

Capital Projects

Planning, Funding and Oversight
Nuts & Bolts of Capital Financing

YOUR PANELISTS:

HOWARD S. GOLDMAN, ESQUIRE, GOLDMAN & PEASE, LLC.

BEN KETCHEN, CAMBRIDGE SAVINGS BANK

DOUGLAS THAYER, CPM®, THAYER & ASSOCIATES, INC., AMO

WILLIAM MACKEY, CPM®, PCAM®, RS™, BECHT ENGINEERING, BT, INC.

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ATTORNEYS AT LAW

Introductions

Howard S. Goldman, Esquire
Goldman & Pease, LLC

Howard S. Goldman, Esq.

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Howard S. Goldman is the founding member of Goldman & Pease, concentrating his practice in real estate, condominium law, and real estate litigation. He served on the CAI New England Chapter Board of Directors, is an active member of the CAI Lawyers Committee, Real Estate Bar Association, RI Bar Association and the Institute of Real Estate Managers, and is a frequent lecturer on real estate and condominium matters. For 35 years, he has been providing professional legal counsel to condominium associations, lending institutions, management companies, condominium developers and property owners. His firm offers a full range of real estate services, including condominium law, safeguards against negligent security cases, rules enforcement, real estate development, condominium fee and superlien collection, transfer or extinguishment of developer rights, and developer transitioning.

Introduction

**Ben Ketchen, Corporate Banking
Cambridge Savings Bank**

At **Cambridge Savings Bank**, we understand condo associations. But more importantly, we'll take the time to understand your condo association. We're empowered to find creative solutions, make quick decisions, and do whatever it takes to help you succeed.

Whether you're renovating, making common area repairs, or seeking additional financing, we offer a suite of products and services that can be customized to meet your needs—today and in the future.

Capital Improvements

- Construction Financing
- Lines of Credit & Term Loans
- Amounts—\$500,000 minimum
- Rates & Fees—Negotiable
- Repayment Schedule—Fixed monthly principal payments plus interest

Cash Management

- Commercial Checking & Savings Options
- ACH & Online Wire Transfer Capabilities
- Remote Deposit Capture
- Escrow Management Services
- Online Cash Management Solutions
- Positive Pay & Account Reconciliation
- Lockbox Services
- Zero Balance Accounts

Introduction

Douglas Thayer, CPM®
Thayer & Associates, Inc., AMO

Thayer & Associates, with roots dating back through 4 generations, provides highly personalized and professional real estate management services to condominium communities, homeowner associations and cooperatives throughout eastern Massachusetts. It is our firm belief that truly effective management of condominium communities, homeowner associations and cooperatives involves building lasting relationships with clients, Board Members, Unit Owners and vendors, regular, timely and meaningful communication, openness and transparency and adherence to the high ethical standards of the Institute of Real Estate Management (IREM) and Community Association Institute (CAI).



Introduction

William Mackey, CPM® , PCAM® , RS™
Senior Project Manager
Becht Engineering BT, Inc.

BECHT ENGINEERING BT, INC.

For over 55 years, Becht Engineering BT, Inc. has provided building solutions for residential properties. We provide a broad spectrum of services for condominium, townhouse, and single-family residential complexes. Whether you live in a Townhouse, Condominium, or Homeowners Association, we can provide you with the expertise and resources to protect your community for years to come.

Expert Services and Solutions for Community Associations:

- Transition/deficiency studies
- Capital reserve studies
- Construction projects
- Roof systems
- Foundations
- Stoops, decks, and balconies
- Retaining walls
- Concrete and pavement
- Site grading and drainage
- Stormwater systems
- Building envelope analysis
- Masonry façade investigations
- Window and flashing failures
- Pavement and concrete inspections
- Structural repair designs
- MEP&FP engineering
- Paving and drainage corrections
- Infrared thermal imaging
- Drone inspections
- Video inspection of pipes
- Troubleshooting of problematic systems
- Cost estimating
- Needs assessments
- Construction code consulting
- Building Plan review

