



## Communication and Due Diligence are Keys to Success According to Experts at The Building Next Door: The Impact Of Construction On Adjacent Buildings

New York

On April 9th, New York's real estate owners and developers, engineering and architecture firms, and construction leaders gathered at the **Harvard Club** for **The Building Next Door: The Impact of Construction on Adjacent Buildings**. Hosted by Zetlin & De Chiara LLP, The Steven L. Newman Real Estate Institute, Real Estate Weekly and The New York Building Congress, the event brought together experts to discuss forward-thinking, sophisticated strategies for navigating the complex process of building next to existing structures.

New York City's age and density make ground-up construction particularly challenging since there is often at least one existing building abutting any new construction site, and adjacent structures can be more than a century old. Panelists with extensive first-hand knowledge of the design, development and construction process offered advice and best practices for those looking to prevent major issues with proactive efforts to protect neighboring buildings.

Moderated by **Michael De Chiara**, Senior Partner of Zetlin & De Chiara LLP, the Building Next Door program began with a primer by **Raymond T. Mellon**, Senior Partner at Zetlin & De Chiara LLP, on how to avoid protracted and costly battles with neighboring properties.. Mr. Mellon, a recognized leader on these matters, discussed the critical due diligence issues that developers must address prior to the start of any construction project. Key points included:

- Clear communication with adjacent property owners at the earliest stages of the process is crucial.
- Negotiating and executing a comprehensive license agreement, which includes provisions relating to the scope of work, duration of construction, insurance, access procedures and fees, is the best way to ensure a smooth process.
- If it is not possible to reach a license agreement, developers can take the matter to court to get a temporary license to do necessary inspections and work on adjacent properties but it is always better to avoid this process.

Following Mr. Mellon's presentation, each member of the distinguished panel provided a personal perspective on the complexities of building next to existing structures:

- **Robert Schubert**, Senior Vice President of Construction at Boston Properties, presented a case study on his firm's project at 250 W. 55th Street, a development that, despite extensive due diligence and proper legal procedures, experienced lengthy and costly delays due to the structural issues of neighboring buildings that needed to be addressed prior to the start of construction as well as challenges with adjoining property owners. Mr. Schubert reiterated the importance of early communication and preparation but warned that surprises are inevitable.
- NYC Department of Buildings Assistant Commissioner of Investigative Engineering Services **Timothy D. Lynch, P.E.** reminded the audience that developers have been recycling properties in New York City for nearly 400 years and that the issue of properly protecting adjacent buildings has been a requirement in the building code since the 1800s. He underscored that the DOB is there to support development and to ensure that it is done safely.
- **Stephen DeSimone**, President/Chief Executive of DeSimone Consulting Engineers, discussed his personal experience with protracted legal battles over damage done to adjacent buildings during construction. He noted that unfortunately contractual agreements often do not clearly delineate responsibility for any potential damages, creating major headaches for all parties involved.
- Senior Principal **Alan Poeppel** from Langan, mentioned that his work specializing in excavation and underpinning is riskiest in New York City because of the issues with neighboring properties. Many of the hottest areas for development in the city – FiDi, TriBeCa, the Highline and Far West Side - are filled with older existing buildings, often with poor soil conditions, making supportive work and underpinning very complex. He believes that bifurcating responsibility for the design and

engineering work from the construction means and methods would clarify the process, limit liability and improve the efficiency of development.

In late May, The Building Next Door program will be aired on CUNY TV and will also be available by visiting <http://www.buildingnextdoor.com/>.

## **ATTORNEYS**

Michael K. De Chiara

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