IN THE NEWS

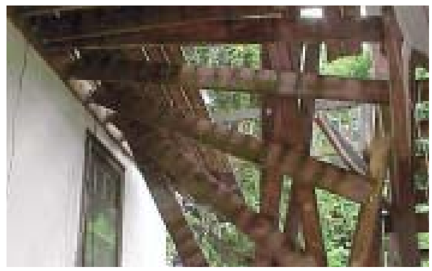
EDITED BY TED CUSHMAN

Collapse of Overloaded Deck Teaches Useful Lessons

Standard residential decks aren't capable of supporting heavy objects like pools

Mark Liebermann

This five-year-old deck collapsed as a result of severe overloading. Decks built to code should be able to carry a 40-psf load; a pool placed on this deck weighed an estimated 180 psf.



Independence Day weekend came and went this year without any reports of fatal catastrophes involving outdoor wood decks or porches. But as happens every summer, a few smaller deck failures have made the news, including one case in Hughsonville, N.Y., that luckily did not hurt anyone, but did teach a valuable lesson.

Built in 1999, the second-story deck gave way suddenly under the weight of a large plastic swimming pool. "The lady was inside putting swimming trunks on the kids when she heard a boom, and when she looked outside the whole deck was gone," says town firefighter and police officer Mark Liebermann. "These people just didn't understand that you can't put a freakin' swimming pool on top of a deck."

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Franchise Firm Offers Builders a Business in a Box

In many industries, entrepreneurs looking to open a business have the ready option of buying a franchise. Want to serve burgers? Open a McDonald's. Sell cars? Any automaker can set you up. Want to help the local ladies buff up? There's probably room for another Curves near you.

But homebuilding? Well, sure. Epmark, Inc., an arm of Dublin, Ohio-based building company Epcom Group, offers would-be homebuilders a turn-key package able to establish any qualified investor in business as a developer and builder, ready to rock and roll. With 73 franchisees in the network, the company says its instant builders account for 200 developments completed or underway, with 15,000 homes built so far.

Almost half the new builders who have bought the Epmark dream have no prior background in construction. But the parent company insists that its franchisees work full-time as developers, and offers training, help with marketing, an operations manual, and the power of large-volume group buying for materials. Epmark also supplies proprietary building plans for its trademark one-story, two bedroom, two bath, condo-style units, built four to a building in a pinwheel layout. The company says punching out basic models by formula works as well for buildings as it does for burgers, at least if the bottom line is the top concern — while details aren't available, Epmark claims franchisees earn net profits averaging higher than 12%. That's double what NAHB statistics say builders can expect to earn with new construction.

Too good to be true? We asked franchisee Larry Lindstrom, owner of Leisure Villas in Salt Lake City. Lindstrom was the first builder to try the Epmark formula in a Western state, and he credits Epmark with helping him succeed at something he would never have tried without them.

"I was a little builder," says Lindstrom. I built mostly between about 12 and 15 homes a year, some

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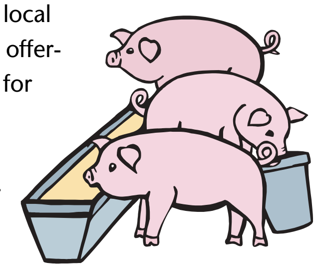
OFFCUTS

Massachusetts is set for a major revision of wetlands enforcement policies, according to the *Boston Globe*. The new rules will focus enforcement efforts on major violators, and devote less time and attention to reviewing small permit applications that pose less of a direct threat to wetlands. State officials say the changes will make enforcement efforts more effective, but environmental advocates fear the move will amount to a rollback of wetlands protection.

Florida's Office of Insurance Regulation in June ordered employees on 29 home construction sites to stop working when the workers or their employers could not show proof of workers comp insurance coverage, reports the *Tampa Tribune*. The stop-work orders were the result of a sweep of job sites in two counties over two days. Only the employees not covered by verifiable insurance were affected, says the *Tribune*; legally insured employees were allowed to keep working.

A Washington State Supreme Court decision gives change-order procedures the strict force of law in the state, according to executives of the Bellevue law firm Berntson Porter & Co., PLLC. Previously, an owner's general awareness of changed conditions was sufficient to entitle the contractor on a job to collect for unbudgeted expenses on the change. But the court ruling means that from now on contractors must follow all change-order procedures to the letter in order to be entitled to payment.

