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LEGAL CASE STUDY: DOWNSIZED LONG ISLAND SHOPPING MALL REQUIRES SUPPLEMENTAL ENVIRONMENTAL REVIEW



ANTHONY
GUARDINO

For more than a decade, Michigan-based Taubman Centers Inc. has been trying to develop a shopping mall in Syosset, New York. The battle began in 1998, when Taubman filed for a special use permit and site plan approval to construct a 960,000-square-foot shopping mall. During a State Environmental Quality Review Act (“SEQRA”) review, Taubman offered several plan modifications, including an overall size reduction to either 860,000 square feet or 750,000 square feet. All of Taubman’s offers were rejected, and in 2001, the Town Board ultimately denied the application.

Upon finding that the Board failed to identify the evidence used in issuing its SEQRA findings, which varied from the initial SEQRA findings made by the Town Environmental Quality Review

(“TEQR”) favoring the project, the Supreme Court vacated the Town Board’s denial in June 2002. In its decision, the Court directed the Town Board to continue with the SEQRA process in the form of a supplemental environmental impact statement (“SEIS”) and remitted the matter to the Town Board for consideration of the 750,000-square-foot mall. The Appellate Division affirmed the Supreme Court’s decision, on the basis that the Town Board had “insufficient evidence to support a deviation from the initial SEQRA findings.”



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CONTINUED LITIGATION

The Supreme Court then modified its prior order and directed the Town Board to approve an 860,000-square-foot mall. That decision was reversed by the Appellate Division on the basis that its prior decision “did not mandate the issuance of a special use permit, let alone a building permit, for the construction of an 860,000-square-foot mall.” Taubman then moved to compel the Town Board to issue a special use permit for an 860,000-square-foot

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PARTNER PERSPECTIVE: CHANGE OFFERS OPPORTUNITY TO SERVE YOU BETTER



DOMENICK
CHIECO

From the desk of Domenick Chieco, Senior Vice President, Milrose Consultants, Inc.

> I've been asked by many clients lately: "How do you keep up with all these changes?"

and "What keeps you motivated, given all the pressures of your business?"

Our industry certainly has experienced its fair share of changes recently implemented at a number of city agencies. I've always maintained that change leads to new opportunities.

By opportunities, I mean that, when correctly analyzed and implemented, efficiencies in process and workflow are realized. These efficiencies translate to better customer service and a better understanding of what is needed to successfully complete a project.

At Milrose Consultants, we understand how to implement change so that it will have minimal negative impact to the construction process and, most of all, to our very valuable clients. We are taking additional steps to communicate through focused email blasts, this newsletter, and our Milrose team to keep you informed of the latest changes that could impact an already-complex and time-sensitive process.

By proactively flagging issues and communicating concerns, we are able to help you quickly decide the best path of action with contingency plans at the ready, just in case.

My motivation comes from knowing that you, our valued client, rely on Milrose Consultants as a trusted advisor for our expertise and as a partner in your projects.

LONG ISLAND

ESTABLISH ENERGY EFFICIENCY FOR RENOVATIONS



THOMAS TABONE

The Energy Conservation Construction Code of New York State 2007 Edition, adopted by Long Island last year, requires projects to furnish energy calculations.

By the end of 2008, most municipalities were requesting these energy figures for all types of projects.

“The idea is that multiple renovations will result in an overall efficient building over time,” said Thomas Tabone, District Manager for Milrose Consultants’ Long Island office. “Besides Lighting and Mechanical components, the measuring of both ‘R’ (insulation) and ‘U’ (transmission) ratings are key in establishing a structure’s energy efficiency.”

While lighting and mechanical energy figures are relevant to almost every type of project, building envelope figures are not. On numerous occasions, however, Building Envelope Calculations have been requested for interior alterations. In such

cases, only those components changed, modified or replaced need to be identified.

Per the U.S. Department of Energy (DOE): “If the exterior building envelope will be renovated, then the components that are being touched might have to comply if they do not meet any exemptions. COMcheck can be used to show compliance to an alteration and only the components that are being altered should be identified and meet compliance individually. This does not include interior components (i.e., walls, floors).”



As part of its tool set for commercial and residential high-rise building projects, DOE developed COMcheck to computerize their energy calculations and confirm material compliance with energy codes. New York is one of 44 states that use ComCheck.

If you have questions about whether your project requires Building Envelope Calculations, contact the Long Island office of Milrose Consultants at 516-939-CODE.

NEW JERSEY

ENCLOSED MALL KIOSK RULES



JASON COLLINS

Virtually an unknown commodity 20 years ago—even here in New Jersey, the unofficial “mall capital of the world”—the retail kiosk has become a staple of the typical shopping mall’s interior environment.

When considering construction and placement of these kiosks within enclosed mall buildings, mall managers frequently ask, “What specific code requirements have to be met?”

The NJ Uniform Construction Code (UCC) indicates that kiosk structures can fall into one of two classifications: permanent or temporary. In each case, different requirements and codes apply.

To ensure the code compliant installation of either type of retail space, it is important for mall managers to accurately distinguish the differences between permanent and temporary kiosks.

