and have answered, the following questions:

### 1. Can I appeal in 2021?

For most properties in New Jersey, the annual filing deadline for tax appeals is April 1st, although properties in Monmouth, Burlington and Gloucester Counties may have an earlier deadline which passed on January 15. For 2021 appeals, the "assessment date", or date of valuation, is October 1, 2020, so evidence of sales or leases of other properties that occurred last fall – in the midst of the pandemic – may provide a taxpayer with evidence in support of an appeal this year.

### 2. What is the Property's Current Assessment and "Equalized Value"?

Prior to filing a tax appeal, you first need to know your property's current assessment and its indicated value. New Jersey municipalities use an "equalization ratio" to translate property tax assessment to market value, thereby avoiding the need to reassess properties every year. The ratio is different in every town and changes every year. Ratios are available on the NJ Division of Taxation's website. For a ratio at or near 100%, the assessment is intended to represent the current market value. But some municipal agencies have base assessments that have not been revalued in many years, so the equalization ratio is low. As an example, the City of Elizabeth has a 2020 ratio of 10.68%, meaning that a property assessed at \$500,000 would intend to indicate a market value of about \$4,700,000! If the equalization ratio is less than 100%, statewide legislation may provide the town with a shield in the amount of 15% of the equalization ratio, which acts as a cushion so that the assessment does not have to be perfect.

### 3. Is the Property Currently Under-Assessed?

Importantly, situations do arise where filing a tax appeal could potentially increase your property tax assessment, so you need to make sure that filing a tax appeal won't cause you to wind up with a higher tax bill. Furthermore, in certain municipalities, appeals have been and are being filed by the town to increase assessments. For example, in the City of Jersey City in 2020, dozens of appeals were filed by the City to raise commercial

property tax assessments. Make sure you evaluate that risk before filing an appeal this year.

### 4. How will the Property be Valued?

Sales of similar properties are generally the best indicators of a property's value for residential properties and land. Income-producing commercial properties such as retail, warehouse, or office properties are typically valued by using a formula to "capitalize" the income stream in order to determine value. Special purpose properties, like certain types of industrial facilities, may be valued using a "reproduction cost" approach, since there may not be adequate evidence of the sale or lease of similar properties. Significantly, any owner or taxpayer for an income-producing property needs to determine if "Chapter 91" requests were properly made by the local tax assessor, because filing to timely respond to these 91 requests will give the town a right to dismiss any appeal filed in the following year.

### 5. Should I Look for Assistance?

Property tax appeals can often be complicated and time-consuming. Commercial tax appeals in New Jersey can take a few years to resolve. In order to be successful, it's important that to comply with state-sanctioned deadlines and procedures, only some of which have been mentioned above. An experienced property tax appeal attorney can provide assistance by ensuring your tax appeal is filed appropriately, has merit, and can be supported by competent evidence.

#### About the Author:

Anthony F. DellaPelle, Esq., CRE®, is a shareholder in the firm of McKirdy, Riskin, Olson & DellaPelle, P.C. [www.mrod.law](http://www.mrod.law). He has represented New Jersey property owners and local government agencies in eminent domain, property tax appeal and other real estate valuation litigation matters for more than 30 years.

## The Top 7 Social Media Marketing Trends Home Builders Leveraged in 2020

By: Terry Tateossian

The past 2020 year posed a number of challenges to the homebuilding industry.

Home builders were to take into consideration that health concerns triggered a new interest in their market, namely the need for separation. With the decline in demand of multi-family houses and the townhomes becoming the popular choice of purchase the sales and marketing techniques were to be reconsidered.

The change in market predispositions also affected the way home builders were used to communicate with their target audience online. People are now spending more and more time online and that's the reason why Social Media Marketing becomes quite a valuable tool in home builder's marketing arsenal.

But let's go over what were the top 7 social media marketing techniques that successful home building brands adopted within the past year and see whether you could adopt those to your own social media strategy.

### Selecting the Color Scheme and Sticking to It

As a seasoned home builder you most certainly know that Instagram is one of the top converting social media platforms for your vertical. You should not only seek ways to attract new followers, but how to make your current ones feel cozy and 'at home' when visiting your business profile.