When his permit application was denied, a Georgia developer who wanted to re-zone 34 acres from agricultural to residential use decided to raise a stink — literally. The *New York Times* says developer Bob Cain decided to dump copious quantities of chicken manure on the site, claiming that he planned to raise hay. The stifling stench of the manure was soon accompanied by swarms of biting flies, says the paper. At the same time, local newspaper ads appeared offering to lease the property for use as a pig farm at one dollar an acre. The re-zoning application is currently in litigation.



Colorado Voters Take Aim at Construction Liability Reforms

Colorado builders are gearing up to resist a threatened voter backlash against the state's recently adopted construction liability reforms. House Bill 1161, passed last year by the Colorado legislature, requires homeowners and builders to try non-judicial resolution of complaints before filing lawsuits, and caps punitive damages in construction defect suits at $250,000. But proponents of a ballot initiative to overturn the law have already gathered enough signatures to place their measure on the ballot in November as "Amendment 34."

The campaign is shaping up as a tough and costly fight, as a builder group called "Coloradans for Responsible Reform" squares off against "Property Owner's Rights," a citizen group founded by 77-year-old Colorado lobbyist Freda Poundstone. Both sides have scored some hefty cash donations, reports the *Rocky Mountain News*: According to the paper, the builder group has collected $277,000 for direct mail, TV, radio, and print advertising, including a $100,000 gift from McStain Enterprises, $75,000 from Beazer Homes Holding, and $50,000 from Shea Homes. Campaign official Rick Reiter reportedly said, "I don't have any doubt that there is going to be a sufficient amount of money to defeat this proposal." On the other side, Poundstone's group has already spent $235,000 on its successful signature drive, most of it provided by two Denver law firms who are said to have given more than $117,000 apiece. The owner's rights group says it has spent all its funds, and plans to rely on door-to-door grassroots campaigning to counter the builder group's advertising blitz.

The homeowner group is framing its argument in terms of "government for the people by the people," as opposed to the "big money" builder interest. But speaking for the builder group, Rick Reiter derided the initiative as "just kind of a business plan for a couple of lawyers who had success suing homebuilders."

The builder campaign will likely focus on the way unlimited litigation drives up housing costs and makes insurance unaffordable. According to Reiter, last year's reforms have brought quick relief: He told the *Rocky Mountain News* that construction-defect lawsuits decreased from a total of 109 in 2003 to just four in the first five months of 2004.

Fish and Wildlife Permits in Limbo as Judge Vacates "No Surprises" Policy

Building industry lobbyists reacted with dismay to a June ruling in federal court that suspends the Fish and Wildlife Service's "no surprises" rule for land-use permits issued under the FWS Habitat Conservation Program.

The "no surprises" rule, adopted by the Clinton administration in 1998, has allowed developers to rely on permits negotiated under Fish and Wildlife's "Habitat Conservation Program" to stay valid for the duration of a project, even if new threats to a species are discovered after a permit is final. The idea is to protect builders and developers from the wild-card risk of major losses that could result from the interruption or cancellation of a project at mid-point, or from an unlimited series of new requirements and restrictions imposed after work starts.

But in a lawsuit brought by a California-based environmental group known as the Spirit of the Sage Council, Judge Emmet Sullivan has ordered the Fish and Wildlife Service to stop applying any "no surprises" guarantees to Incidental Take Permits or Habitat Conservation Program plans until the Service has finished rewriting its Permit Revocation Rule (PRR), a related regulation which Sullivan had previously vacated and ordered the Service to rework. The PRR lays out the conditions under which a permit, once approved, can be revoked. Sullivan said that both the PRR and the "no surprises" policy were adopted without the notice and comment period required by federal law, denying the public "the opportunity to weigh in on decisions likely to have significant effects on public resources."

The National Association of Homebuilders (NAHB) plans to submit comments during the new rule-making process. NAHB official Duane Desiderio said the loss of "no surprises" protection would be a major blow to builders. "The underlying thrust of the 'no surprises' rule is, a deal is a deal," Desiderio told the Associated Press. Without it, he said, "A permit won't be worth the paper it is written on."

