Fall 2022

DIMENSIONS

Newsletter of the New Jersey Builders Association

In This Issue

Dimensions newsletter is produced by the New Jersey Builders Association (NJBA). NJBA is a housing industry trade association of builders, developers, remodelers, subcontractors, suppliers, engineers, architects, consultants and other professionals dedicated to meeting the housing needs of all New Jersey residents and facilitating their realization of the American Dream of home ownership. NJBA serves as a resource for its members through continuing education and advocacy. NJBA and its members strive for a better, greener, more affordable housing market. Additional information is available at www.njba.org.

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

Mount Laurel in the "Fourth Round" – What Happens Next?

By: Thomas F. Carroll, III, Esq.

The "fourth round" of *Mount Laurel* compliance begins in July 2025. Many towns are already beginning to plan for meeting their fourth round obligations, and some builders are already exploring the opportunities that the fourth round may present. This article summarizes where things stand, and examines some possible mechanisms for fourth round compliance.

Recapping the "Third Round"

The third round of *Mount Laurel* compliance was supposed to begin in 1999 but, due to foot-dragging by the Council on Affordable Housing (COAH), it did not begin in earnest until 2015. In March of 2015, the New Jersey Supreme Court released the opinion that has come to be known as "*Mount Laurel IV*." In *Mount Laurel IV*, the Court declared COAH "moribund" and directed that *Mount Laurel* compliance was to be achieved through the filing of court cases, including municipal declaratory judgment (DJ) actions and builder's remedy suits (under certain conditions). Since 2015, well over 300 *Mount Laurel* cases have been filed and almost all of them have now been resolved, mostly through settlements.

The third round concludes in July of 2025. Almost all judgments of compliance entered in third round cases provide towns with immunity from builder's remedy suits (with certain exceptions) until July 2025, at which time the fourth round begins. Certain questions are therefore presented – how will fourth round compliance be achieved? Will we again have it done through the filing of lawsuits? Or through an administrative agency? Will we see new legislation on the topic? How will fair share obligations be determined?

Legislative Activity

In 1985, the New Jersey Legislature adopted the New Jersey Fair Housing Act, the legislation that created COAH and began a 15-year period of achieving *Mount Laurel* compliance through the COAH process. However, that process broke down, and COAH never adopted lawful regulations after the "second round" concluded in 1999. There is nevertheless some hope by certain interest groups for additional legislation on the subject.

In that regard, the Assembly Housing Committee held a hearing on *Mount Laurel* issues on September 15, 2022. Representatives of municipalities and some others urged an end to the court process we saw in the third round, hoping for return to the "COAH days" and/or new legislation making *Mount Laurel* compliance less onerous from their perspective. Builders and housing advocacy groups testified against a return to the legislative/administrative processes since experience has taught us that those processes simply did not work very well. In any event, no legislative activity has occurred subsequent to the September 15 Committee hearing.

The Municipal "Appeal" Seeking the Return of COAH

A number of municipalities have filed an "appeal" with the Appellate Division asking the court to order Governor Murphy to nominate members to the COAH board. No such nominations have been made for 10 years or so, and COAH does not even hold meetings. The municipalities want the Appellate Division to order that the COAH board be reconstituted so that it can adopt new regulations and once again process municipal petitions concerning *Mount Laurel* compliance. The municipalities' brief is currently due on December 12, 2022, and the brief on behalf of the Governor is due January 11, 2023 (subject to possible extensions). Other litigants may also seek to appear, likely as amicus curiae (a "friend of the court"). This is viewed as a "longshot" appeal by the towns, but a decision either way is far down the road.

Will the "Fourth Round" be like the "Third Round"?

It is possible that nothing will change, and that the fourth round will be much like the third round. In other words, DJ actions and/or builder's remedy actions would be filed with the courts, in mid-2025 or so, and *Mount Laurel* compliance may be achieved in that way. We would once again need a mechanism for establishing the magnitude of fair share obligations. This was done by the Hon. Mary C. Jacobson, A.J.S.C. (now retired), during the third

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The Non-Use Of LSRPS For Due Diligence Under SRRA 2.0

By: Steven M. Dalton, Esq.

The New Jersey Site Remediation Professional Licensing Board's recent proposal (PRN 2022-138) to change its rules (N.J.A.C. 7:26I) for the purpose of making them consistent with the 2019 legislative amendments to the Site Remediation Reform Act (SRRA 2.0) brings renewed focus on SRRA 2.0 provisions relating to the use (or more aptly, non-use) of a Licensed Site Remediation Professional (LSRP) for pre-acquisition due diligence.