And just like an interior designer will recreate the perfect impression of a new home, your IG feed will present your brand in a light that could either encourage clicking the follow button, or

will chase away your target audience.

The overall look of your Instagram feed should be carefully planned. It should offer a consistent look, both in terms of a color scheme and in terms of content format.

If you scroll further down their feed you'd see that it remains true to this unique style. Elegance, simplicity, calmness – the beige notes, complemented by delicate accents in royal blue (their brand's color) – everything whispers of professionalism.

Don't get me wrong, feel free to experiment with colors, but do it wisely and in style. Otherwise you risk having a chaotic IG feed that overwhelms rather than draws your target audience.

### Stepping Up on the Video Production Efforts

Deciding on the content format you are to publish on your Social Media profile is just as important as covering its general theme. Among the home builder's community "93% say they use social media in their marketing, but only 45% say they use video".

That's an untapped opportunity – a competitive advantage that you could seize and up your game.

Let's check the top 2 home builders, the finalists in the Builder 100 list for 2020. Both D.R. Horton and Lennar Corp list a video as a cover for their Facebook page:

Of course, this could be only the beginning of your video content production strategy. Think of:

- Showhome Tours;
- Testimonials;
- Informational Videos;
- Explainer Videos;
- Listing Videos;
- Interview Videos;
- Home Buyer Advice Videos;
- Special Offers Videos;
- Virtual House Tours;
- Neighborhood Videos;
- New Construction Model Video Tours;
- Live Q&As;
- Aerial Footage;
- Before & After Videos;
- Staff Interviews.

Unleash your imagination, test what your audience likes best and focus on delivering it on a regular basis.

### Events are Still a Thing!

Regardless of the fact that the past year has somehow crippled our social lives, public events haven't been postponed, they simply moved online.

Diversify your Social Media strategy by launching a grand opening on your Facebook profile. Take Pulte Homes for example, they are doing this on a regular basis.

### Putting Your Clients in the Spotlight

There is no better brand advertisement than a happy customer. Show off your satisfied customers. In a world where an image is worth a 1000 words illustrate your client's positive experience with your services. Posting a photo of newly-become homeowners is almost as good as posting their honest testimonial.

[Continued on page 17](#)

#### About the Author:

Terry Tateossian is Founding Partner at Socialfix Media, a 15-year old agile and fearless digital agency based out of NJ, New York City, and San Francisco. Always relationship focused, Tateossian utilizes aggressive growth strategies and leading-edge digital solutions, executed flawlessly to achieve maximum impact for the agency's wide client roster. An international speaker and thought leader, Tateossian enjoys taking ideas to the next level of innovation and repeatedly delivering value to her clients and audiences.



## Is My Development Project Located In An Opportunity Zone, And Why Should I Care?

By: Michael Benguigui, CPA

The state of New Jersey is running huge deficits due to the pandemic that started almost one year ago. In 2018, New Jersey lawmakers created a new top tax bracket of 10.75% on earnings starting over \$5 million, but because of the pandemic, the income threshold was lowered from its highest top-end income bracket of 10.75% from \$5 million to \$1 million. Currently, there are many tax strategies for real estate investors to defer or reduce their taxes. The option that is fairly new and has brought much attention to investing in real estate is Qualified Opportunity Zones (“QO Zones”) – either creating one’s own Qualified Opportunity Fund (“QO Fund”) or investing in a third party’s QO Fund.

QO Zones allow investors who previously recognized a taxable capital gain (can be short-term or long-term capital gains) to defer it by investing the gain proceeds into a QO Fund. QO Zones are designated low-income housing tracts in the United States (and Puerto Rico). There are approximately 8,700 QO Zones spanning low-income areas of major cities across the country. A detailed map can be found here: [www.saxllp.com/QOZ-designations](http://www.saxllp.com/QOZ-designations)

### What’s the Tax Incentives to Investing in a QO Fund?

1. Immediate Tax deferral of previous disposition gain.

The investor must invest their capital gain from a previous transaction into a QO Fund. This can be any capital gain from the sale of real or non-real property. The capital gain is deferred by investing the amount of the gain into a QO Fund;

hence the return of capital portion does not need to be invested to benefit from the deferral. The investment must be made within 180 days after the sale of the property which triggered the gain. The gain is deferred to the earlier of (i) the date on which a QO Fund is disposed or (ii) December 31, 2026; the deferred capital gain would be paid by April 15, 2027. Note that capital gains reported from a flow-through interest (i.e. partnership or S-Corporation) are exceptions to the 180-day-rollover deadline which can allow taxpayers to defer their capital gain from a 2020 calendar year recognition until September 12, 2021.

