

# CONSTRUCTION & LAND USE NEWSLETTER

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## Protecting Your Brand: A Gift Not Reserved for the Holidays

By Juanita Ferguson



As we enter the holiday season, one thing that all construction industry professionals can agree on is that brand protection is a gift whose usefulness never ceases. You understand the significance of it. Your logo may appear on scaffolding, on the tops and sides of buildings or in trade publications. Your safety awards may adorn the walls of your places of business, and the finished products of your lucrative contracts remain the topics of conversation among those who are fortunate enough to live in, work at or otherwise experience the benefits of one or more of your projects.

While largely a focus of ad agencies and public relations companies, brand protection has practical and legal considerations worth considering:

### False Advertising

*Lawsuits* - Even the most comprehensive disclaimer cannot overcome representations about the goods and services that your company has to offer. Before you approve any advertising related to your business, ensure that you are able to do everything that your advertisements represent. For example, if you represent that you are bonded and insured, verify that your insurance is current and that your surety still considers your business a good risk for construction projects. Otherwise, your business could find itself in the unenviable position of having to defend against state and federal claims for misrepresentation.

*Increased regulatory oversight* - Claims of false advertising may spur not only lawsuits, but also independent investigations from a host of federal, state and local government agencies that exist to ensure that your project does not have the potential to become a safety or environmental risk. Random inspections are expected during the course of a construction project. However, inspectors read the papers and watch the news also. Additional assessments of your project will not only cost you and your client in terms of lost productivity for a particular project site, but may actually increase your overall cost of doing business and thereby affect your ability to create jobs and to compete for projects.

*Loss of business* - An obvious outcome, but the most devastating effect of false advertising is that it decreases interest in your business with potential clients and may lead to the termination of projects with existing clients. Minimizing the risk that your business will be affected as the result of false advertising is a completely achievable goal.

### Workplace Safety

Workplace safety laws exist to decrease the likelihood of personal injuries and illnesses in the workplace. Some of the ancillary benefits of a safe workplace

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are increased morale among employees and reduced workers' compensation rates. Also, your company will be more attractive to potential employees if your business has the reputation for taking no risks when it comes to the well-being of employees. Projecting a positive image to both your customers and your employees is free advertising that will manifest itself in increased productivity and higher profits.

## Review Stereotypes

More often than not, construction professionals have to work to dispel the notion that anyone can work in construction regardless of their abilities or educational background. The "blue collar stigma" espoused by those not in the construction industry exists and unfortunately has been the basis for many of the laws that are promulgated by well-meaning politicians who want to ensure that the unemployed and underemployed get the opportunity to be productive members of society. While verbally articulating the attributes needed to succeed in construction, never miss an opportunity to emphasize the professional traits that contribute to success..

## Addressing the Millennial Factor

If you have done any employee recruitment recently, then you know that millennials, persons born between 1982 to 1994 in the age range of 18 to 30 years, cannot be ignored, not only for the contributions that they can make to your workplace, but for the attitudes that they possess about how to get things done and how to make the world a better place. Offering training to senior management of your business about how to work with and, more importantly, provide leadership to millennials will not only score you free points with the workforce who you seek to attract to your business, but also reinforce with veteran employees that your business continues to be a thriving entity in the construction industry.

## Maintaining Relationships

Whether it is with your clients, your employees or your colleagues or competitors, there is no better way to enforce your brand than to maintain respect. Do what you say you are going to do. If your business cannot complete a project on schedule, address the situation sooner rather than later to avoid the threat of a client terminating the project. It could mean the difference in a fully executed change order or a complaint against your company. When workplace issues arise, document how you handle the issues. Then read what you write. If it does not read convincingly to you, chances are that it will not be received favorably by a safety investigator or an ex-employee seeking retribution for an unfortunate workplace incident. Avoid mistakes, but if they are made, own up to them. There is no substitute for maintaining relationships in the construction industry. Make your brand one that signifies best practices and continues success in the future of construction.

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## Amendment to the Interstate Land Sales Full Disclosure Act

### By Jonathan Kinney



Changes to the Interstate Land Sales Full Disclosure Act will be effective March 29, 2015. These changes will exempt condominium developers from the filing and registration requirements of the Interstate Land Sales Act. This amendment will eliminate the need for condominium developers to register condominium projects with the Consumer Financial Protection Bureau and to provide condominium unit purchasers with the property reports and contractual protections required under the Interstate Land Sales Act.