SRRA 2.0 presented the Legislature an opportunity to address a practice that developed in real property transactions of parties not utilizing, and expressly excluding, LSRPs for pre-acquisition due diligence. This practice became common based on the concern that LSRPs had a heightened obligation to report discharges of contamination discovered in the due diligence process, and if a prospective buyer were to terminate, and the seller learned of a discharge discovered during buyer's due diligence, seller would be left with an obligation to remediate without the benefit of the intended sale.

Prior to SRRA 2.0, an LSRP was only required to report a discharge of contamination for sites "for which he is responsible". N.J.S.A. 58:10C-16.k.[1] SRRA 2.0 amended this provision to require an LSRP to report a discharge with respect to any site for which she "is retained." This change ensures continuation of the prevalent practice of non-use of LSRPs for pre-acquisition due diligence.

Prior to SRRA 2.0, parties to transactions were often concerned that the LSRP reporting obligation under Section 16.k would apply even in the context of due diligence work performed by an LSRP, even though such work should be readily distinguishable from implementation of a remedial action. Others were comfortable with the position that a distinction existed between hiring an LSRP for remediation, in which case the reporting obligations of Section 16.k would apply, and hiring a person who holds an LSRP license for the purpose of pre-acquisition due diligence rather than as an LSRP "responsible for the site". This latter interpretation comports with the Brownfield Act, N.J.S.A. 58B:1.3.d(2), which expressly provides that a person conducting pre-acquisition "all appropriate inquiry" is not required to utilize an LSRP, a clear recognition that such persons do not have a remediation obligation and, despite conducting activities akin to remediation work, are not actually performing remediation.

This issue was hotly debated in Senate environment committee stakeholder sessions preceding SRRA 2.0. New Jersey Department of Environmental Protection (DEP) representatives strongly objected to the position that a person holding an LSRP license could be hired for pre-acquisition due diligence and not have a reporting obligation under SRRA section 16.k, taking the position that an LSRP may never perform environmental consulting work in a capacity other than as an LSRP.

DEP also opposed the argument of industry group representatives, including NJBA, that due diligence is not "remediation", relying upon the definitions inclusion of investigation of a suspected or threatened release for the position that a person conducting the pre-acquisition due diligence investigation is actually performing remediation, notwithstanding the fact that such person has no legal obligation to implement a remedial action to address any contamination that is found, did not cause a discharge and is not performing what any lay person would reasonably consider to be "remediation." The Legislature accepted DEP's position and rejected industry proposals to amend the definition of remediation to exclude preliminary assessment and site investigation work performed by a person conducting pre-acquisition due diligence, which would have been consistent with the Brownfield Act allowance for completing such work without hiring an LSRP. Favorably, at the behest of NJBA and other industry organizations, the Legislature declined DEP requests to eliminate the Brownfield Act LSRP exception for due diligence.

To remove uncertainty regarding the reporting obligation of LSRPs hired to perform due diligence, the Legislature amended section 16.k of SRRA replacing "responsible for site" with "retained,"

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[1.] An LSRP's obligation to report an identified "immediate environmental concern" remains unchanged. N.J.S.A. 58:10C-16.j.

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Financial Reporting for Payment in Lieu of Taxes Program

By: Amanda Brady and Brianna Walsh

Real estate developers typically utilize the federal income tax basis of accounting to prepare their internally generated financial statements. Developers often have an in-depth knowledge of their financial position in accordance with the federal income tax basis of accounting. However, when developers enter into certain agreements, such as a financial agreement with a municipality as part of the Payment in Lieu of Taxes (PILOT) program or a lending agreement with a bank, the agreement may require financial statements that are prepared in accordance with Generally Accepted Accounting Principles (GAAP). It is important to understand the differences between the two methods as you enter into these agreements since they often yield substantially different results.

Methods of Accounting

The Federal income tax basis of accounting is the basis of accounting that a company uses to file its federal income tax return. It is based on the same federal income tax laws found in the Internal Revenue Code, as well as related revenue rulings, regulations, and procedures. The federal income tax basis of accounting allows entities to choose a cash basis or accrual basis. On a cash basis of accounting, revenues are recognized when cash is received, and expenses are recognized when they are paid. On the other hand, on the accrual basis of accounting, revenues are recognized when they are earned, and expenses are recognized when they are incurred.

GAAP is a set of rules, guidelines and principles that are established by the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA). The first key difference between the federal income tax basis of accounting as compared to the GAAP basis of accounting is that all financial statements prepared in accordance with GAAP are required to be prepared on an accrual basis of accounting.

Key differences

When reading the financial statements of an entity it is important to understand the method of accounting that is being used to report the financial activity. There are many differences between the federal income tax basis of accounting and GAAP and the financial statement results could be drastically different.