2. Basis increase of a QO Fund.

An investor’s initial tax basis of a QO Fund is initially zero since the cash being invested is from a transaction in which the gain is being deferred. However, if the investor holds its interest in a QO Fund for at least five years, the tax basis is increased by 10% of the deferred gain; investors that invest in a QO Fund after December 31, 2021 would no longer be eligible for the 10% tax basis increase.

3. Elimination of the gain on certain properties held by a QO Fund.

Investors that hold the QO Fund investment for at least 10 years can receive the added benefit of paying no tax on any realized appreciation in investments made with the QO Fund.

New Jersey tax law follows the Federal treatment of QO Fund investing.

Example:

New Jersey resident holds appreciated publicly traded securities. Investor sells

securities and generates \$2 million of long-term capital gain by December 31, 2020. Investor decides to defer \$1 million of this gain into a QO Fund. Here is a breakdown of the tax benefits:

### Dec. 31, 2020

Defer paying \$200,000 tax on the gain (i.e. 20% tax on \$1 MM capital gain) and \$109,700 of NJ Taxes.

### Dec. 31, 2025

\$20,000 (10% of \$200,000) of Tax forgiven since met the 5-year holding period at the Federal level and \$10,970 at the NJ level.

### Dec. 31, 2026

Investor pays \$180,000 of Federal tax (\$200,000 - \$20,000) due by April 15, 2027, and \$98,730 (\$109,700 - \$10,970) of NJ taxes.\*

### Dec. 31, 2030

QO Fund sells underlying property generating tax profit; investor’s portion is \$500,000. None of this profit is subject to Federal or NJ Capital Gains.

### Breaking News:

Taxpayers who recognized a gain in 2019 may now have until March 31, 2021 to invest in a Qualified Opportunity Fund, according to a new notice issued by the IRS on January 19. This Notice effectively allows taxpayer’s in certain circumstances the option to amend their 2019 tax returns and defer those capital gains by March 31, 2021. You can read Sax’s article with more information on this update [here](#).

\* Assumes tax rates at that time is the same as today.

#### About the Author:

Michael Benguigui, CPA is a Senior Manager at Sax LLP and a member of the Sax LLP’s Real Estate Practice. He specializes in tax and accounting services for property owners, developers and private equity investors. Michael can be reached at [mbenguigui@saxllp.com](mailto:mbenguigui@saxllp.com).

## A Brief: LNAPL-Impacted Soils

By: Fuad Dahan, Principal

The remediation of petroleum spills to render a site ready for re-development may be very costly and lengthy because of the nature of the petroleum liquids involved, and their interaction with soils and groundwater. The discharges of petroleum liquids, which are also known as Light Non-Aqueous Phase Liquids (LNAPLs), are common in oil terminals, tank farms, gas stations, and other oil processing or storing facilities. LNAPL-impacted sites are generally valuable real estate for warehousing or residential development because of their proximity to waterfronts, major highways (oil terminals and tank farms), or near city centers (gas stations).

If spilled in quantity, LNAPL floats to the top of the groundwater table and adsorbs to the soils. Free phase LNAPL may be in the form of floating phase on the ground water or in soils if detected above certain value as extractable petroleum hydrocarbon (EPH). In New Jersey, if a site investigation detects LNAPL as free phase, it requires remediation. Given the constraints of the remedy and time it may take, choosing the proper remedy is key for the economic viability of the development project at an oil-impacted site.

