



Jane Webster and Matt Caruso - Being a good neighbor - Adjacent properties during construction

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As the industry returns to normalcy and stalled sites become "unstalled," backhoes start "hoeing" again and cranes start "craning," no other issue rears itself as serious as the plight of the developer and constructor and their dealing with adjacent properties.

From demolition to excavation; foundation to superstructure to facade work all areas become an issue as how to deal with neighbor protection and safety issues.

* It is prudent to develop an adjacent property "plan" (which can be incorporated into the required site safety plan) to deal with adjacent properties and protections during various phases of construction.

* The first brush with adjacent properties comes with the NYC DOB code requirement (section BC3309) for the survey of the condition of the adjacent property. This interior and exterior survey is also helpful to the owner to set a "base" of what structure conditions are and get a basis for future evaluation of claims, etc.

The vibration monitoring requirement that used to be saved for jobs within the NYCTA "area of influence" and for projects within 90 feet of a landmark have now become a requirement for many adjacent properties during the demolition and excavation and foundation phases. In some cases surveying is an additional requirement for adjacent properties.

Costs are compounded by the NYCTA requirement to have monitors manned and the owner reimbursement of NYCTA costs for services during monitor installation. Although "remote" monitoring presents an option for adjacent properties the real value of monitors is "real time" readings that allow for the stoppage of work once thresholds are exceeded to evaluate further construction actions. Correspond this with the fact that the "design team" is reticent to set a monitor threshold and it forces the construction team to use the parameters either set by the NYCTA as part of their approval process or that of the threshold set by TPPN10/88 by the NYCDOB.

Demolition now requires plans for means and methods and phasing as well as the structural submission required for excavation and foundation. Both phases now also require support of excavation (SOE) drawings that are specific to the site and adjacent properties (and may even have to address the adjacent properties, foundation, etc. something which can be incorporated as a component of the adjacent building condition survey). These SOE submissions are a separate filing and may require its own permit as well as a separate special inspections and signoff process.

As superstructure commences the protection of windows (lot line present a set of different issues for the owner/construction and adjacent property owner-especially (i.e., seal up is the adjacent property owner responsibility; one that only has been formally addressed in the recent years through a restrictive declaration requirement by NYCDOB)).

Chimneys, roofs, skylights, patios/balconies and the 100 ft high 20ft sidewalk shed extension

requirement create quite the conundrum for the owner and contractor.

These issues must be incorporated into the site safety plan for the site identifying specific means of protection.

As difficult as these items are "alone" they are compounded by the requirement to have a license to enter the adjacent premise to perform these surveys and methods of protection. Code sections BC3309 are very specific that if the adjacent owner does not allow a licensee to enter the responsibility "devolves" on them.

This requires many owners to request the "license" in a way that documents the ambivalence of the adjacent property and allows the owner to prove his attempts.

Although this sounds all well and good this issue is compounded by the reticence of the city to enforce this issue "against" adjacent property owners.

Although their silence should be enforced with action against the non responsive adjacent property owner it is easier (even though the code is clear) to hold the owner/contractor responsible.

Too often violations for failure to protect, (i.e. lot line windows, chimney) are issued unjustly against the constructor even though they have made every attempt to comply.

Couple this with the astuteness of today's adjacent property to see a "pay day" for adjacent site construction and you have a somewhat untenable situation.

Many contractors have even gone as far as to "lease" 20 feet of the adjacent property for the duration of the project to avoid violations, trespassing, claims, etc. and allow them to perform the necessary protections.

Combine today's astute adjacent property owner with the city's lack of a proper and clear code based enforcement policy and the adjacent property issue becomes one of the most challenging and costly issues for a development project.

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