The chart below details some of the key differences between the two methods of accounting that may impact a real estate entity.

Topic	GAAP	Federal Income Tax Basis
Rental income and rent expense	Operating leases with a term of more than 1 year are recognized evenly over the term of the lease on a straight-line method.	Lessors recognize income when it is earned or paid, whichever comes first. Lessees expense the rent when payments become due, if accrual basis is used, on a cash basis rent expense is recognized when paid.
Advance payments	Included as a liability on the balance sheet as deferred revenue. When the advance payment is earned, it is then recognized as revenue on the income statement.	Advance payments are recognized as income upon receipt provided there is no restriction on the use of the funds.

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Financial Reporting for Payment in Lieu of Taxes Program

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Topic	GAAP	Federal Income Tax Basis
Bad debt expense	Management is required to evaluate accounts receivable, no less than annually, to determine an estimate of accounts receivable which, may not be collectible. This estimate is included as a contra-account to accounts receivable on the balance sheet and is included as bad debt expense on the income statement when the estimate is made.	Management must exhaust every effort to collect on a receivable. If it is then determined that a receivable cannot be collected management will use the direct write off method to reduce accounts receivable by the uncollectible amount and include bad debt expense on the income statement for the uncollectible amount.
Business Alternative Income Tax Expense	The tax is calculated based on actual income at year end. If there is a difference between the year-end calculation and the amount the entity paid during the year, an asset or liability is recorded to reflect the actual tax expense based on income	The tax that has been paid by the entity during the year is the expense that is included in the income statement. There is no adjustment for actual results at year end.
Depreciation	GAAP requires fixed assets to be depreciated using the straight-line method of depreciation over the estimated useful life of the asset	The internal revenue code allows for various accelerated methods of depreciation and provides the asset class lives that must be used. Depreciation expense under the income tax basis of accounting will generally be higher during the earlier years a fixed asset is placed into service.
Like-kind exchange	Property acquired pursuant to a like-kind exchange is recorded at fair value on the date of acquisition.	Property acquired pursuant to a like-kind exchange is recorded at the tax basis of property relinquished, increased by gain, if any, recognized on the exchange
Deferred mortgage costs	Deferred mortgage costs are shown net of the liability associated with the cost, and amortization of debt issuance costs are included as interest expense on the income statement.	Deferred mortgage costs are shown as an asset on the balance sheet. Amortization of debt issuance costs is recorded on the income statement as an amortization expense.

Before entering into a financial agreement with a municipality in connection with a PILOT program or any other agreement that requires the submission of financial statements it is important that you understand the method of accounting that you will be required to adhere to. These agreements often include financial covenants that need to be met to maintain the agreement or avoid paying additional fees or penalties. Without a solid understanding of the method of accounting required it is impossible to know if you can meet those financial covenants.

Systematic Approach to UST Removal Saves Historic Landscape Design

By: Gustave E. DeBlasio, CPSI, LTE, ISA, CIC, LEED AP

As fall sets in, and plant life is becoming dormant, now is the time to begin planning next year's landscapes. New and re-configured planting plans, relocation of trees and shrubs that have outgrown their design value should be addressed now to ensure they are re-energized for the spring. Perhaps there is work to be done where plant life is in the way--such as blocking an excavation for foundation repairs. Or in this case the removal of a leaking underground storage tank (UST) interfering with a historic landscape design.

Settled in 1665, Historic Rumson Borough consists of 5.2 square miles on a unique coastal peninsula in New Jersey, flanked by the Navesink and Shrewsbury Rivers. To this day, Rumson has retained a naturalized beauty in its rolling countryside with estates that have maintained architectural details reflective of those dating back several hundred years.

History

Built in 1929, the Rumson Estate home, designed in the French Baroque architectural style, is the focal point of a 5.12-acre property. The landscaping around the home was designed as an architectural element to visually

emphasize the estate's grandeur. A horseshoe-shaped driveway accentuates the home's frontage, creating a grand entryway. Six mature Corinthian Linden trees symmetrically line both sides of the horseshoe. Today, each of the trees in the design are between 75-80 years old, standing approximately 65+ ft. tall and are healthy, having been meticulously maintained for over the course of their lifecycle.

Project Scope

During an oil-to-gas utility conversion for the Rumson estate's heating system, a soil inspection performed for a UST beneath one of the Linden trees revealed Extractable Petroleum Hydrocarbons (EPH) at concentrations exceeding the NJDEP Residential Soil Remediation Standards on site.