Generally, the remedy of LNAPL consists of mass removal of the free phase followed by treatment of the dissolved residual phase in groundwater. There are several remedies commonly applied for the mass reduction of LNAPL including multi-phase extraction, recovery, thermal extraction, surfactant flushing, and excavation. The optimal remedy must consider the duration to achieve the remedial objectives and its implementation must have minimal delay on site improvement. Implementation of certain remedies (i.e. thermal) may have major impact on the start of the development. Certain remedies such as surfactant or multiphase extraction and recovery may not affect the start of construction. However, they may be long term remedies and, in many cases, may result in relatively small recoveries, which result in further extending the duration of implementation. Excavation, depending on the depth of the water table, may be the most efficient remedy method because it removes contaminants from the site. Depth of the impact caused by an LNAPL discharge is limited to the depth of the groundwater. In areas where the groundwater table is shallow, the excavation of LNAPL and

off-site disposal of the resulting soils may prove to be economic. In addition, excavation is a quick process and conducive to development especially if it is part of site preparation.

The characterization of the LNAPL is a key first step for a successful remedy. Determining the limits of what is considered free product in soil or groundwater pre-remedy will determine the time and effort to complete the remedy. The NJDEP has determined that the free product is a set EPH concentration in soils depending on the spilled oil category: either #2 fuel oil or diesel/all other types of oil. However, the level of EPH that defines the free product varies from site to site depending on the soil characteristics and the weathering of the discharged oil.

Familiarity with contaminants, local and federal requirements, and available remediation options are important to selecting the best solution for your project. Learn more about LNAPL, 1,4 -dioxane and other emerging contaminants by following our social media channels or contacting us directly.

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### About the Author:

Fuad Dahan, Principal. SESI's mission is to advance the success of our clients by approaching every project as a partnership. Since our founding in 1976, we have earned an excellent reputation for providing comprehensive engineering services – Geotechnical, Environmental, & Site Civil. [www.sesi.org](http://www.sesi.org) 973.808.9050

## Social Recruiting: Job Hunting Goes Digital

By: Vicki Marziale

It's no secret that your employees are the key to your company's success, that's why it's crucial to attract and retain top talent. In the past, attending job fairs and listing open positions in the classifieds may have been enough to recruit employees. However, the job search has evolved in recent years thanks to our increasingly digital world, resulting in the rise of social recruiting.

Social media is a powerful tool for job seekers as 73% of millennials report using social platforms to find their current position. These tips will ensure you are reaching potential candidates and showcasing why your company is a great place to work.

### Find the right platforms

LinkedIn is the go-to platform for employers and job-seekers alike, with over 100 million applications submitted each month it should be used to your advantage. LinkedIn offers a variety of options for creating and promoting job openings, allowing you to target and reach the perfect candidates.

Instagram allows you to give candidates an inside look at everything your company has to offer. Use it to showcase original photos and videos from around the office.

Word of mouth matters, that's why monitoring and maintaining a presence on Indeed and Glassdoor is vital. As current and former employees leave company reviews ensure you are actively responding to them, even when they're negative. This shows potential candidates that you are engaged and responsive to employee feedback.

### Showcase your culture

In a competitive job market your company culture is what sets you apart and can often make the difference when candidates are considering offers. Make sure to capture what makes your company unique, from internal events to office perks. Unsure how to define your company's culture? Seek employee feedback by asking "how would you describe us in three words?" This feedback can then be used to develop your recruiting efforts.

### Use Authentic Images

Use authentic imagery to tout your company culture. Candidates will see right through stock photographs, so enlist the help of a talented photographer. Look for unplanned moments around the office: a department holding a surprise baby shower, two employees holding a meeting in the kitchen, a lively chat at the water cooler. Candid photos capture the essence of your employees and allow your culture to shine through.

A professional photoshoot in the office is a great way to build a library of images for your website, social media and Glassdoor. You're striving for candid pictures. Avoid forcing camera shy employees to participate, standard headshots--and above all, no one pointing off camera with a forced smile. These images lack sincerity. Invest in a talented professional who understands proper lighting, composition and even editing. One or two well composed images can sell your company culture.

### Employee advocacy is key

The beauty of social recruiting is it goes

beyond your company's existing social media accounts. Your current employees are powerful advocates and can help boost your recruiting efforts. Create a hashtag and encourage employees to use it when sharing photos from around the office. The hashtag will help capture organic moments from the people who matter most - your employees. Candidates want to know how your current employees feel about your company, let these photos and videos show them.

