

GRS&D's Key Takeaways From The 2012 Atlantic Builders Convention

April 12, 2012

The last few days of March brought over 6000 attendees, several hundred exhibitors, top New Jersey legislators, regulatory officials and a diverse array of professionals affiliated with the building and development community - including a group of attorneys from our firm who practice in the real estate, redevelopment, land use, construction and environmental areas - to Atlantic City for the 63rd Annual "ABC" Convention.

Our firm was proud to be a Master Sponsor of this important event once again this year, and to have the opportunity to make presentations, network, and socialize with many of our key clients and professional colleagues throughout the course of the 3-day event.

We'd like to share the following insights and observations:

Meryl Gonchar

I had the opportunity to participate in two programs this year - "Land Use Trends" (a program I've spoken at for the past dozen or so years) and "Ethics in Land Use" (a new addition to this year's lineup). We had thought that NJ's Permit Extension Act would have been amended by the time of the convention, as bills that would have further extended the existing "extension period" from December 31, 2012 to December 31, 2014 were scheduled for vote in both houses on March 15, 2012. Sadly, however, these votes were adjourned to sometime in May, following the budget break.

As the Act was my topic for the program on trends, I encouraged anyone with an interest in developing land, and/or the economic health of NJ's real estate and construction industries, to follow the progress of the pending bills. As currently drafted, S743 and A1338 would (in addition to extending the extension period) alter the definition of an "environmentally sensitive area" to exclude approvals granted in the preservation area of the Highlands and certain lands in the Pinelands and Meadowlands, making the applicability of the Act to these previously excluded areas retroactive. At the Ethics program, I spoke about the risk of planning and zoning board members' conflicts of interest, addressing the various laws defining what constitutes a conflict of interest (including the Municipal Land Use Law and the Local Government Ethics Law) and the challenge of determining what rises to the level of a disqualifying conflict. From the developer/applicant perspective, it is clear that it's best to err on the side of caution and ask questions that will reveal potential conflicts. While doing so may run the risk of antagonizing a board, not doing so poses a substantially greater risk.

Numerous cases were discussed where approvals were set aside as a result of a board member's failure to disclose a conflict of interest, regardless of intent, and the cost in each situation was borne most heavily

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by the applicant who could not recover the time or money expended in the lost approval. While we all know that conflicts exist, this discussion of potentially undisclosed conflicts and how to avoid the dire consequences of failure to remain diligent was among the most worthwhile take aways of the convention.

Robert Goldsmith

For the first time in five years, I felt there was a much better sense of the marketplace among attendees. I attended the Economic Seminar which followed the Annual Board of Directors meeting on Tuesday morning, and to paraphrase Tim Touhey (CEO and Executive VP of the NJBA), after hearing the economists make their predictions it was the first time I didn't feel like "driving my car off a bridge" in recent memory. The consensus among all three economists who spoke was that the marketplace was improving. I make special note of the fact that this point of view was shared by appraiser Jeffrey Otteau, who has been less than positive, to say the least, for the last several years.

On Wednesday morning, I moderated a panel presentation titled "Growth in Mixed Use Developments" at which a number of key points were raised. We discussed the importance for builders, both large and small, to keep in mind the fact that the DCA's Residential Site Improvement Standards (statewide requirements for improvements including those related to streets and parking, water supply, sanitary sewers and stormwater management) are greenfield standards, and that various exemptions and exclusions likely apply to mixed use development and redevelopment projects.

Furthermore, many municipalities have a sense that the mixed use designation requires a particular project to include retail and residential and, perhaps, office and other uses. When undertaking a development or redevelopment project in a downtown location where there is already a context of mixed use, however, it may not make sense to add to the existing retail presence, as the addition of residential may in itself be helpful to further the mixed use aspect of the downtown district. In some instances, it may still be important to have retail on the first floor to maintain the streetscape cadence and overall ambiance. Still, the addition of residential without added retail may be a tremendous asset which heightens the interest of existing retailers by adding "walking wallets" in the downtown space. Finally, shared parking was discussed as a key concept for builders of all sizes, as it can substantially reduce the amount of parking spaces required for a project.