The Challenges

Upon analysis, it was determined that the contaminants in the soil had the potential to either kill or adversely affect the tree, as well as the other trees in the design configuration. Losing a tree of this caliper would have compromised the landscape design that was painstakingly sustained for almost 100 years, devaluing the invested real estate. The tree was deemed irreplaceable since they never would have found one that matched the original five Linden trees in age, height, girth, structure, and canopy.

A team of professionals overseen by Gustav E. DeBlasio, CPSI, LTE, ISA, CIC, LEED AP, Department Manager of Landscape Architecture at Colliers Engineering & Design, was comprised of a NJDEP licensed tree expert, landscape architect and Licensed Site Remediation Professional (LSRP) who were brought in to assess the situation. Customarily, UST removal is performed by digging straight down and pulling the tank up which would have had a severe negative impact on the health of this tree. In this case, it was determined that the UST would best be removed by pulling it out sideways and away from the tree.

Systematic Approach

The team waited until November, when the tree would be in its maximum state of dormancy, to take advantage of the optimal time for interacting with the root system and causing the least amount of damage. The first step was to stabilize the tree in an upright position using 4"x 4" wooden bracing planks so it could withstand digging around its root system,

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Failure to Adequately Address Site Plan Waivers Can be Fatal to Otherwise Conforming Applications

By: Danielle Kinback, Esq.

Anyone who has been involved in a site plan application is likely familiar with the proofs required to obtain (c) variance relief pursuant to the Municipal Land Use Law ("MLUL") at N.J.S.A. 40:55D-70 with respect to bulk variances and other relief. Additionally, the interpretive case law on (c) variances is ample, clear and consistent. In contrast, interpretive case law on the legal standard for design waivers or exceptions pursuant to N.J.S.A. 40:55D-51 is scant, ambiguous and conflicting, despite such relief being sought in most site plan applications, either with or without (c) variance relief.

What distinguishes whether variance or waiver relief is required is where within the applicable municipal code the provision appears. If the provision is in the zoning chapter, the applicant must seek variance relief. However, if the provision is in a design standard or site plan review chapter, the applicant will need waiver or exception relief pursuant to N.J.S.A. 40:55D-51. As it is up to the governing body where to include certain standards in their ordinances, the same relief in one town may require a (c) variance but in another require a waiver. This is often the instance for standards related to number of required parking spaces and buffer requirements. For this reason, it is necessary for experts to tailor their testimony not only to the relief being sought in the application, but to the specific municipal code under which the board is conducting their review.

The standard enumerated in the MLUL for a waiver (rather than a variance) is that the planning board has the power to grant the exception "if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." N.J.S.A. 40:55D-51(b). The standard is similar to what is required for a c(1) variance related to specific conditions of the property in question or a showing of undue hardship. However, when an applicant cannot meet the (c)1 standard, the applicant has the option to fall back on a request for a (c)2 variance, which can be obtained if the applicant can show that a deviation from the ordinance would advance an enumerated purpose of the MLUL and the benefits of the deviation would outweigh any detriment. As the standard for a waiver contains no alternative, it is in a sense more difficult to obtain a waiver than a (c) variance, despite the common outlook that such exceptions are "easier" to obtain than variance relief. For that reason, many applicants, when preparing for an application, focus on the needed (c) variances and do not dedicate equal or enough preparation to the requested waiver relief. While in practice, many boards routinely grant waivers without requiring much in the way of credible evidence, the courts are not as lackadaisical when it comes to affirming the grant of a waiver or overturning a denial. Accordingly, if there is a chance of a denial or a challenge to an application requiring a waiver, it is imperative to adequately prepare your professionals and establish a record that meets the requirements of N.J.S.A. 40:55D-51.

While older published case law provides guidance for overcoming a board's denial of a waiver when an applicant cannot meet the literal ordinance requirements but meets "the spirit of the ordinance," (Morris County Fair Housing Council v. Boonton Tp., 230 N.J. Super. 345 (App. Div. 1989) (a standard not enumerated in the MLUL) more recent decisions have seemingly placed heavier burdens on applicants.

Based on guidance from recent court decisions, it is imperative to ensure that all testifying experts must be prepared to address whether any alternatives exist that would or would not allow the applicant to meet the strict requirements of the ordinance, as any doubt on that front could justify a denial. Additionally, the justification for the request should not be rooted in an economic or business convenience context, but related to peculiar conditions pertaining to the property. As such, any argument for relief needs to be specific to the particular property at issue, as Courts have upheld a denial of waivers when a board concluded that applicant's arguments were not specific to the particular piece of property.

Lastly, assuming the relief has been granted, it is likewise critical that the resolution clearly enumerates why waiver relief was granted and that it was related to peculiar conditions related to the property and undue hardship. Several denials have been upheld because the courts could not find adequate support for the grant of a waiver in the board's resolution.

