An attorney discusses gearing up for capital improvement projects - by C. Jaye Berger

February 18, 2020 - New York City

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Capital Improvements, by their nature, are the bigger repair projects needed on buildings, which are the most expensive and time consuming to complete. Local Law 11 repairs on façades are an example which has been in the news a lot lately. They can be done on all types of buildings, including co-ops, condominium buildings and regular commercial buildings.

Organizing and coordinating these repair projects requires a lot of time, energy and funding. These projects also require a lot of planning in advance. Let’s say a building has leaks on the roof and cracks in various locations. The building will need to first retain engineers to survey the building and the work that needs to be done. Plans and specifications will need to be drawn and bids will need to be obtained from contractors for pricing. The plans will need to be filed with the New York City Department of Buildings and approved. Even after all of this work is done to prepare in advance, it is commonplace to find “hidden conditions” requiring additional work and money that are not yet in the plans or the budget. Therefore, whatever money is allocated for the project, there must be additional money set aside for these contingencies. Some buildings need to refinance their mortgages to obtain funds. In those instances, the advance planning can occur over a couple of years. This is why sometimes we see buildings in obvious need of repair and wonder why no work has been done. The answer may be that the owner is still trying to arrange for the financing. However, that is not really an excuse.

Since the repair work is hazardous and will take a while to complete, there will need to be a sidewalk shed and other protection in place to protect the public and workers from any falling debris. Sheds usually extend 20 feet or so on to neighboring property. Despite the need for such safety measures and protection, sidewalk sheds are often met with hostility by neighboring businesses claiming that they block the view of stores and buildings and scare people and customers away. In extreme cases, there can be sheds that have been left in place for long periods of time while the building owners try to obtain the necessary funding for the repair work or work out other issues. In one case, the sidewalk shed was protecting people from hazards due to falling debris, but was preventing...
installation of a handicap access ramp to help deal with that issue. Sometimes neighbors threaten
to take such issues to court. Given the balancing of the issues and the need for such repairs, it is
doubtful a court would require scaffolding to be removed without the work being fully completed.

There must be a fully thought out, well-drafted and negotiated contract with the contractor. It should
have the full scope of work, including plans and specifications, and the legal terms and conditions
regarding the project. All too often people show me what they are calling the “Contract,” but it is only
a list of the work they want to have done and a payment schedule. More often than not, the payment
schedule requires payment at specific intervals of time, with no regard to the amount or percentage
of work performed at that time. In a worst case scenario, payment could be due according to the
contract, but the work is way behind schedule. That should not be the case and usually the
consultants determine that.

Having the right insurance in place naming the correct parties as additional insureds is essential.
One building owner at a seminar I gave, told me that just when the work was ready to begin, they
realized they did not have a certain insurance provision and had to delay the commencement to sort
out obtaining it and who would pay for it.

People need to know who is responsible for performing various tasks, when and who is paying for it.
On one project, the engineer was supposed to obtain the permit after the expediter filed the plans.
The engineer mistakenly thought the contractor was handling that and time was wasted until it was
sorted out.

The nature and location of the work may be such that materials will need to be moved up to the roof
and stored, possibly on a neighboring roof, for easy access. Permission for that type of access
needs to be requested, negotiated by knowledgeable legal counsel and obtained in advance in a
written license agreement. A fee may need to be paid to the building allowing the access. There
may also be liquidated damages in the agreement for each day the building is late in completing the
work, to give more incentive to keep the project on track.

Clients often make the mistake of signing the contract with the contractor and the Alteration
Agreement or Work Letter with the building, without having them reviewed by a lawyer who
understands construction law. There are a lot of details that need to be reviewed and addressed.
Individuals and corporations also make the mistake of thinking that the building management will act
as their “project managers” and tell them what is needed. The individuals and companies are
required to basically do “what ever is necessary” to have a legally executed project, but they are not
told specifically what needs to be done.

One client told me that the contractor had failed to obtain a building permit and the property
manager did not realize this until the contractor had walked off the job. The shareholder did not even
know about the need for a permit until the new property manager pointed it out. The shareholder’s
reaction was “Why didn’t the building check on this and tell me there was no permit?” There was
also no electrical or plumbing inspection, which meant that the new contractors would need to open
walls and perhaps re-do work in order to pass inspection.
These are only a few of the many things that can be done with the guidance of experienced legal counsel to prevent things from going wrong on renovation projects and to keep them on track for a timely completion.

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