"If you treat an individual as he is, he will stay that way,
but if you treat him as if he were what he could be,
he will become what he could be."

- Goethe

LePatner Report

CONSTRUCTION COST CERTAINTY

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A QUARTERLY FOR OWNERS AND THE REAL ESTATE & CONSTRUCTION INDUSTRY FOR 33 YEARS

Saving on Construction Costs Is Within Every Owner's Grasp

By Barry B. LePatner, Esq.

As I have discussed in previous columns, owners, investors, and builders would be well served if they followed the following three steps for any and all construction projects:

- Avoid "Fast-track" Projects
- Contractually require the construction team to assume the risk of completing the project on time and on budget
- Retain an independent cost estimator to provide the owner with the cost of the completed design documents before sending them off to bid

This is smart business on a case-by-case basis, but let's talk about the greater effect these tactics would have on the country at large.

Construction in the United States is a $1 trillion a year industry—a powerful sector that impacts the overall economy. A one-time improvement in construction productivity of 10 percent would boost America's GDP by $100 billion. That sum, compounded annually at 3 percent for 30 years, would mean a real per capita income over $273 billion higher in 2037 than if the construction industry remains unreformed.

Improving construction would lead to more, safer buildings and better infrastructure—bridges, highways, railroads, and tunnels. Similarly, lower housing construction costs would allow an even higher percentage of Americans to purchase their own homes and enjoy a true ownership stake in their country. Perhaps most

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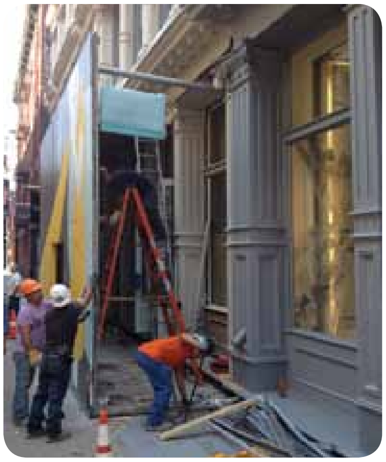
5 Guidelines for Cost Management

Careful development planning, execution keep retail stores ahead.

By Barry B. LePatner, Brad Cronk and Norine Bagate

In today's environment of social media and sophisticated interactive online media, branded physical environments play a pivotal role in validating the consumer's perception of any brand. This is particularly the case for luxury goods retailers because it is in these environments that customer experience and brand value are consummated.



Yet the act of planning these environments is often plagued by compressed project schedules and ongoing design changes during construction, which lead to runaway costs, missed opening dates or both.

Many luxury goods retailers spend tens, if not hundreds, of millions of dollars annually on renovating and building out their retail locations. Given the potential to drive sales during the lucrative holiday season, an early fall opening as opposed to a spring opening of the following year, may seem an obvious choice.

However, shortening the planning period to achieve an earlier, but unrealistic, opening often results in unanticipated cost overruns and the very schedule delays the retailer is trying to avoid. The increased costs and delays ultimately eat into the pro forma projections used to rationalize the project in the first place.

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enticingly of all, lower construction costs would spell lower taxes.

Lower construction costs would also result in lower rents, some of which would be passed onto consumers, while others would swell corporate profits—never a bad thing in a country where most people own corporate securities, if not directly then through intermediaries like banks, insurers, or mutual funds.

The construction industry itself would of course also be a big winner if it could increase productivity. Lower prices stimulate demand for building, so there would be even more construction work to go around. The least efficient construction workers and firms might lose out, but the wages and profits of the rest would increase, perhaps dramatically.

As a matter of precedent, this is what happened when agricultural and manufacturing productivity soared in the eighteenth, nineteenth, and twentieth centuries. People shifted out of agriculture into manufacturing and out of manufacturing into services, boosting their productivity, real wages, and standard of living along the way. Construction should be no different.