In all, it is important that requests for waivers and/or exceptions pursuant to N.J.S.A. 40:55D-51 not be taken lightly, as a denial of such relief can be as detrimental to a development application as a denial of variance relief pursuant to N.J.S.A. 40:55D-70.

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Crash? Or a Crash Course in Course Correction?

By: Staci Cool

If it is beginning to feel as though tuning into your favorite news outlet is akin to watching Chicken Little warn of impending doom, you are not alone. When it comes to the economic reports tied to the real estate market the negative chatter appears magnified. It certainly seems as though there are a lot of Littles yelling "The market is crashing! The market is crashing!" All this rumbling correlates directly with rates going up and sellers losing, what they have perceived as, the power position.

Inflation, supply chain issues, staffing problems, rising interest rates, and noticeable increases in the cost of everyday necessities, are absolutely giving credence to these concerns. The pain of our current economic strain is evident throughout our day-to-day lives. Plus, for many, the impact of the Great Recession is still visible in the rearview mirror.

Based on these factors, it is logical to presume the Littles are correct. The evidence seems to align with the idea that the housing market is about to fail. Counter to this, there are data points which contradict the negative viewpoints. What we are seeing are pricing corrections in the market which will allow for the return of balance to our industry.

Prior to the pandemic the housing market

was steady between buyers and sellers, however, it was acknowledged that a housing shortage was imminent. That existing shortage has remained relatively unchanged. In part due to the increased demand during the pandemic paired with the overall inability of builders to keep up. At present, the ratio of homes available to buyers in the market is still imbalanced in the favor of sellers.

Leading up to the Great Recession, there were more homes built than there were qualified buyers. Currently, the buyer's market is much stronger and more economically sound than years prior. On one hand this proved astronomically advantageous to sellers during the pandemic buying spree. On the other hand, foreclosure risks have been significantly decreased because lenders held onto their stricter guidelines. Many homeowners are sitting on equity gains that will keep them in a healthy position.

Given this strength, positive equity will play a part in tempering the probability of a foreclosure boom. Additionally, the momentum of demand for homes is still in play. This is in opposition to the market stance in 2008 where significantly over mortgaged properties were common.

Comparing current buying rates to the pre-pandemic buying rates, it shows a less than 1% decrease. Yes, the market has cooled, however, and this is an opportunity for increased stabilization. Buyers will once again have a fair chance of getting the home they want and be able to do so without making risky decisions. Additionally, it is less likely that buyers will experience absurd bidding wars over homes leading to equity deficits.

Despite the negative economic challenges faced by families across the nation, the balance has not completely shifted. Holistically, buyers are fiscally healthy and unemployment rates remain low, which indicates sustainability is within reach. Achieving this does require leaning on lessons of our past while implementing new mindsets. Ultimately, to avoid a crash, course correction is necessary and merely indicates an acceptance that the tides are changing.

About the Authors:
For over 4 decades, Residential Warranty Company, LLC (RWC) (rwcwarrant.com) has been a leading provider of third-party, written, insured home warranties for new home construction throughout the US. Our warranties will limit builder's liability, protect your company's bottom line, add value to the homes you build, and allow you to stand out from the crowd and attract more buyers. Contact us at 800-247-1812 x2188 / info@rwcwarranty.com

Rent vs Own

By: Marc Demetriou

When it comes to buying a home versus renting, the rise of interest rates over the last year has changed the equation for many. More than a few future first-time homebuyers have paused as they consider the big jump from renting to owning. For many, renting has typically been their singular reality, and even as they've kept their eyes on the prize (buying a home), they're equally committed to a sound financial decision. And word on the street these days is that renting a home might make more financial sense than buying one.

But exactly how accurate is that perception? It often seems that people who say that renting is the superior option aren't always considering the full spectrum of factors.

Initial costs

There's little doubt that the initial costs of buying a home outweigh those of renting. However, when you plunk down a 20% down payment you aren't just securing a property for the next 12 months, you're entering into an agreement to buy a home—a purchase of great magnitude that ushers you into a deeper connection with your community. So, while renting is cheaper, you're also getting less.

Years planning to stay

When it comes to figuring out if it's better to buy or rent, the expected number of years you plan to stay is a large factor. The value of owning becomes more evident over time. Not only are you building equity but many of the upfront fees are spread out and most will receive more financial advantages buying a home than renting one.

Taxes and tax deductions*

Every homeowner pays yearly real estate taxes, and the more expensive your home, generally speaking, the more taxes you owe state and federal coffers. Renters are spared from these sorts of taxes.

