Notebook...

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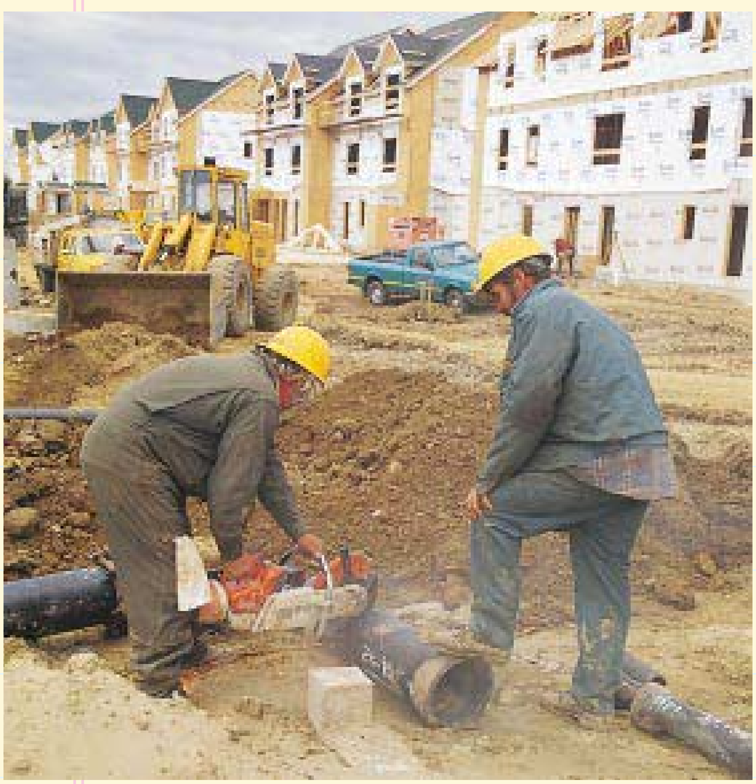
Building Boom Brings Controls

As construction surges, some towns tap the brakes

by Kathy Price-Robinson

Growth controls are to a building boom as a gel hammer grip is to a hammer — something to cushion the impact. And with much of the nation booming over the last year or two, communities and states across the country have been creating and applying growth-control regulations in a way not seen since the 1980s.

"When there's a recession, people don't get torqued about building," observes Bob McNamara, a planner with the National Association of Home Builders. But when building accelerates, the resulting loss of open space, strained municipal services, traffic problems, and "urban sprawl" generate much public concern about growth's less attractive side effects.



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"It's a complex problem," says McNamara. "And there are no easy answers."

A Grab Bag of Tools

Easy or not, many communities are trying to create answers, and their efforts are affecting builders of all sizes — from big developers to one-off custom homebuilders — in many ways. Communities and states are using not only traditional measures like zoning, but new tools as well, some of which are more graceful than others. A few examples from around the country:

Permit caps. Dozens of towns around the country have either considered or instituted limits on permits over the last few years. In Dayton, a small town in southern Maine, residents passed an ordinance to cap the number of building permits at 12 per year. The resulting wait for permits made at least one developer's subdivided lots unsellable. A similar cap created in Eliot, Maine, killed a deal a small custom builder there had to build an affordable house on an infill lot.

Impact fees. Communities all across the country have made increasing use of impact fees to try to slow development and to help pay for related infrastructure costs. According to builders' objections, some of these fees exceed the costs development actually creates.

Set-asides for open space. Some communities, and at least one state (Connecticut), now require larger developments to contribute a certain percentage of the development's land value, either in land or funds, for open space or conservation purposes. Though sometimes attacked as an unconstitutional "taking" of property, most of these requirements have survived legal challenges.

Building moratoria. Finally, some of the fastest growing areas have established outright temporary bans, or moratoria, on new construction to give communities time to develop growth management plans.

A Fit for All Sizes

While growth-control measures are often seen as affecting mainly large developers, most of the

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methods described above affect builders of any size. Santa Barbara, Calif., contractor Greg Brown, for instance, says that while the present boom has allowed him to expand from remodeling and build a custom home in Ojai, Calif., growth controls are cramping what might be a big business opportunity for him. The Ojai home took nine months to move through the town's strict regulation process; Brown says "it would be wonderful" if growth regulations eased to allow him more such opportunities.