Since condominium developments are regulated on the state level, Congress basically moved to eliminate the dual registration requirements. However, condominium developers will still be subject to the fraud and

misrepresentation provisions of the Interstate Land Sales Act and will have to comply with all provisions of state law regarding condominium purchases.

During the recent housing crisis, purchasers of condominiums had used technical violations of the Interstate Plan Sales Act as a creative method to back out of condominium purchase contracts and retain their deposit despite the terms of the condominium purchase agreement.

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## Changes are Coming to ISD

By Lauren Keenan Rote



Changes may be on their way to Arlington County Inspection Services Division, according to Shahriar Amiri. Early this month, Mr. Amiri, director of Inspection Services for Arlington County, addressed NAIOP-Arlington and explained his plans to change the way permits are issued in Arlington County.

In the next 6-9 months, a cashier will be added to the 10th floor of the Arlington County building at Courthouse, allowing for more convenient payment for permitting and zoning applications. Currently, the only cashier is on the second floor, so adding a second cashier should make payment for permits and zoning applications more efficient.

Applicants will be able to electronically file plans with ISD in the near future. In fact, Mr. Amiri ultimately would like to see a system where inspectors and reviewers on his staff can work remotely, reducing overhead within the County offices. Amiri's hope is that such cost-savings could be used to allow for extended hours for inspections, which currently end at 3 p.m. Mr. Amiri is committed to incorporating technology in a way that reduces costs, increases efficiency and, he hopes, even appeals to the modern-day workforce who want more flexibility.

During the NAIOP meeting, Amiri asked for help from the NAIOP community, specifically architects and engineers, to help beta-test the system by presenting plans and testing the electronically filing process.

This isn't the first time that Mr Amiri has talked about "shaking things up" within his division; in recent years, Mr. Amiri has announced efforts to streamline the permitting/inspection review process. In 2013, he reduced permitting fees, and has suggested that he would like to review the zoning fees next to see if any changes might make sense there as well.

It's clear that Mr. Amiri has strong conviction about overhauling the permitting and inspection process within his department to function more seamlessly, but in the short run, such changes will come at a cost. While permitting fees were lowered by Amiri, prior changes to the system did result in the addition of an automation fee to standard zoning fees. Amiri explained that in the short-term, as in the next two to three years, permit fees may be raised again to cover costs of implementing the new technology. However, he feels that ultimately costs should fall, as this remote-electronic filing system promises to be a cost-saver. Amiri has also said that eventually he would pass such savings on to the applicants.

It will be telling to see how the initial changes in the coming year will affect the overall review process. The plans Mr. Amiri has articulated are long-term in nature and he appears to be open to feedback and suggestions from the development community, as well as other end-users of the system, to try to continue to improve its overall efficiency.

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### Arlington's New LEED Standards

By Matthew Roberts



On November 15<sup>th</sup>, the County Board of Arlington County voted 4-1 to adopt a revised incentives policy for its green building standards. While technically a “voluntary” component of 4.1 Site Plan applications, the County has long encouraged and planned for new buildings to be LEED certified. The revised policy includes the following changes:

- Projects must propose to achieve LEED Version 4 Silver certification, or above
- Commercial and Residential projects will receive the same base bonus density, depending on the proposed certification level
  - o Silver - .25 FAR
  - o Gold - .35 FAR
  - o Platinum - .50 FAR
  - o LEED Gold, plus two Community Priority credits (see below), plus Net Zero Energy building certification - .55 FAR
- Commercial projects must also agree to achieve Energy Star certification within four years of occupancy
- Additional .025 FAR is available to projects that achieve one of the new “Community Priorities.” The County will award up to .05 FAR for these credits (i.e. achieving two Community Priorities). The Community Priorities include:
  - o Energy Star certification score of 75 in multi-family residential projects
  - o Optimizing energy performance at 9% or 12% above the LEED baseline
  - o Envelope commissioning
  - o At least one-percent of building energy use generated from renewable sources
  - o Onsite habitat restoration
  - o Light pollution reduction and bird friendly facades
  - o Building reuse and materials salvage
- To encourage “green” affordable housing projects, projects receiving Virginia Housing Development Authority tax credits may use the Earthcraft rating system, instead of LEED, if they achieve Earthcraft Gold or Platinum. These projects are also eligible for additional density using the “Community Priorities.”

Understanding that this change will take time to implement, the revised policy has an “effective date” of September 30, 2015. Site Plan projects that are accepted by the County Managers office (i.e. officially taken into the County’s Site Plan review process, rather than merely filed for preliminary review) before this date may choose to continue under the current standards.

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