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6 Questions Every Owner Should Ask When Planning High-End Residential Construction

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Construction

Despite rising inflation, escalating material and construction costs, supply chain delays and general market uncertainty, the high-end residential construction market continues to experience record growth. According to [recent statistics](#), the value of new private home construction projects in the United States is at a record high (\$776 billion in 2021). Although we have written extensively about the market factors currently putting pressure on the construction industry, as well as some steps that can be taken to mitigate impact, this article will discuss additional questions that owners planning high-end residential construction should be asking.

Will Permitting Issues Delay Project Commencement?

High-end owners may be faced with substantial delay issues before the first shovel even hits the dirt. For a variety of reasons, the permit process in many desirable locations is lengthy and frustrating. In an effort to curb what they deem to be out-of-control building, some municipalities have gone as far as to enact moratoriums on permit applications for significant amounts of time (Aspen, Colorado for instance). Other locations, while having no moratoriums in place, have permit processes which extend many months or even in excess of a year for a variety of reasons, including inadequate staffing and turnover.

While there may be little an owner can do to avoid these issues, having a team on the ground that knows the local agency's rules and procedures, and has good relationships with the permitting authority will help. If appropriate, an expeditor can be retained. However, at a bare minimum, the owner should at least make sure the permit delays are taken into account in determining the timing and feasibility of the project.

If I Build It, Will Someone Insure It?

Because luxury homes are often built in desirable locations near coastal areas, wooded areas or mountains, obtaining insurance for the completed home may be either incredibly expensive or not available. This is due in part to recent climactic events which have caused significant damage to numerous towns and luxury homes. As a result of these catastrophic losses, the insurance industry has dramatically tightened its underwriting criteria resulting in higher premiums to owners, or, in some cases, no available coverages.

To mitigate this problem, working with a broker or other risk management professional in getting an insurance carrier involved prior to construction is best. Insurers may be more willing to cover a home if certain construction guidelines regarding materials, design or construction means are followed and incorporated in the project. For instance, an insurer may be willing to cover a home in an area prone to hurricanes if a more robust structural system is designed for such events, better wind resistant materials are used or safeguards are in place for high water events.

Is My Architect Up to the Challenge?

As we have discussed previously, having the right team in place is key to having a successful project. This is especially the case with selecting the project architect. Having someone who is familiar with local permitting authorities, who has completed similar projects and who has a good rapport with local entities in the area will not only aid in reducing delays with local authorities who are ultimately approving the design, but also reduce the risk for staffing issues due to the relationships your architect has established over the years with other design consultants and contractors. An owner should also try and make an assessment of the ability of the architect to work with local contractors.

Is My General Contractor Up to the Challenge?

Likewise, having a general contractor with the appropriate experience is equally essential. Considerations should be given to prior projects your contractor has completed in the locale of your project, depth and experience of team members who will be actually performing the work (i.e. will you be working with their “a-team”), the proposed contractor’s project management and teaming practices, and how many other projects are ongoing alongside yours. In addition, it is important to understand what work they will be self-performing and what will be completed through subcontractors as local relationships with trades can impact how efficiently the work is performed to the extent it is subcontracted out.

Do I Need An Owners Representative?

In a [previous article](#), we identified numerous reasons why an owner’s representative can add value. In sum, having a local contact who can serve as the owner’s “eyes and ears” can keep the trades working efficiently together all while identifying potential issues early on for owner involvement. Alternatively, if the owner is one who is more involved with their construction project, the need for a separate owner’s representative may not be as crucial or scopes can be modified to address the participation of the owner as the project progresses. Consideration can also be given to the owner’s retention of a scheduling consultant to review the schedule as it progresses and offer suggestions for adhering to existing schedules or even expediting schedules. Such consultants can also help make certain that multiple construction activities take place simultaneously without disrupting the critical path.

Is My Contract Sufficient?

Given this unique economic climate and how those impact the potential for changes in cost Last but certainly not least, having a robust contract which provides adequate protections from an owner’s prospective and appropriately shifts risk is essential to a successful project. Owners should understand different pricing models which are available down the road (i.e. stipulated sum, cost of work, cost of work with a guaranteed maximum price, etc.). Additionally, force majeure provisions and delay language should be thoroughly reviewed. Given recent pandemic restrictions and supply chain disruptions, we have seen provisions which are extremely broad and provide for extensive protections to a general contractor while leaving the owner on the hook for not only associated delays but also increased costs resulting from those delays. Finally, supply chain issues should be reviewed and, if necessary, appropriate language inserted, covering not only the potential for such delays, but how costs will be shared and whether any preliminary actions can be taken by the parties early on to address such issues (i.e. advance ordering of specialty materials, storage of such materials, capping increases in costs on certain materials to a mutually agreed upon amount, etc.)

In this new normal, not only must owners be diligent in having the appropriate protections in place from a contractual point of view, but permitting and insurance considerations must be discussed early on as well. In the past, permitting and insurance constraints were not limiting factors on luxury projects. However, given recent moratoriums and climactic events, we must now take extra precautions to ensure not only that the project can actually commence in a reasonable timeframe, but that the project, when complete, will be insurable from a risk management perspective. These are just a few of the considerations to review when planning high-end residential construction.

If you have questions about any of the issues discussed in this article, please contact a member of Gould & Ratner’s [Construction Practice](#).