There is good news for homeowners, however: You can deduct a large portion of the interest on your mortgage. Indeed, homeowners are allowed to deduct home mortgage interest on the first $750,000 ($1M if the mortgage was secured prior to December 14, 2017).

Equity

Equity is really where the rubber hits the road when it comes to buying a home. When you rent a house or an apartment, you are not building any equity—unless you count the equity you're building for your landlord. That's why buying a home is considered a great investment over time: It enables you to build wealth.

While building equity is fairly straightforward, it is not guaranteed. It requires you to consistently make payments that reduce the principal (which is the cost of your home minus your initial down payment) and it's also dependent on the marketplace. To create wealth, your home needs to appreciate in value over time. If for some unexpected reason your home depreciates in value (as determined by a professional appraiser), then your equity building plan will fail to materialize.

The good news is that the American dream of homeownership is healthy and sound, and the vast majority of homeowners who make their monthly mortgage payments will build equity over time. Renting can't compete with that.

Maintenance and Fees

Both homeowners and renters are on the hook for certain fees. However, homeowners have a larger burden when it comes to maintenance and fees.

For example, a typical homeowner of a home purchased for $250,000 might need to spend approximately 1% on yearly home maintenance (equivalent to $2,500). Add to that homeowner's insurance, owner-paid utilities and other miscellaneous fees and the costs start to mount.

Renters, of course, do not skate away fee-free. They might have to pay renter's insurance, an initial broker's fee as well as fork over a security deposit—the latter being a large sum of money that could otherwise be invested. Yes, it's less than a buyer would pay, but renters also receive less in return: less freedom to decorate, less freedom to renovate and zero opportunity to build intergenerational wealth.

Monthly rent vs. monthly mortgage

Let's say you bought a home for $250,000, with a 20% down payment and have a 30-year mortgage. Depending on the interest rate you were able to lock in at the time of purchase—for our purposes let's say it's 5.00%—you may have a monthly mortgage payment for as little as $1,073 (not including taxes and fees).**

Whether you find that figure to be high or

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Partnering with a Preferred Lender

By: Michael Borodinsky

2022 has been a turbulent year for mortgage rates and is impacting buyer demand for housing. Although buyer preferences continue to support newly built residences, home builders play a crucial role in providing a variety of housing product including single family, townhomes, and condominium apartments.

Since buying a newly constructed home can take anywhere from three to 12 months to complete (or more!), there is significant time for complications to arise that could derail a buyer's loan approval. To ensure a smoother progression toward closing, home builders should work with their sales team and lending partners to discuss the following with clients:

- Help home buyers understand financing options to address interest rate concerns and program options that in assist with payments that will meet budget expectations. Communicating the different financial tools available can help home buyers determine which mortgage is best for their individual circumstances. Such tools include builder paid interest rate buydowns (both temporary and permanent), Adjustable-rate programs that offer reduced interest rates for a fixed period (5, 7 or 10 Years) and interest only payment options that allow for lower payments for the fixed duration. Our loan officers provide on-site coverage to allow for face-to-face interaction with prospective buyers and can best review the menu of program options best suited for each individual scenario. This can support point of sale pre-approvals to better help both the buyer and builder/seller.

- It is especially important to help home buyers understand longer term rate lock options. For example, Caliber Home Loans offers the ability to lock in an interest rate for up to 12 months during the home construction period with the option to lower the rate 30 days before closing if market rates have declined. These types of options help buyers secure their rate and payment in a fluctuating rate environment. Caliber's extended rate lock plan can alleviate buyer apprehension and insure a loan approval that is protected from rising rates.

- Avoid incurring new debt: Since the contract to close cycle can take longer than a resale, buyers are more susceptible to credit changes. Home builders should communicate the dangers of adding new debt or depleting assets during the construction process. Many times, a buyer's exuberance can lead to other new purchases such as a new car or furniture. Adding additional debt or liquidating assets can potentially have a negative impact on their original qualifying credit.

- Communicate all changes to the lender. Provide weekly pipeline reports to update our builder partner with status on each buyer who has been pre-approved, in process, committed, and/or cleared to close. Home builders should ensure any additional costs incurred during the building process (i.e. additional upgrades) are immediately relayed to the lender. Buyers may not be fully aware of the impact to their payments or qualifying debt ratios for the loan.

- If the project is a condominium, Caliber Home Loans offers specialized condominium approval support services (FHA/FNMA) along with unique valued added features including waived pre-sale and construction completion requirements and non-warrantable condominium programs.

- Not all borrowers are "credit ready" at point of sale. Some may need to accumulate additional savings to cover down payment and closing costs. Some may have had credit histories that need repair in order to meet lender guidelines (this is where the credit repair services come into play). Some may need to restructure their debt service to qualify. Even if a prospective buyer isn't qualification ready, today, the Caliber Home Loans team can work with them over the construction period to make them "mortgage eligible" prior to completion.