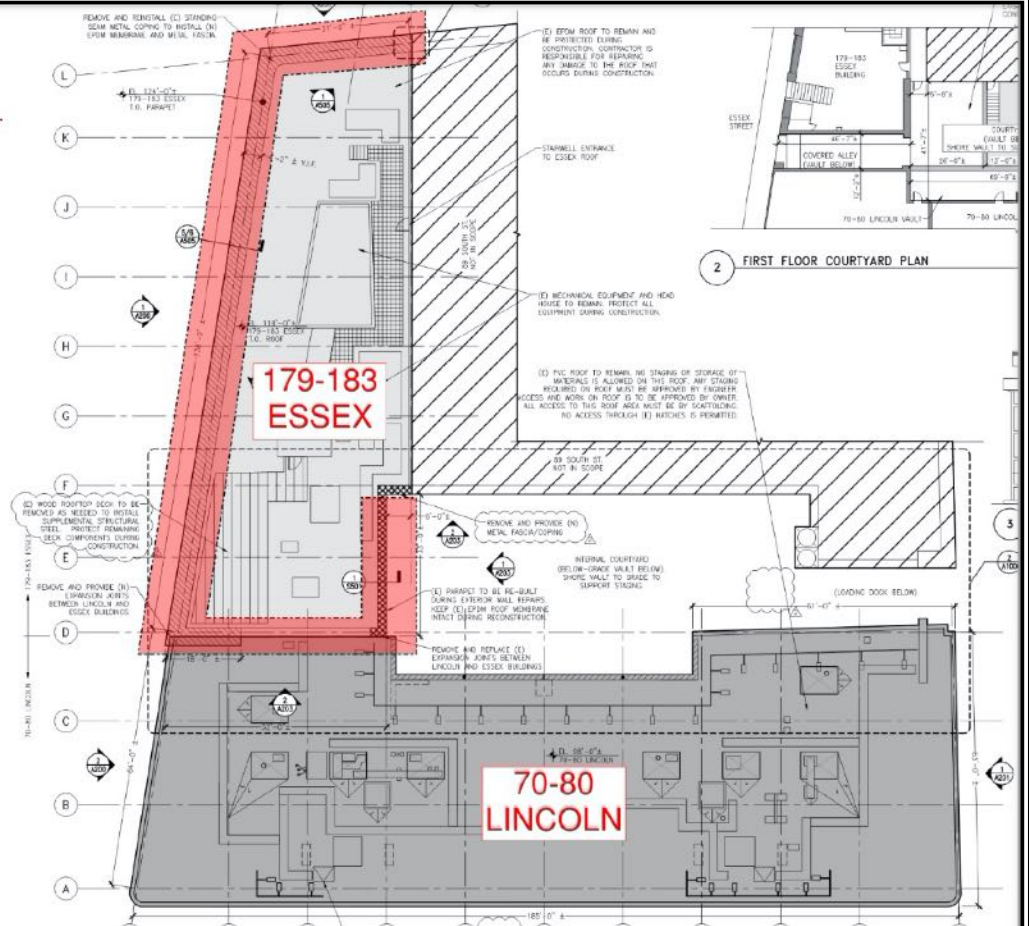


The Project



Scope of Work

- Wood Trim Replacement
- Window Perimeter Sealant Replacement
- Isolated Brick Masonry Repairs/Repointing
- Steel Framing Repairs
- Steel Lintel Repairs
- Stone Repairs/Repointing
- Band Course Waterproofing
- Steel Cladding Painting
- Copper Cornice Repairs
- Parapet Roofing
- Parapet Reconstruction



Locations of Work

COURTYARD FRAMING - Repairs



ESSEX FRAMING - Existing





© Annual Meeting

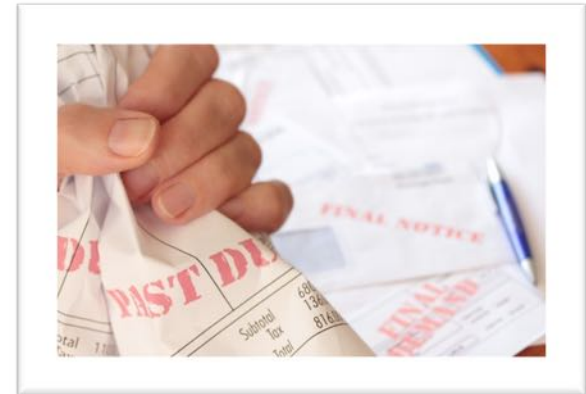
BAND COURSE – Existing Conditions



Capital Projects Planning Funding and Oversight

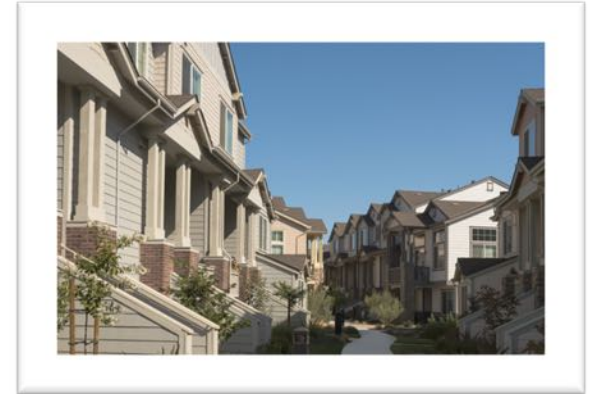
I. Supplemental Assessment v. Special Assessment

- A. Fashioning assessment for capital financing as “Supplemental” allows for superliens
- i. Strengthens ability of trustees to collect,
 - ii. Enables association to leverage that mortgage lender pays outstanding condominium fees on behalf of delinquent owner
 - iii. Reason for care in language: 183A§ 6 provides that priority liens “shall not include amounts attributable to special assessments...” but “[Section 6] does not affect... the priority of liens or other assessments made by the organization of unit owners.”



