

March 2023 Report from Planning Committee

Next meeting scheduled for March 23rd 7pm by zoom or in person.

Topics

1. Reserve calculation 2023
2. Small lots and how to deal with them strategically
3. Other.

Submitted by John Rolando – Chairman

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After the Champlain Towers tragedy in Surfside, Florida, state and local governments throughout the country began contemplating legislation that would prevent such a tragedy from re-occurring. In addition, CAI formed a national task force

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to develop building safety and structural integrity legislative models. NJ LAC also formed a building safety and structural integrity task force chaired by Ed San George.

Lawmakers started moving on legislation right away. Last session, former Senate President Sweeney introduced an inspection bill that was not passed. Jersey City passed local ordinance 21-054 requiring certain structural inspections, and other municipalities are contemplating ordinances as well.

Senator Troy Singleton, Chair of the Senate Housing Committee, approached NJ LAC and asked that we draft comprehensive, model, building safety legislation. Senator Singleton accepted the legislation prepared by the LAC, consulted with other stakeholders, and, on May 26, 2022 introduced bill S2760. We are currently in discussions with members of the Assembly to identify a Sponsor to introduce the legislation in that chamber as well.

We believe that the bill, which includes construction phase inspections, post construction inspections, and reserve requirements, will be key in ensuring both the safety of CIC residents and that needed structural repairs can be funded.

Key components of the bill include the following items:

Amendments to Uniform Construction Code Act (N.J.S.A. 52:27D-119, et seq.)

Covered Buildings

- Structural inspection requirements during and upon completion of new and existing Use Groups R-1 and R-2 residential buildings having load bearing concrete, masonry, steel, hybrid structure including but not

limited to heavy timber, and buildings with podium decks.

New and Existing Building Inspection Requirements

- All covered newly constructed buildings shall have their first initial structural inspection within the earlier of 15 years after issuance of a certificate of occupancy or 60 days after observable damage to the load bearing system.
- For existing buildings, the initial structural inspection shall occur with two (2) years of the effective date of the legislation.
- Inspections shall be performed under direction of a NJ licensed professional engineer qualified in structural engineering (the construction structural inspector) who may be assisted by other licensed professional, including geotechnical and civil engineering. The inspector may also be a NJ-DCA Bureau of Housing Inspector employee who is also an engineer licensed in NJ.
- Structural engineer shall determine a reasonable period of time within which next inspection must take place for the covered building, but in no event will it be more than 10 years after the initial inspection during the first 20 years and more than five (5) years if the covered building is more than 20 years old.

Written Reports and Required Corrective Maintenance, Repair or Replacement

- Structural engineer shall reasonably detail any needed corrective maintenance,

repair or replacement and prepare an inspection report in accordance with the protocol set forth in the American Society of Civil Engineers Guideline for Structural Condition Assessment of Existing Buildings.

- Such reports shall be filed with the enforcing agency or municipal appointing authority and shall be provided to the covered building's owner and shall be made available to a resident upon request.

Amendments to Planned Real Estate Development Full Disclosure Act (45:22A-21, et seq.)

Community Association Requirement for Capital Reserve Studies

- Community Associations required to undertake capital reserve study.
- Study shall conform to the National Reserve Study Standards of Community Associations Institute.
- An association without a reserve study or who have not updated an existing study in 5 years shall have one created or updated within one (1) year of the effective date of this legislation.
- New associations must conduct reserve study within two (2) years of transition.
- Reserve studies thereafter shall be undertaken at least every 5 years.

Community Association Funding of Capital Reserves

- If it is determined that funding in the capital reserve account is deficient, the deficiency must be recovered in not more than two (2) fiscal years.
- If a deficiency in capital reserve account would require an increase in the annual assessment of more than 10%, the deficiency must be recovered within 5 years.

Community Association Use of Capital Reserves

- Association may utilize only amount allocated by the reserve study to any particular component, provided that the executive board may utilize more of the remaining capital funds for another component if it will not interfere with any other scheduled replacement in the next 5 years and the funds are recovered within the following 3 years.

Community Association Authority to Borrow or Assess – Structural Corrective Maintenance

- An executive board may adopt an assessment payable over one or more fiscal years or obtain a loan whenever necessary to fund the cost of corrective maintenance of the primary load bearing system. The executive board must first obtain a written report from a New Jersey licensed engineer or architect that there (a) is an imminent or reasonably foreseeable hazard to health or safety (b) is a violation of the Uniform Construction Code or (c) will be a material increase in the cost of such corrective maintenance if delayed.

Plans/Specifications and Preventative Maintenance Schedule

- Developer shall provide association with plans and specifications utilized in construction, including plans setting forth all field changes impacting any structural components.
- Developer shall prepare a preventive maintenance schedule to prolong or maintain the condition of the structural integrity of the building's primary load bearing system.
- Budget prepared by developers must include all annual operating expenses pursuant to preventative maintenance and deferred maintenance schedules.

PLEASE NOTE

A version of this column also appears in the July 2022 issue of CAI NJ's *Community Trends* magazine.

ABOUT THE AUTHOR

Matthew Z. Earle, Esq. is a partner with the law firm of Kates Nussman Ellis Farhi & Earle, LLP where he concentrates his practice in the areas of community association law, construction defect litigation, general equity litigation, real estate tax appeals, international law, municipal land use, and commercial litigation in the state and federal courts of New Jersey and New York. Mr. Earle is the chair of the New Jersey Legislative Action Committee (NJ LAC). He can be contacted via email at: mearle@nklaw.com.