Construction firms are notoriously small and specialized. Over 80% of all construction workers are employed by firms of ten or less. Today, it is not unusual for 50 or more firms to take part in the design and construction of large projects like industrial facilities. Even tiny home renovation projects may require the input of half-a-dozen companies.

Getting owners and just one firm onto the same page is difficult enough. Needing scores of firms and the owner and its architects and engineers to work together challenges the imagination and is a potential recipe for fiscal disaster. As it is currently constituted, the industry invites such disasters. Almost always, these problems result in additional project costs and delays that the owner will most likely absorb.

By following the rules set out above, owners, investors and builders will do better and be able to typically save 5-15 percent, on a project, and in some cases up to 40 percent more over what less knowledgeable owners would save in comparable situations.

Do not be intimidated by any architect, contractor, or construction manager who challenges these suggestions. Remember, these companies want your business and have much room to be flexible. If you explain that the project you proffer includes the suggestions above because you want a more collaborative and claims–free project, you will be rewarded with a team that accepts your business goals and will harvest considerable cost savings.

Each project stands on its own, but savings like this can help improve project profitability and, at the same time, rebuild the country.

Leave the Stone Age, Part II: Pricing the Cost of Construction in the 21st Century

By Barry B. LePatner, Esq.

In my previous column, I discussed the failure of the design/construction industry to embrace technology, which restricts the much-needed evolution of this $1 trillion industry.

In particular, the design/construction industry lacks a standardized, searchable database that allows owners to review the current costs of all of the various products used to build their projects.

The innovation of computer-aided design (CAD) has, by all definitions, not increased material productivity. And fees paid by owners to architects and engineers have, by most standards, not increased, even while various firms have adopted newer design technologies as they emerge.

Hence, architects—as the principal designers for every construction project—are without tools that would make their jobs easier in much the same way that lawyers saw a huge benefit in doing legal research with the advent of computer-aided research tools such as Lexis\Nexis more than two decades ago.

Our nation's architects and engineers—and the contractors who build what they design—operate daily in the most inefficient way. As a result, owners are at the mercy of the contractors, who arbitrarily set the prices of those various products, driving up costs at the owners' expense.

A solution is on the way.

Bringing greater efficiency to the creative processes of the design team—and developing the first true marketplace for vendors, suppliers and manufacturers to sell their products directly to architects and owners during the design process—will save substantial costs and reduce the time it takes to design and construct these new projects.

By early 2014, a new software platform will change all of this by creating the first nationwide marketplace that owners and their architects can use to create real-time pricing for project costs as a project is being designed.

This new platform will create a direct marketplace for the hundreds of thousands of vendors, suppliers and manufacturers providing goods for each project. The platform enables architects to specify the right product with vendor input during the design process, and enables vendors to bid directly to owners—cutting out the middlemen—at a price that will be substantially below current market costs. Savings are expected to range from 10 to 25 percent for each competitively bid product.

Once a true marketplace for products used in the construction of our nation's built environment is in place, owners—both public and private—will see immediate benefits from a noticeable decrease in the cost of construction. The impact on the economy will be striking, and the transparent marketplace will replace the phony, opaque one that contractors have held hostage for decades.

Welcome to the 21st century!

Construction attorney ***Barry B. LePatner*** *is founder of LePatner & Associates, a New York City-based construction law firm, and author of* Too Big to Fall: America's Failing Infrastructure and the Way Forward *(University Press of New England; 2010) and* Broken Buildings, Busted Budgets: How to Fix America's Trillion-Dollar Construction Industry *(University of Chicago Press; 2007).*

These articles originally appeared in *Commercial Observer.*

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Drawing lessons from our recent experience in project managing the build-out of a new store for a major luxury goods retailer in a major urban historic district with a very aggressive schedule, every retailer should take the following into consideration.