Employee advocacy tools like Gaggles and Hootsuite Amplify allow you to curate content specially made to be shared by your employees. Leverage your employees' social reach by encouraging them to share posts about job openings, company announcements, and more. Incentivize participation through gamification, awarding prizes each quarter to employees who share the most content. This allows you to get more employees involved outside of Sales and Marketing, who often view employee advocacy as part of their job description.

As the job hunt continues to evolve it's important to make sure you're focusing your recruiting efforts properly. By following these basic principles you're setting your company up for success as you introduce new social recruiting tools to the business. Artificial intelligence and recruiting via texting are emerging trends, so it's key to stay ahead of the curve.

Need help managing your presence on social media? Contact us and we'll help create content that appeals to prospective employees and customers alike!

#### About the Author:

Vicki Marziale is the Social Media Manager for Netwave Interactive Marketing. With nearly a decade of experience in digital marketing, Vicki helps clients reach and engage with their target audience, starting conversations that generate sales. Her work for clients on a national and local scale has been recognized with awards from the Public Relations Society of America and PR Daily. Vicki can be reached at [vicki@netwaveinteractive.com](mailto:vicki@netwaveinteractive.com).



## Home Building for Today's Buyer

By: Nina Petersen

As we start 2021, we are slowly beginning to take steps towards returning to normal; however, there are several things that started during the pandemic that many believe are here to stay. One of those things is remote working. Numerous companies are finding that they are able to keep up their productivity and save money by switching to this new model. People will be spending more time at their homes than ever before.

So, you may be wondering, what does this mean for the construction industry? This means people are going to want more amenities in their homes. Amenities that we have seen at global headquarters of innovative tech companies will now be coming home. New buyers will be

looking for a wide array of things to make their lives more convenient and to entertain their kids. The first thing buyers will be looking for are home offices. These are distraction free zones where homeowners can escape in the same way they used to when they went to work. When building a new home, factoring in a home office leads to a huge return on investment. By adding the home office from the initial build, you save on renovations you would otherwise need to do in the future. Building a home office leads to an average return on investment of 87%.

People will also be looking to stay active and entertain their kids in safe ways. This is where home gyms, sports courts,

and swimming pools come into play. It is essential that these additions be added to the plans from the very beginning. With ceiling height restrictions and other space requirements, adding an indoor basketball court, squash court, or home fitness studio in the initial plans can save a lot of money for homeowners. When considering outdoor additions, it is important to consider the lot coverage if the homeowner is looking to add an outdoor sports court, a swimming pool, or an in-ground trampoline.

By taking the time to plan for the future from the initial build, homeowners will be able to save money while ensuring that they have the space for all of the amenities that fit their new lifestyle!

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### About the Author:

Nina Petersen, Assistant Project Coordinator, SportProsUSA SportProsUSA has been the premier source for building and maintaining sport courts in the metro area for over 10 years. As the exclusive Sport Court® residential and commercial court builder in New Jersey and New York City, SportProsUSA has a proven history and unparalleled experience of installing unique, playable and safe surfaces for every sport in every environment. [www.sportprosusa.com](http://www.sportprosusa.com) (201) 485-8520 [info@sportprosusa.com](mailto:info@sportprosusa.com)

## NJ PACT Heating Up

Continued from page 3

- or obtain a hardship without the same “practicability” consideration, making the leniency provided for new/redeveloped roadway provision suspect.
- Stormwater rules will be amended to require onsite retention of the water quality storm and 80% TSS removal for redeveloped motor vehicle surfaces. Major development projects requiring wetland permits will be subjected to Stormwater compliance.
- CAFRA permitting will require approved developments to meet traffic LOS D. Currently, applicants are not required to mitigate for existing roadway conditions where LOS D is already exceeded.
- Under the flood hazard program, regulated waters will be expanded to include isolated waters that drain less than 50 acres. Riparian zones (“RZ”) will be expanded (including addition to the non-ocean side of barrier islands) and made more restrictive, and mitigation requirements enhanced.
- Climate change related conditions will be added to wetland permitting including among others demonstrating “necessity” for proposed General Permit impacts, vernal habitat assessments for proposed isolated wetland fills, enhanced mitigation requirements, expansion of minimum distances (25-feet) from wetlands and deed restriction requirements (entire modified buffer) for buffer averaging.
- Mitigation for all Land Use permitting programs will require consideration of future climate change.
- NJDEP will remove Department-delineated coastal centers from the Coastal Rules and instead rely solely on State Plan designations for impervious cover allowances.
- Procedural changes are contemplated to automate many permit condition compliance obligations, and establish a new “Permits-by-Registration”

category replacing most of the current Permits-By-Rule.