- The availability of "alternative" mortgage programs designed to assist self employed borrowers, buyers seeking purchases for investment purposes (in the name of an LLC), emerging market buyers who have not established a social security number yet.

- Programs for first time buyers allowing for higher debt to income ratios and or lower down payments, and down payment assistance programs.

- Programs for Veterans, and first responders.

Partnering with an experienced lender who is laser focused on new construction end loan lending provides the best means to successful sales and customer service to the buyers.

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LSRPA: How to Reduce Permit Approval Times

By: David Morris, LSRP, and Sue Boyle

New Jersey Department of Environmental Protection (NJDEP) data show processing times have nearly doubled for permits where active soil or groundwater remediation is complete and protections are in place.

From the time a permit is submitted until it is issued now takes about 1.5 years on average and can be much more. This contributes to enormous delays for sites where remediation is already complete, protections are in place and only the administrative permit remains to be issued.

But what if many of these permits could be issued in 45 days? If the simplest permits could be fast tracked, it would allow the NJDEP to concentrate on the most complex of projects, freeing more brownfields for redevelopment and productive reuse while preserving the protections for the public and environment.

The delays are a paperwork issue, not a remediation issue. When the applications for these permits are filed, the construction equipment required for the remediation are gone, the controls have been installed, and the ongoing maintenance and monitoring requirements are in place.

Known as a remedial action permit or RAP, whether for soil or groundwater remediation, it is one of the last steps in an environmental cleanup. Whenever soil or ground water contamination remains above an unrestricted use standard, the RAP is established to ensure the remedial actions implemented remain protective of public health, safety, and the environment - for however long as the implemented actions are necessary. The RAP formalizes the maintenance and monitoring requirements that verify the remediation remains protective over time.

Once the NJDEP issues the permit, a Licensed Site Remediation Professional (LSRP) can issue a Response Action Outcome (RAO), indicating the remediation is protective.

The idea to streamline RAP permits is relatively straightforward - using reforms already instituted and based on other NJDEP permit programs.

Many RAP applications are simple. For example, the remaining soil contamination at a property may lie beneath pavement, preventing contact and entombing the material. The contaminants pose no risk beyond the site, so a notice recorded with the property deed may be the only requirement.

In recent years, the NJDEP has indicated a willingness to consider establishing a general remedial action permit program for simple scenarios, including where contaminated historic fill material is the only area of concern, where a deed notice is the only required remedy, or groundwater permits where monitored natural attenuation is the remedy and no one uses the impacted groundwater. Monitored natural attenuation usually is used when the source of contamination has been removed and lets the remaining contaminants degrade.

Although the NJDEP hasn't adopted a general permit program yet, it's a good idea and a good start. And there is more that can be done.

A general permitting process could be expanded to include most all soil permits. To do so, it also is essential to codify the process as a certification-based process.

Issuing a general permit within 45 days could be done if the application is complete and if both the LSRP and the person responsible for conducting remediation certify that the specific remedial conditions established in rule protect public health, safety, and the environment. General permits would be limited to remediation projects considered low risk to the public and environment.

Under existing programs for RAPs and RAOs, persons responsible for completing remediation face NJDEP enforcement actions and an LSRP face disciplinary action if an audit finds the remedy is not protective. An audit program for general permits could work the same way.

Since 2009, when the LSRP program was created, only 3 percent of the more than 19,000 RAOs have been withdrawn by the LSRP because later information questioned the protectiveness of the remedy. A small fraction of less than 1 percent have been invalidated by the NJDEP.

Senior NJDEP leadership have repeatedly praised the success of the LSRP program and touted that both simple and complex remediations are being completed faster.

A general permit for simple RAP permits would be the logical next step to accelerate project completion and relieve the burden on NJDEP staff. It would still be protective of people and the environment and it is supported by the experience of the remediation program.

A general permit, however, should not be applied to all applications. All RAP permit applications are not the same, just like all remediation projects are not the same.

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About the Authors:
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The Non-Use Of LSRPS For Due Diligence Under SRRA 2.0

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and added a definition of "retained." An LSRP is "retained" if they are hired to perform any activity within the definition of "remediation," including a preliminary assessment and site investigation for a suspected or threatened release. With this action, a person who engages a consultant holding an LSRP license to perform pre-acquisition due diligence has retained that person as an "LSRP," and a "retained" LSRP has an obligation under section 16.k to report a discharge even though discovered during due diligence.