At the same time, builders like Neil Grider, another Santa Barbara general contractor, recognize that such regulations are usually reactions to either inadequate planning or irresponsible development. Because moratoria give cities a chance to reassess their policies, Grider thinks they make much more sense than simply increasing permitting and impact fees, which he says are just "the squeaky wheel getting the grease."

Yet both Grider and NAHB's McNamara say that moratoria and other clumsy methods are the results of communities reacting rather than acting. What's needed, says McNamara, are strategies that deal with growth by planning for it and by creating a more proactive, forward-looking process. Such an approach, says McNamara, "can put community concerns into the process in the front end, rather than tacking them on somewhere along the line. It's growth management rather than growth control."

Fortunately, some towns are beginning to encourage developers and community advocates to work cooperatively. In Port Royal, S.C., for instance, planners decided in advance what they wanted on each plot of land. If you approach the planning department with the intent to build what they want, says McNamara, "They'll cut you a permit that afternoon."

And groups in the region around Albuquerque, N.M., are meeting to determine a positive direction for growth. Rather than trying to stop growth, they'll determine where they want growth to occur, and offer incentives for builders to build in those areas.

On a national scale, a study group made up of the NAHB, the Urban Land Institute, the American Institute of Architects, the National Association of Realtors, the National Realty Committee, and the Lincoln Institute of Land Policy, has been meeting to explore strategies and tools for proactive growth management.

If these and similar efforts bear fruit, communities and building groups around the country may be able to draw on a more cooperative, productive set of tools to balance the benefits of growth with its drawbacks.

Tax Talk ...

Deducting Business Start-Up Costs

by Milton Zall

The IRS will not let you write off start-up expenses for a new trade or business the same year you incur those expenses. Instead, you must deduct the pre-operating costs, such as marketing studies and legal and consulting fees, over a 60-month period. Worse, that 60-month period commences only once you are "actively engaged" in the new trade or business. You're "actively engaged," says Murray Alter, a tax partner with the Coopers & Lybrand Accounting firm in New York City, "when income starts coming through the door."

Given these rules, you have two main ways to shorten the time between incurring start-up expenses and writing them off. One way is to generate income from the new business as soon as possible. That starts the clock on the 60-month write-off period for pre-operating expenses, and, says Alter, "all subsequent business expenses can be deducted against operating income" in the usual manner.

Another strategy is to create a business that can be legitimately considered part of a business you already run. "In that case," says Alter, "the IRS will permit you to write off expenses immediately." For instance, if you already have a construction company, you might decide to use some of your equipment and expertise to run a handyman service. Since the new venture can properly be considered an extension of your present business, you needn't wait to write off the expenses of getting it started.

The business expansion, however, must conform to your existing business's charter documents (articles of incorporation, partnership agreement, or sole-proprietorship charter). Such documents, says Steve O'Rourke, educational manager of the National Tax Practitioners Association, "must be broadly worded to encompass as wide a range of activities as possible." With that done, you should be able to treat any costs associated with an expanding range of business activities as operating rather than start-up expenses.

Promoting Green Building

Denver HBA pioneers a group marketing plan

Denver's "Built Green" program verifies energy and tight-house standards by such means as blower-door tests (inset), helping builders turn "For Sale" signs into "Sold" signs.

It's difficult to convince home buyers that an "environmentally friendly home" is the real thing. Does a "green" home mean it's painted chartreuse? That it has a double-pane window? Extra insulation? Or much more?

To help ease the confusion — and to offer the benefits of a large marketing effort to builders of all sizes — the Home Builders Association (HBA) of Metropolitan Denver has created a "Built Green" program, now in its second year, that is available to all builders in the area. When a home earns the program's "Built Green" designation, it is promoted and marketed by the program and its myriad sponsors, including the Governor's Office of Energy Conservation. Kim Calomino, the program's administrator, says it not only gives individual builders a chance to distinguish their product, it gives the industry as a whole "an opportunity to wear a white hat."