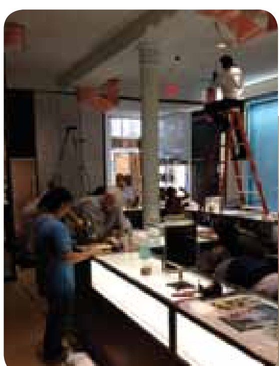
1. Location Matters

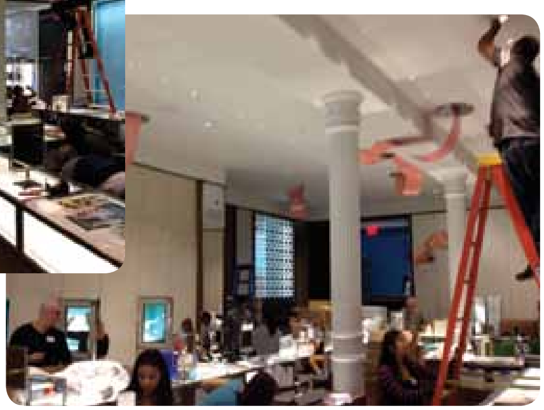
This goes without saying. But what a lot of luxury retailers don't initially realize is that their desire to locate in culturally vibrant urban neighborhoods, such as SoHo in New York City, means increased development costs attributable to:

a) Renovating older building stock, in particular integration with or replacement of older heating, plumbing, sprinkler and other life-safety systems.
b) Dealing with residential neighbors or other non-retail occupancies.
c) Construction and delivery logistics and restricted work hours.
d) Local landmark laws, input of community groups, and strict municipal noise ordinances.

2. Planning Matters

A store design consistent with brand image within a given project budget and schedule is the expected outcome, but this is easier said than done. The design team must have a comprehensive grasp of not just the elements and coordination of the design, but also an understanding of how procurement, fabrication, and the construction schedule are impacted by their written specifications for the project.





Greater front-end coordination is often necessary if unforeseen expedited delivery and/or overtime costs are to be avoided. The in-house design team can mitigate some of the uncertainty surrounding procurement and performance of specified items by adhering to strict criteria for when to include new and novel items into its brand-standard specifications. Those criteria should include confirmation from the manufacturer regarding applicable use and expected performance prior to inclusion in the construction

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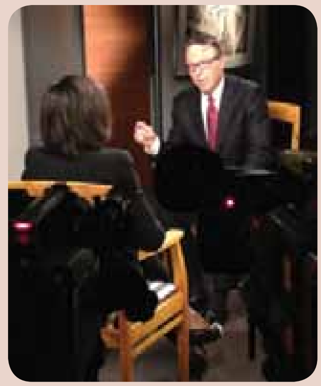
Gravity Always Wins: My Interview on ABC's *20/20*

By Barry B. LePatner, Esq.

I thought that interest in the nation's infrastructure plight would fall off drastically within a few days of President Obama's State of the Union Address in mid-January when he alluded to the need for more investment to improve the "72,000 structurally deficient bridges" across our nation. Yes, there were the numerous interviews I gave to BBC-TV and appearances on CNBC's *First Business*, along with radio and newspaper quotes over the next week or two. But then the nation would quickly turn back to the sequester fun that the U.S. Congress was having, the novelty of a pope resigning for the first time in 700 years, or the burning issue as to whether the 100 magazines that pictured Taylor Swift on their covers in 2012 ever saw even the tiniest bump in circulation from putting her on the cover as opposed to Angelina Jolie or Jessica Whoever (in fact, there was not the slightest bump up for sad Taylor).



So I was somewhat surprised to hear directly from a producer for ABC-TV's highly acclaimed *20/20* that they wanted to come over and do an interview on infrastructure for an upcoming show. Within a few days, they had arranged to send over a dozen people who literally set up a studio in the rear of our offices with tons of cabling, lots of hot lights, and cameras galore. It was only early on Monday morning of that week that the producers mentioned that the interview would be done by Deborah Roberts, who appeared several hours later all prepared to discuss the fragility of our nation's bridges and just how we got ourselves into this sorry state of affairs.