Marcie Horowitz

This was my first time attending the Builders Convention, an experience I found both enlightening and fun. My father had been in the lumber business and I thought of him often as I wandered through the vendor displays of hardware and building supplies. After the last few dismal years of economic downturn and turmoil, it was heartening to see signs of life in the building industry. I heard from many participants that attendance at the convention was up. I can't compare with prior years, but my impression was that there was a reasonably robust crowd, especially on Thursday.

On Wednesday morning, I participated in a panel discussion on the latest developments in the NJDEP's Division of Land Use Regulation. Two fellow panel members from the NJDEP, Assistant Commissioner

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Marilyn Lennon and Acting Director Mark Pedersen, discussed their ongoing efforts to improve service and expedite the issuance of Land Use permits, including e-permitting and the enhanced use of permits-by-rule and general permits. The panel also discussed whether it might be feasible to turn the responsibility for permit issuance over to licensed private consultants (akin to the Licensed Site Remediation Professional, or LSRP, program). As an environmental lawyer, my presentation on the panel focused on the intersection between Land Use and Site Remediation - how can the goals of the site remediation program be reconciled with land use requirements that were designed with development - not remediation - in mind? In addition, I spoke about the NJDEP's new Waiver Rule, which allows the NJDEP to waive strict compliance with its rules under certain prescribed circumstances.

Panelists and audience members engaged in a lively debate over the new rule and its likely impacts on the Land Use program. The rule has already been challenged in court by a large coalition of environmental and labor groups, who are predicting dire consequences. Property owners and developers, on the other hand, generally favor the rule and are optimistic that the rule will allow for a more "common sense" application of regulations to real world situations. We shall see.

Dennis Estis

I've been a regular attendee at the ABC Convention for at least the past ten years - truth be told, I've actually lost count. It would be impossible to deny the fact that the numbers of both exhibitors and visitors has diminished in recent years, an understandable consequence of the economic crisis which has engulfed the development and construction industries, rattled our collective consciousness, and caused far too much distress and uncertainty within our ranks.

Still, and notwithstanding the realities we continue to struggle with, the effort to survive, to regroup, and to push beyond the obstacles was alive at this year's convention. Some came to spread the news of fresh starts and new professional affiliations, while others displayed an almost palpable sense of relief that they were still plugging away, nurturing relationships, and waiting for that unanimously hoped-for turnaround.

As a practicing lawyer for almost forty years, I've seen my share of ups and downs, and have come to believe that in a way, successful business relationships are a little like strong marriages. You have to be able to weather, together, both the good and the bad, "for better for worse, for richer for poorer..." And so I went once again to Atlantic City, to shake hands, share stories and to renew my vows with the industry I've been a part of for a good many years.

Robert Beckelman

I was very glad to have attended the 2012 Atlantic Builders Convention. This year's visit started on an especially high personal note when at Tuesday morning's Board of Directors' meeting I was honored to receive the NJBA Chairman's Award as an acknowledgement of my role on the Redevelopment Committee

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In my conversations with dozens of attendees, on the convention floor and at networking events, I couldn't help but sense a higher level of enthusiasm than in the past few years, along with an aura of cautious optimism in the air. This year's convention served as a strong reminder that the NJBA's membership is comprised of a tightly-knit and extremely resilient professional community. I also came away with a reinvigorated sense of commitment and purpose related to my participation in the Association's legislative efforts.

With the convention in full swing, I was able to attend a number of informative and timely seminars. I have always been impressed by the quality of the presentations at ABC and this year was no exception, with a full schedule of offerings that covered a range of subjects relevant to New Jersey's building community at large. Beyond these educational sessions, though, a good deal of the 'learning' one experiences at this convention comes about through the many and ongoing opportunities to connect and interact with people. Everyone comes to Atlantic City eager to make contacts, share information and exchange ideas. It's a natural, organic and somewhat effortless networking experience that adds significant value to my annual attendance.