Permanent kiosks are required to comply with the provisions of Section 402.10, Kiosks, of the

2006 International Building Code, which details the approved construction materials, location within enclosed mall buildings, separation distances, fire protection requirements, and overall area restrictions.

Temporary kiosks are more prevalent during the holiday season when specialty retailers focus on a short-term operation cycle or promotional event for the peak buying season.

Per the NJ UCC Section N.J.A.C. 5:23-2.14(b).4.i., certain temporary kiosks must also comply with the requirements of Section 402.10 of the 2006 IBC when these kiosks meet both of the following criteria:

1. The kiosk covers an area 120 square feet or more, including all connecting areas or spaces with a common means of egress or entrance.
2. The kiosk remains in place for 180 days or more.

If a temporary kiosk does not meet the listed criteria above, it is subject to the requirements of the Uniform Fire Code (UFC).

NYC TIP OF THE MONTH

EQUIPMENT USE PERMITS



Equipment Use Permits (EUP) are required for the use and operation of four types of service equipment:

1. Air conditioning and ventilating systems
2. Fuel burning and fuel oil storage equipment
3. Refrigeration systems
4. Heating systems



RACHEL CAFARELLI

When a project scope entails the installation of any **new** equipment listed above, and the unit meets certain capacity requirements (800 CFM, 2 tons, or 24,000 BTU / 24 MBH), you are required to post an EUP card on the equipment.

Exception. Permits are **not** required for any refrigeration system exempted under the provisions of section BC 27-781. For example, systems using a group A2, B1 or B2 refrigerant and having a prime mover of one horsepower or less, or systems using water or air as a refrigerant, do not require an EUP.

Permit Requirements. The following information is required to apply for EUP cards:

1. Manufacturer’s name
2. Floor number where the unit will be installed
3. Number of units with identical specifications
4. Material & Equipment Acceptance Division (MEA), Board of Standards & Appeals (BSA), and/or Universal Listed (UL), in addition to the serial number of the new equipment
5. Capacity (in BTU or CFM)

Signatures. The Licensed Professional who completed the mechanical special inspection (TR-1 Technical Report Form) is required to sign and seal the EUP application.

shopping mall. In June 2007, the Supreme Court denied Taubman's motion and remitted the matter to the Town Board on the ground that "[t]here must be follow through on the offer to mitigate impacts by reducing the application to 750,000 square feet."

In September 2007, the Town Board adopted a resolution, listing numerous submissions considered in denying Taubman's application for an 860,000-square-foot shopping mall, and requested a site plan for a 750,000-square-foot shopping mall with an SEIS. Taubman moved to compel the Town Board to adopt the TEQR Commission's initial SEQRA findings, issue a special use permit, and process and review the proposed site plan. Nearly a year later, in June 2008, Justice Jeffrey Arlen Spinner granted the motion and directed the Town Board to review and process a site plan for a 750,000-square-foot shopping mall "with all due haste."

A RESOLUTION?

Recently, the Appellate Division reversed Justice Spinner's decision, finding that the Town Board had complied with the Supreme Court's original order. The Court also concluded that the Supreme Court was wrong in determining that the Town Board's request for an SEIS for the downsized mall was arbitrary and capricious. In its decision, the Court found that the Town Board complied with SEQRA mandates and that its request for an SEIS on the smaller mall was justified by SEQRA's implementing regulations.

The Court concluded by stating that Justice Spinner's directive deprived the Town Board of the right to consider the potential impacts of the downsized shopping mall. According to a statement by Taubman officials, the company plans to appeal this decision to the State's highest court.

LESSONS LEARNED

In hindsight, Taubman may have been able to avoid some of the delays had it not offered to downsize its original plans for the mall. This offer triggered the need for an SEIS, which became the subject of several rounds of costly and protracted litigation. In addition, Taubman could have advanced the application years ago by preparing an SEIS when first requested. Had it done so, the Courts may well have reached a different result.

Anthony S. Guardino is a partner with the law firm of Farrell Fritz, P.C. and practices in the areas of land use, zoning and environmental law. He can be reached at 516-227-0675 or by email at aguardino@farrellfritz.com.

NYC CODE QUESTION OF THE MONTH >>

QUESTION:

Many years ago, when I was a young, recently licensed architect, I filed a project with the DOB. The examiner issued an objection because the partitions shown on the plans were not braced to the slab. Pointing out the code section of ceiling construction, the examiner said that partitions cannot be fastened to the ceiling grid. Because the ceiling system is only designed to suspend vertical loads—such as the weight of the system itself, the light fixtures, and the diffusers—the partitions must be braced to the slab above. The ceiling system was not designed for lateral loads.

I am still puzzled by the issue of anchoring partitions to the hung ceiling system, especially with the newer type of partitions that are being marketed as "furniture" items, not "construction" items. I've seen drywall partitions erected up to the ceiling, anchored to the ceiling and left at that.