II. Elements To Include In AIA Capit Contracts That Protect Condominiums

- Dispute Resolution
- Changes in Work
- Owner's Representation
- Contractor to Identify the Project Supervisor and Foreman (experience)
- Owner's Representation
- Retainage
- Warranties
- Performance Bond
- Lien Waivers
- Liquidated Damages Clause
- Substantial Completion/ Retainage

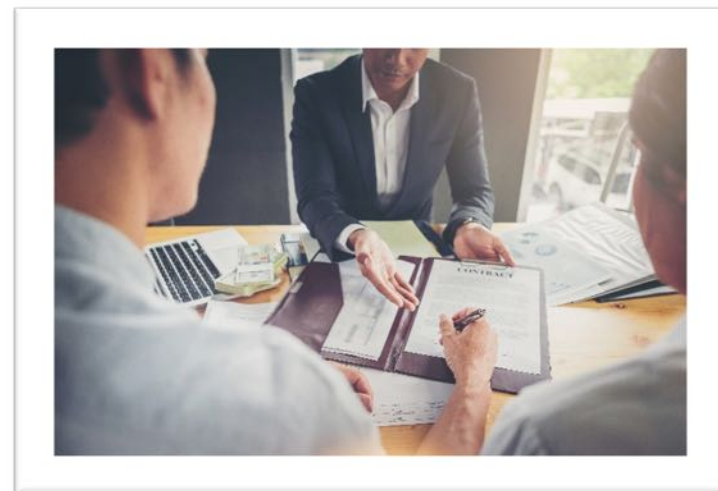


B. Liquidated Damages Clause

- a. provide an amount of predetermined, stipulated compensation recovered upon the occurrence of a particular event (simply put, contractor financially penalized for certain delays).
- b. Liquidated damages provisions are helpful in capital projects where it is often difficult to prove damages due to delays.
- c. Drafting note – your LD must be a *reasonable* estimation of damages under law, otherwise court will find it unenforceable
- d. Difficult to recover LD if Condo's conduct contributed to delay

C. Performance Bond (Article 17, Sections 17.3: Performance Bond and Payment Bond)

1. Protects condo from financial disaster caused by contractor failure to perform the capital improvements
2. Guarantee agreement issued by corporate surety – guarantees “principal” – contractor – will perform the “obligation” – the defined scope of work.
 - i. Creates legal relationship between contractor and Condo before work commences and throughout project (compare insurance policy):
 - ii. Bond is void if contractor fully performs, and is in full force and effect if contractor defaults
3. Effect of default under performance bond – options:
 - i. Call upon surety to complete obligations through its own contractor; or
 - ii. Select and pay for a new contractor to contract directly with Condo



D. Lien Waivers

Lien waivers eliminates risk and prospectively waive ability for the GC or subs to claim a lien. (Not to be confused with release or “waiver” of a previously filed lien). Massachusetts statutorily requires specific waiver forms and language.

- Assures project completion and guarantees subs will be paid, relieving condo from risk of liens by unpaid subs

(Article 11, Sections 11.1, 11.2 & 11.3: Subcontractors)

- Types of waivers

1. *Partial vs. Final*

- a) Partial waivers - when the contractor expects more payments to be made under the contract. Usually include a “through-date,” identifies cut-off date for value of labor or materials. partial waivers reserve other claims to payment or retainage
- b) Final waivers used for receipt of the last or full payment under the contract. waive all remaining lien rights for labor or materials furnished to the project.

2. *Conditional vs. Unconditional*

- a) conditional waiver - effective upon a condition being met, namely the actual receipt of the specified payment.
- b) unconditional lien - effective upon execution, which means that once signed, lien rights have been waived whether the payment has been received or not.



Project Management of Lien Waivers

- Having a solid lien waiver process allows owners, GCs, and lenders to provide secure risk protection.
 1. A project can remain lien-free by ensuring that waivers are collected from all parties on the project chain
 - a) Condos should require list of subs at commencement of project and require regular check ins that all subs are being paid.
 - b) *Electronic Waivers* -If project is large, consider electronic waivers
 - i. quick, cheap, easy to track, and can be electronically signed and exchanged. Avoid the deluge of paperwork associated with construction projects.
- *Follow Up* - Once contract and subs apply for payment, condo should attach and obtain unconditional waiver to avoid issues re future payments.



III. Bank Assignment of Condominium Fees:

Bank loans are secured not by the condominium itself; lenders take an assignment of the condo fees and the future income stream represented by the regular payment of those fees by unit owners.

- A. In other words, lenders are given the right to collect condo fees in lieu of the Condo if the Condo does not satisfy the terms of the loan
 - 1) Default rates are very small
 - 2) Express language in condo documents to authorize trustees to borrow funds from a bank and to grant assignment of condo fee
 - 3) Fees
 - 4) Legal enforceability
 - 5) Opinion
 - 6) Means to perfect
 - 7) Security interest to
 - 8) Bank UCC and
 - 9) Recording



QUESTIONS