As the interview proceeded, it was apparent that Ms. Roberts began to grasp the enormity of the crisis, blurting out, "So, it's not about *if* these 8,000 structurally deficient bridges that are also fracture-critical bridges are going to fall someday. It's…" and she left off in a rather theatrical way, nodding for me to finish the sentence. "It's just a matter of *when*, since every engineer associated with bridge design and maintenance understands that gravity always wins."

The full segment as it aired on *20/20* can be seen here.

Let me know if I made a persuasive case for one of our nation's most underrated subjects needing immediate attention.

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documents. It should also include sufficient time in the planning schedule for mockups and the submittal of test samples. If there is insufficient time for coordination and timely procurement of novel specifications, alternate proven materials and details should be selected.

3. Teamwork Matters

Many luxury goods retailers that maintain a significant real estate portfolio have their own in-house design and construction operations, and utilize outside consultants on a per project basis.

In an effort to not be critical of its client, these consultants often accommodate the client design team's internally driven changes, which inevitably increase the scope, cost and schedule of the project. Strong consultants should provide the discipline required, respectfully holding the client to the project budget and schedule when the threat of 'scope creep' ensues with the retailer's in-house team. Retailers with actively involved in-house design teams should select strong outside consultants to shore up any weakness or lack of experience in their in-house team.

4. Complete Scope Matters

The devil is in the details. Most retail projects are executed on such a fast-track that less than 80-percent-complete construction documents (CD) for bidding are the norm. However, a properly planned project schedule can account for expedited production of complete and coordinated CDs.

Even so, construction managers and contractors bidding projects, require sufficient time to review the plans and submit requests for information in the event that any given aspect of the scope of work is not specific or sufficiently clear. A beneficial byproduct of a thorough bidding process is valuable input for improving constructability. The project team can use this input to enhance the CDs prior to accepting final bids.

5. Fairness Matters

The best-planned project will still face its share of challenges. Working with the project team ahead of time to develop a fair method to allocate responsibility for those risks among project participants will make reaching resolution during the frenzy of construction easier and less disruptive to the process.

The project team can also develop a list of weighted risks that could adversely impact project costs, then seek a price for the appropriate mitigation effort from the bidding construction managers or general contractors. Those costs form the basis of an informed project contingency controlled by the owner, not the contractor.

Retailers following the five guidelines will learn they exert greater control over actual construction costs and project schedule while improving their relationship with each member of the design and construction teams. Achieving these greater efficiencies throughout the project process will naturally result in the success everyone desires.

Barry B. LePatner *is the founding partner of LePatner & Associates LLP which serves as construction counsel for corporate, commercial, institutional owners and real estate developers.*

C. Bradley Cronk *is a principal of LePatner C³ LLC, the project management practice affiliated with LePatner & Associates LLP.*

Norine Bagate *is a project manager for LePatner C³ LLC.*

This article originally appeared in *Retail Facility Business* (April/May 2013).

FIRM NEWS

* Following the Skagit River Bridge collapse in Washington state in May, Barry LePatner was the expert of choice for high-level media. He shared his thoughts on the collapse and the nation's overall infrastructure problems with *The New York Times*, the *Associated Press*, *CNN.com*, *Bloomberg TV*, *CBS Radio* and many other media outlets.

* In June, Barry LePatner presented at the National Academies' Government-University-Industry Research Roundtable (GUIRR) in front of a prestigious group of attendees. His presentation, "Canaries in the Coal Mine: Why the I-35W and the I-5 Bridge Collapses Are Prime Examples of What Happens When Infrastructure Goes Unfunded," and many of the Roundtable's other presentations can be viewed here.

  To view a portion of LePatner's speech, click here.

* In July, Barry LePatner received an exciting invitation from the editors of Encyclopædia Britannica's Book of the Year, an annual volume which covers major news stories and topical subjects and has been published continuously since 1938. Barry will write a Special Report on the state of the nation's infrastructure for the upcoming volume, which will be released in 2014.

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