So, the question remains: **Are partitions required to be braced to the suspended ceiling system in NYC?**

ANSWER:

Ever since the passage of Local Law 17 of 1995, which affected alteration approvals after February 21, 1995, and with the adoption of UBC Section 2312 of 1990 – Earthquake Regulations with Accumulative Supplements, as amended by RS 9-6 of the 1968 Building Code, New York City has required that certain non-structural building construction elements (including non-bearing interior partitions) be designed and constructed to resist seismic forces. This is further reinforced by the adoption of the 2008 Building Code under BC Sec. 1621

– Architectural, Mechanical and Electrical Component Seismic Design Requirements, which adopts an amended version of ASCE 7 – Sec. 9.6.

Under the 2008 Building Code, non-bearing partitions are required to be laterally braced to the building structural system (columns, beams or structural floor assemblies) as per BC Sec. 1621.1.2 when the partition is greater than six (6) feet in height or not more than nine (9) feet in height when the horizontal seismic load does not exceed five (5) PSF as per BC Sec. 1607.13. Since most suspended

ceiling systems are designed to move with seismic forces and are not designed to resist seismic forces, bracing a partition to a suspended ceiling system does not achieve the desired intent of the code.

Under the previous 1968 provisions, only non-bearing partitions surrounding vertical exits (including exit offsets and exit passageways) in existing buildings using the 1968 Code as per RS 9-6, Table RS 9-6, require design that resists horizontal forces.



MANUEL
SANTIAGO

Thank you to **The Switzer Group** for submitting this Code Question of the Month. To have your question featured, please send your ideas to codequestion@milrose.com.

LONG ISLAND NEWS: BROOKHAVEN HAS A NEW TOWN SUPERVISOR

Democratic candidate Mark Lesko defeated Republican Tim Mazzei in the March 31 election and is working with his transition team to prepare for what lies ahead.

*Democratic candidate
Mark Lesko*



image source: en.wikipedia.org/wiki/Mark_Lesko

Lesko most recently served as Deputy Chief of the Long Island Criminal Division, where he ran the U.S. Attorney's Office on Long Island, leading all federal investigations and prosecutions in Brookhaven. Most recently, Mr. Lesko served as lead prosecutor on the Muttontown Slavery Case.



BUILDINGS DEPARTMENT HOLIDAY CLOSURE

MEMORIAL DAY

In observance of Memorial Day, the Buildings Department will be closed on Monday, May 25.

Remember to submit all holiday variance requests at least one week in advance with a letter from the building owner.

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QUIZ: COMMONLY CONFUSED NYC BUILDING TERMS

In the field, these terms are often confused or mistaken for each other.* Fill in the blank.

Awning? Canopy? Corridor? Passageway?

1. _____ requires support in addition to the anchoring that attaches it to a building, which typically requires a DOT permit since the additional support is anchored to the sidewalk.
2. _____ is a projection off the side of a building, requiring no additional support or anchorage to the sidewalk.
3. _____ is only found on a floor with at least two tenants.
4. _____ is only found on a floor with a single tenant.

In upcoming issues, we'll look at the differences between "scaffolding" and "sidewalk shed," and between "fence" and "barricade."

**Definitions come originally from the 1968 NYC Construction Codes with no substantial changes in the 2008 code.*

Quiz Answer Key: (1) canopy (2) awning (3) corridor (4) passageway (hence, Single Tenant Passageway)

ABOUT THIS NEWSLETTER:

The Milrose Consultant is distributed free of charge to construction professionals in New York City, New Jersey and Long Island. Milrose Consultants, Inc., is a leader in the field of municipal building code and zoning compliance. More than 100 employees have extensive experience and knowledge in navigating the sometimes-complex bureaucratic approval process for all types of construction projects, including high-end residential, commercial and retail. Services include code and zoning analysis, new buildings, alterations, permits, violation reports, violation dismissals, letters of completion, certificates of occupancy and certificates of approval. Our ability to interact with regulatory agencies results in compressed construction schedules and accelerated occupancy.

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Suggestions: To have your question featured as the **Code Question of the Month**, please send your ideas to codequestion@milrose.com.



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MILROSE IN THE COMMUNITY >>

COVENANT HOUSE: 22ND ANNUAL LIFELINE AWARDS

On May 21, the Covenant House, the largest privately funded agency in the Americas providing shelter and other services to homeless, runaway and throwaway youth, is hosting its 22nd Annual Lifeline Awards Dinner Dance. As with past events, the Dinner Chairman is Louis Mantia of Cushman & Wakefield.

This year's honoree is James Haviaris, SVP of Operations & Management for Rockefeller Group. Mr. Haviaris manages operations and staffing requirements, as well as oversees capital

projects, for the Rockefeller Center west side properties from 47th to 51st Streets and from the Avenue of the Americas to Seventh Avenue. Albert Crecca, a Principal of Micron Construction, is the recipient of the Humanitarian Award.

Tickets are available at \$600.00 per person. To reserve tickets or for sponsorship opportunities, please contact Brandy Zahner at Covenant House (BZahner@covenanthouse.org). Event proceeds will help the Covenant House "open doors for homeless youth."