OFFCUTS

An Indiana builder's down-payment gift program has drawn a homeowner lawsuit based on allegations of deceptive selling, reports the *Indianapolis Star*. Indiana attorney Eric Pavlack is seeking class-action status for a suit charging that low-income home buyers are led to believe that a builder gift to cover a mortgage down payment will give them starting equity in a new home, as well as making the mortgage loan possible. In fact, charges Pavlack, the "gift" is a loan because the amount is rolled into the sales price of the house, and financed in the mortgage. Indiana consumer advocate Mildred Wilkins said that financing a down payment defers the time when the owner can escape the mortgage by selling the house, and puts the buyer at risk.

The New Haven County, Conn., Home Builders Association has its first woman president. Liz Verna, co-owner of Verna Builders and Developers in Wallingford, Conn., took over the job in June after serving on the board of directors for 10 years, says the *New Haven Register*. Verna joined her father's company when he asked her to manage a project, and now shares management tasks with her brother Gerald. Nationally, only 5% of HBA members are women.

Chicago, Illinois is set to start a comprehensive rezoning process that will define the look and feel of city neighborhoods for decades to come. The *Chicago Tribune* says the city council has passed a drastic revision and expansion of Chicago's zoning rules, which had previously addressed only the height and bulk of buildings. The new rules aim to shape the character and functioning of neighborhoods, and to make streetscapes more pleasant and pedestrian-friendly. New provisions include a prohibition of curb cuts for driveways in favor of alley access for cars, and a requirement that walls facing streets must have doors and windows.

"Who steals my purse steals trash," said Shakespeare. The playwright made no reference to those villains who would rob us of our rocks, but outlaws are making a practice of it in commuter towns outside New York City. A New Canaan resident told the *Stamford (Conn.) Advocate* that it took several weeks for her to realize that one end of a long stone wall on her property was gradually disappearing. A neighbor told the paper that he knew of several stone walls that had suffered similar depredations; his own wall was hit in 1997, he said, by thieves who took only the large, flat cap stones.

Franchise Firm

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spec and some custom. And with the margins out here, you can make a decent living, but you are never going to make any real money. Our goal was always to make ten percent on a deal, and the only way to get ahead was to get a piece of dirt to develop. If you made ten percent on the house you could make a living; if you made ten percent including the lot, you might end up with a little something left over at the end of the year."

Lindstrom's fortunes changed when he met up with Epmark. "I got into it by accident," he says. Somebody asked me to partner up on a deal, and I ended up taking it over." His construction experience was helpful, Lindstrom says, but he could not have made the move into large-scale multifamily construction without Epmark.

Lindstrom had plenty of related knowledge: "I grew up in the hvac trade, and I've run other businesses. I had done a little developing, a little building.... Most builders have no clue about developing, but I felt comfortable with that, and with the financing too, because I've worked in mortgage banking. But where I was hard pressed to understand was in the condo stuff — homeowners associations, the warranty program, all the entitlements ... Epmark gave me a lot of help and training with that."

But Lindstrom also credits Epmark's formula approach with much of his success. "I have gone from being a custom builder to a production builder. I have been with them for five years, building the same floor plans right along: two buildings, four floor plans. If we can't figure it out after building it a few hundred times, we aren't too bright."

Dean Lee, Epmark

A few proven floor plans arranged pinwheel fashion in four-unit condos are a formula that works for Epmark franchise owners, says franchisee Larry Lindstrom. Lindstrom uses vinyl siding in his market, rather than the synthetic stone shown here.

Customizing? "We don't do changes," says Lindstrom. "I use the same color of vinyl in every unit, the same color of countertops, the same color of paint. We are not trying to be everything to everybody — we have established a niche and we are chasing the niche. On my projects, I am selling forty or fifty percent to widows. These are the Eisenhower women: They think vinyl is better than tile 'cause it's not hard on their feet, they wouldn't want hardwood because they don't want to wax the floor."

Staying in step. The factory-like efficiency of mass production comes into play, says Lindstrom, but he doesn't rush things. "I start a building every so many weeks. I run either a two-week, three-week, or four-week schedule. And I may adjust it a little bit based on sales, but I really adjust my sales to meet my building schedule. If I get too many sales out in front of me I'll raise my pricing; if they start to slow down, I lower it. That way I keep my subs busy, and I can keep them all programmed out so they know where they are for the next six months."

