In the News

Boulder Builders Get Tax Reprieve

Facing a backlash from local builders and the threat of legal action, city officials in Boulder, Colo., are re-examining their claim that local builders owe millions in unpaid taxes. At stake is a potential revenue windfall for the city of between $1.9 million and $5.2 million, which contractors could be liable for.

The controversy began last summer when a city audit revealed a discrepancy between projected and actual revenue from construction use taxes, which are assessed when a building permit is issued. According to city finance manager Bob Eichem, the shortfall resulted because builders hadn't reconciled estimated with actual project costs and paid their final tax assessments. But veteran builders say they've never heard of this tax policy nor been asked for final assessments on completed projects.

To fight what they call an unfair and retroactive tax, hundreds of Boulder contractors have formed an organization called the Boulder Building Association and are considering legal action against the city. Meanwhile, the city has declared a 60-day moratorium on its back-tax collection effort and hired an outside consultant to review the existing tax code and collection practices.

An unenforced policy. In Boulder, builders pay an upfront use tax — in lieu of the 3.41 percent city and 0.65 percent county sales tax — on construction materials when they apply for a building permit. The amount is calculated by multiplying the project's estimated total construction value (determined by following a square-footage-based city formula) by 50 percent to arrive at a rough estimate of materials, and applying the 4.06 percent tax rate to that.

According to city official Patrick von Keyserling, the Boulder Revised Code has required contractors to report and pay use tax on the actual total cost of materials — not just the estimated cost — since it was adopted in the mid-1980s. But builders say this rule hasn't always been enforced, and Keyserling admits that the city only began distributing an information sheet about the provision and reconciliation forms in permit packages last May.

Eric Youngren of SoBo Homes learned about the city's plans to retroactively enforce the auditing and reconciliation provision in August, when he received one of 339 "voluntary compliance" letters sent out by Boulder's finance department. The letter told him that use taxes on five of SoBo's projects going back to June 2006 hadn't been estimated accurately and needed to be reconciled. Like the other builders who received the letter, Youngren was given until December 31 to pay the difference without penalty; after that, balances would be subject to a 10 percent penalty plus interest charges of 1 percent per month from the completion date of the project. Until the initiative was suspended in late September, another 634 Boulder builders were slated to receive similar letters.

Unfair audit. Youngren and other builders say that they've been

■ Four years after the Supreme Court's most notorious eminent domain case, the private New London, Conn., land that was seized by the government as part of an ambitious development plan now lies largely undeveloped (*In the News,* 12/04). The landmark case pitted seven homeowners against the city of New London in a battle over property rights. While the Supreme Court ruled against the homeowners, the case prompted a backlash that resulted in 40 states passing protective rules and regulations limiting the power of eminent domain. The aging homes that were at center of the controversy are gone, along with $1.2 million in anticipated monthly tax revenues, replaced by a large vacant lot and a 16-acre state park.

■ The 402 workers laid off last year by Simonton Windows have been called back to work at facilities in Illinois and West Virginia. Simonton president Mark Savan credits seasonal demand and the effects of the federal economic stimulus package — which offers a 30 percent tax credit for qualifying energy-efficient replacement windows and doors — for the turnaround.

■ Seventeen percent of all single-family homes built in the U.S. in 2008 earned the Energy Star label, up from 12 percent in 2007, says the EPA. More than 940,000 Energy Star-qualified homes have been built to date, says EPA administrator Lisa Jackson.

complying with Boulder's licensing, permitting, and inspection regulations for years, and they question the city's sudden decision to start enforcing the reconciliation requirement. Finance manager Eichem counters that until recently, enforcement wasn't really necessary, because estimated and actual project costs generally varied only slightly. In the past few years, he says, material costs have risen and construction costs have outpaced the city's upfront formula for estimating them. He puts the average discrepancy at 389 percent per project. At that rate, the builder of a $1 million home could owe the city as much as $58,000.

Even in a more robust economy such a sum isn't easy to come by, and builders are warning that they might have to go back to their clients if the city insists on collecting the back tax. They also say that if the city had been enforcing its own rules all along, it wouldn't have to resort to this tax-collection effort. "When the city performs a final inspection or issues a certificate of occupancy, they are certifying that the project meets all codes and that all fees have been paid," says Donna Werner of BW Construction. "The problem isn't the use tax; it's that they want to do this retroactively."

So far, the city has collected $11,400 from a few of the local contractors who received collection notices. It has offered to return that money while the audit is being conducted, but builders know they won't be off the hook until the policy is not just suspended, but cancelled. — *Andrew Wormer*

Jury Rejects First FEMA Trailer Lawsuit

A federal jury has ruled against a New Orleans family that claimed their government-issued FEMA trailer exposed them to dangerous levels of hazardous formaldehyde fumes. In the closely watched case — expected to be the first of many lawsuits involving Hurricane Katrina victims who lived in formaldehyde-tainted FEMA trailers — the jury found that trailer manufacturer Gulf Stream Coach had complied with government specifications when building the trailer and therefore couldn't be held liable for damages. Concluding that the trailer wasn't "unreasonably dangerous," the jury also dismissed negligence charges against Fluor Corp., a government contractor that hauled and installed FEMA trailers along the Gulf coast after Hurricanes Rita and Katrina in 2005.

Gulf Stream built 50,000 FEMA trailers after the 2005 storm season. During the trial, company officials said they weren't aware that the trailer interiors were finished with materials that were not certified LFE (low formaldehyde emitting) composite wood products, but that they had notified FEMA as soon as they began receiving complaints in early 2006. That was the year the Sierra Club tested 33 FEMA trailers and found that 31 of them exceeded safe formaldehyde limits set by the EPA and the American Lung Association. EPA and CDC testing in 2006 and 2007 confirmed those findings, but it wasn't until 2008 that FEMA announced the test results and began moving residents out of the trailers.

"I would have thought FEMA would have been held liable," one juror, Roy Pierce, was quoted as saying after the trial. In fact, though, the federal government had been removed as a defendant in the trial by the presiding judge in the case, U.S. District Judge Kurt Englehardt. That may not be the case in upcoming trials. Attorney Tony Buzbee, who represented the plaintiffs, says he plans to appeal the court decision. — *A.W.*

- Even though the majority of Southern Pine Council members receive regular requests for certified products, fewer than 40 percent participate in any forest-certification program, according to a recent survey conducted by the Southern Forest Products Association. One reason is cost; *Random Lengths,* a newsletter covering the forest-products industry, estimates that it costs $19,898 a year to obtain and maintain a forest-certification program.

- The Portland Cement Association says that total cement consumption declined by almost 30 percent in the first half of 2009, following double-digit declines in both 2007 and 2008. However, the PCA expects gradual improvement in 2010 and 2011, thanks to a rising tide of stimulus-package funding intended to boost highway construction spending — plus continued slow improvement in the residential sector, which accounts for 50 percent of the market.