The Legislature and DEP were warned in the stakeholder sessions of the implications of this action. These amendments have only solidified the industry practice of excluding LSRPs from pre-acquisition due diligence. If the underlying premise of the LSRP program is that LSRPs are representative of the highest level of qualifications and professionalism with respect to environmental remediation consulting, then use of LSRPs in due diligence should be incentivized. Moreover, often times efficiencies may be achieved in utilizing an LSRP in due diligence if the transaction consummates and some remedial action is required.

DEP and the Legislature were offered a solution in the SRRA 2.0 stakeholder process of amending the definition of remediation to exclude pre-acquisition due diligence work, which would be consistent with the premise under the Brownfield Act that persons conducting "all appropriate inquiry" are not actually conducting remediation and thus have an allowance not to hire an LSRP. Their failure to do so, or implement some other solution that would allow a person holding an LSRP licensed to be hired for due diligence without having a duty to report the findings of such work, has ensured for the time being that the practice of non-use of LSRPs for pre-acquisition due diligence will continue as the prevalent industry practice. That DEP pressed so strongly on this issue and that the Legislature capitulated certainly portends of potential future renewed efforts by DEP to retract the Brownfield Act LSRP exception.

Mount Laurel in the "Fourth Round" – What Happens Next?

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round, and the courts could once again establish the obligations, presumably based upon fair share methodologies that have been used in the past. As in the third round, builders could seek rezonings to assist municipalities in achieving fourth round *Mount Laurel* compliance. Builders are well advised to begin the process of identifying sites that could be utilized in this regard, be they vacant sites or possible redevelopment sites.

The Bottom Line

The third round *Mount Laurel* cases are winding wind down, with most being resolved at this point. That is not to say that third round rezoning opportunities do not currently exist. They do exist in a number of towns, depending on the circumstances. The nature of those opportunities is beyond the scope of this article. Summarized above are some of the additional opportunities that will arise during the fourth round, with the details depending on which process is employed to achieve fourth round compliance.

Systematic Approach to UST Removal Saves Historic Landscape Design

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keeping the root ball intact.

Since 75% of the Corinthian Linden tree's roots exist within the first 2.5 ft of soil depth, the team began digging approximately 12 ft. away from the tree trunk and pulled the tank out below the 2.5 ft vertical threshold. This systematic approach combined manual digging, using a backhoe to locate the tree's primary root system, and excavating around it as much as possible.

During the process, the team intermittently probed for contaminated soil using a small diameter auger to drill narrow holes from which soil samples were taken and tested to establish the contamination limits. This soil was then replaced with uncontaminated soil and testing continued until the results revealed there was no further contamination.

Once this process was completed and the site was successfully backfilled, they continued to water the tree heavily for first three weeks, then trickle-irrigated it for the next two months. Going into spring, the tree was lightly fed with macro and micronutrients.

Conclusion

Because the estate owner brought in the right team of experts, the site was successfully remediated and cleared of any soil contamination which satisfied the strict DEP residential standards. As a result, the property would not be listed as a contaminated site going forward and the integrity of the original landscape design would be protected for the natural lifecycle of the tree and preservation of design.

Rent vs Own

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low, the good thing is that it is predictable. You will always pay the same amount every month as long as you have a fixed rate; the only thing that changes is the amount of principal vs. the amount of interest. For additional insight, take a look at an amortization schedule where you can precisely follow along the monthly breakdown over time between principal and interest.

When renting, your financial horizon only extends to the term of the lease (typically 12 months). After that, it's anyone's guess how much your rent could skyrocket. When it comes to finances, predictability matters.

Useful tools to help you make your decision

While we hope this quick comparison has been helpful to those of you weighing the pros and cons of renting vs. buying, this is far from the only information source to help guide you in your journey.

Guaranteed Rate, for example, offers a great Rent or Buy Calculator as well as a host of other tools including a state-of-the-art mortgage calculator, that is fully customizable. We've looked at six areas in general terms, and buying a home came out as the preferred approach in four of them, but these tools can help you figure out the specific benefits for your unique situation.

LSRPA: How to Reduce Permit Approval Times

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But for most soil permits or groundwater permits for natural attenuation remedies without receptors, an extensive review of the RAP permit application does not make the remedy more protective. It just takes more time.

NJDEP already has the tools it needs to monitor the protectiveness of the remedies permitted without an intensive review of the remedial action permit application submission through the biennial certification process. This two-year check represents an opportunity to affirm the protectiveness of the selected remedy and should allow for the issuance of expanded classes of permits under a codified general permit program.

Embracing change and focusing its staff and resources would allow the NJDEP to become more streamlined and place priorities on the projects that require enhanced attention. Permits would move faster. Redevelopment would move faster. And the protections already in place for people and the environment would remain the same.