Because all the units are the same, Lindstrom finds it easy to adjust to a buyer's timing. "Almost all my people have a house to sell, because of their stage of life. Since we don't offer changes, if they sell quicker they can move up to a different unit, and if they sell it slower they can move back to a different unit. Probably 25 percent of them don't end up buying the unit they signed up for."

With annual conventions and training sessions, says Lindstrom, Epmark offers a considerable knowledge base to draw from. Their guidance is a little stronger than a suggestion, he notes; "If I want to change anything at all about the plans or methods, I have to get approval." But he says the company is easy to work with. "If you have a good idea, they'll support it, and then they'll analyze it. If it's cost-effective, they might include it in the system." And Lindstrom says he has found Epmark's judgment to be dependable: "What you find out is that the franchisees that are the most successful are the ones that follow the program closely."

Industry Experts See Price Relief for Lumber, Not Structured Panels

Lumber industry trend-watchers are looking for a slide in lumber prices through late summer and into fall. Press reports in June and July indicated that gradual interest-rate hikes by the U.S. Federal Reserve could cool consumer demand across the board (the Fed bumped one key rate up one-quarter percent in July). Even as the Fed applied its squeeze, several factors have combined to increase summer lumber harvests in western Canada, bringing more wood onto the U.S. market. The extremely tight market for structural panels, however, may not see the same kind of price declines as the sawn lumber market: Oriented strand board (OSB) supplies are limited by mill output capacity, and the new plants scheduled to come on line this year will barely make up for continued closings of plywood mills.

A few bugs in the system. A massive beetle infestation affecting the pine forests of interior British Columbia is one factor increasing Canadian wood harvests, the *Toronto Globe and Mail* has reported. Partly to slow the beetle's spread, partly to salvage valuable lumber, and partly to cut fire risk, provincial officials this spring announced plans to increase summer timber cuts by 30%. An estimated 80% of B.C.'s lodgepole pine trees may be infested by beetles; affected trees can die within a year, and the standing dead trees lose their value within ten years if not harvested.

But changes in the province's pricing structure for timber sales from public lands are also likely to boost output. In response to diplomatic pressure and trade sanctions from the United States, B.C. has switched over to a market-based system for setting the stumpage fees it charges companies to log trees in the provincial woodlands. But if U.S. firms pressing for anti-dumping penalties and countervailing duties expected free-market principles to make their lives easier, they may be disappointed: a Canadian Press (CP) report says the change has brought coastal B.C. forests "abuzz with the sound of chainsaws." Coastal loggers were operating at full capacity in early June, said the CP report, and union loggers who saw 50% layoffs last year reported that "everybody who wants to is working." Plus, a softening Canadian dollar has allowed stumpage fees to slide along with the price of sawn lumber, keeping Canadian loggers on the job — and keeping the wood coming for U.S. builders.

Overloaded Deck Collapses

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This was not a little wading pool, says Leibermann: "It was about the same size as a tank we have for filling fire trucks down at the station, and that holds 2,500 gallons. It covered the whole deck except for about two joist widths in front of the door, and it had about 3 feet of water in it."

While some deck failures are clearly the result of under-designed or poorly built structures, this case involved obvious overloading. And because the load that caused the failure was an evenly distributed mass of a uniform material (water), its magnitude can be estimated without the uncertainty involved when the live load consists of people at a party. A cubic foot of water weighs just over 62 pounds, so 3 feet of water in a pool would have loaded the deck to approximately 180 psf, more than four times the code-allowable 40-psf load.

Mark Liebermann

Seemingly undersized joist hangers still supported the joist ends at the house ledger after the collapse. At the other end, there were no hangers. The joists pulled away from an outer rim member, which appeared to have snapped in half.

In any case, the 40-psf allowable live load is intended to account for the weight of people, and in no way includes any allowance for pools or other heavy objects. Engineer Frank Woeste, professor emeritus at Virginia Tech, comments: "In theory, a code-conforming deck should safely support 7.7 inches of water in a kiddie pool, neglecting the weight of small children in it. But without professional verification, you can't assume the deck is built to code. Even if the deck were designed and built to support the code-prescribed 40-psf live load, deck components can deteriorate in service and not have the strength and safety factor of the original construction. Heavy objects, such as water-filled kiddie pools, should not be used on residential decks unless the design specifically addressed the maximum weight of the object in addition to the 40 psf from the residential code used for the ordinary occupant live load."