Here's how it works: The builder pays a $150 annual enrollment fee ($500 for HBA non-members) and $50 ($75 for non-members) to register each home. The homes must comply with one of two energy rating programs and include a certain number of sustainable construction materials and building techniques from a 138-item Built Green Checklist. Last year, more than 1,000 homes passed muster and were designated "Built Green."

For more information on the Denver program, contact Kim Calomino at 303/778-1400.

Offcuts ...

Low-level carbon monoxide (CO) can cause brain damage, according to a new study at the University of Connecticut Medical Center, as reported in *Energy Design Update*. The study, the first to look at the effects of extended periods of low-level CO exposure, found problems such as short-term memory loss and behavioral changes at levels of CO exposure associated with symptoms such as headache and nausea.

Grow some pot on the place, and I'll cut you a good deal on the house. That, allege federal prosecutors, was the deal an Oregon real estate agent made with some "associates" in order to feed a pot pipeline he had going to California. Prosecutors say the 5-year-long scam involved 12 houses and produced roughly $10 million worth of marijuana.

Linoleum has gotten an update from a Japanese company. Proca takes a blend of cork, wood chips, and jute, turning them into a bacteria-resistant floor covering; a fiberglass backing was added after R&D determined the original material had a tendency to shrink.

Structural inspection, mechanical inspection ... rat review? Some California builders are voluntarily submitting plans to the Orange County Vector Control District, which advises on ways to reduce vermin infestation.

Building Inspection Etiquette

by Leland Stone

To avoid red tags, know the code and your inspector, and steer clear of confrontations

Contractors who become known for quality work are less likely to be hassled over 'gray areas' in the code. Instead of wasting time and resources battling with the building inspector, work on establishing a good reputation.

Fool-the-inspector may be a common game on some job sites, but it's one that Richard Schwartz doesn't have time to play. Schwartz, a contractor in California's San Francisco Bay area, actually had trouble recalling his last argument with a building inspector; that's understandable, since it had happened in the early 1980s. "We sheathed a shower stall with regular gypsum wallboard prior to floating the mortar bed," Schwartz said. "When we called for the nailing inspection, the inspector wanted us to rip out the drywall and replace it with greenboard."

Although replacing the drywall wouldn't have put the job in the red, Schwartz was aggravated by the inspector's decision. "I'd actually contacted the city before doing the job, and I'd been told that regular drywall, covered with a layer of 15-pound felt, would be acceptable for that application."

The local code was in the process of being changed, information that Schwartz hadn't been given by the building department.

The incident taught Schwartz that even if the code is still in the process of being adopted, inspectors are likely to be phasing out the older standards. That means it's critical to get plan checks and inspections done by the same person. "When you pull a permit, ask specifically to have your plans checked by the inspector you're going to be dealing with," Schwartz said.

It's also a good idea to document the building department's code interpretations and your attempt to follow their guidelines. How much of a "paper trail" to leave is a judgment call. Schwartz uses his job log to keep track of code questions and answers. "I jot down everything in a spiral notebook — date, time, contact person," Schwartz said. "It's not just for inspection purposes, but for tracking all the minor details that go into a job," he said.

On the tile job, for instance, Schwartz had the name of the plan checker who'd given him the out-of-date information, so the inspector backed off and the drywall stayed in place. Although he was clearly right in that instance, Schwartz was diplomatic in pointing out the error. Inspectors are human, and they don't like to appear foolish or uninformed. Schwartz avoids confrontation when raising an objection to an inspector's call. "You don't want to challenge the inspector's authority," Schwartz said, "because they're going to be insulted and threatened, and they'll really become difficult to get along with."

In fact, proving your point to a building inspector is a fallback position at best. Establishing a good reputation with your inspector at the beginning of a job is a lot more sensible than trying to win an argument when you're halfway through it. Schwartz points out that if you're doing a lot of work in the same area, you're likely to be assigned the same inspector on each job. "Once they get to know you and the kind of work you do, they're much less likely to scrutinize you," he said, "because they know you care and they don't have to be searching for trouble."

A "perfect" job site isn't the goal, either. "I've found that inspectors want to find something," Schwartz said, "and you shouldn't be insulted by that. It's their job. You hope that they're going to find something innocuous."

The bottom line is that inspectors don't create safe, functional structures — that's the contractor's responsibility. As Schwartz said, "You have to build for yourself, not the inspector."