NJDEP’s NJ PACT presentation signals an intentional shift toward enhanced environmental protection to counter projected climate change threats. The agency’s initial contemplated framework of climate change restrictions on development begs the question, where will housing be incentivized to allow folks to “shelter from the storm”?

## Construction Contracts During And Post-Pandemic

Continued from page 4

by the pandemic, government order or quarantine restrictions to be force majeure events warranting extensions or excuse of performance. Directly addressing the issue will help to avoid or minimize further unnecessary delays and costly dispute resolution.

The COVID-19 pandemic has created challenges specific to construction businesses, as is the case with nearly every business sector. This article is the first in a series that is designed to encourage contracting parties to caucus with their in-house or outside legal teams to consider the unique new challenges each project presents and negotiate upfront who will bear responsibility for each. It will be time, energy and resources well spent.

## The Pitfalls of Litigation to the Bitter End

Continued from page 8

Both of these cases involved needless expenditures of money on experts and attorneys that could have been avoided with the application of a little common sense. The defendants in the *Site Enterprises* matter should have folded their tents and negotiated a payoff once they learned that their former employee was going to substantiate the plaintiff’s claims. Both of the parties in the *Lakehill* matter spent large amounts on legal fees for a trial that now will have to be redone unless the parties settle now.

The opinion in *Lakehill* makes it clear that the plaintiff there was a contentious litigant. The defendants in *Site Enterprises* clearly held onto their position long past its viability. Both chose not to compromise. Both are paying for that choice now. Sometimes a party has no choice but to continue litigating rather than settling. But the danger there, as illustrated by these two cases, is that unanticipated, and expensive, results can occur.

## NJDEP Green Infrastructure Regs to Affect Land Development

Continued from page 6

development in New Jersey. Although sites may become more efficient in terms of stormwater management, the design process will become more involved. Therefore, it's more critical than ever to build your team early to include

architects, landscape architects, civil engineers and geotechnical engineers to navigate you through these rule changes. Local ordinances are still being revised so, while some grandfathering options in the regulations for existing projects

might be available—the final word will be governed locally. Keep in mind that complete application packages have to be in prior to March 2, 2021 to be grandfathered-in under the current regulations.



Credit: Illustration courtesy of the Developers Green Infrastructure Guide 2.0 produced by New Jersey Future and the New Jersey Builders Association. <https://developersguide.njfuture.org/>

## The Top 7 Social Media Marketing Trends Home Builders Leveraged in 2020

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### Motivating Opinion Sharing

Save from offering entertaining and informative content on your Social Media profiles you should definitely try to engage your audience. Make them express their opinion, feelings, expectations, and thus they could easily start a discussion and eventually shape up a strong community.

You can either adopt a subtle approach by offering them an unconventional opinion on a highly controversial topic, or you could be pretty direct and ask them a question.

The guys at NVHomes have done just the latter when they requested feedback

from their followers about their personal design choice for outdoor spaces.

### Introducing Your Team Members

Humanizing your home building brand is really important when you strive to build a connection with your audience. It almost always comes hand in hand with leading a transparent business. If you wish to build trust in your services and team – introduce your experts to your followers.

KBHome have created a series of posts on their Instagram following this particular formula: "Meet Tom, our Tucson, AZ construction superintendent".

### Showing What You Care for

There is nothing more revealing of the culture and values of a given business than the causes it supports. Giving your audience the opportunity to learn about how you support your community is the right way to win their respect and trust.

Have you already thought about ways you could integrate the above-listed techniques in your Social Media Marketing strategy?

Remember; do not follow blindly your competitors. Select the approach that best fit your own brand and culture, test it and fine tune it till it starts rendering great results for your business.