

# QBBA BULLETIN

the newsletter of The Queens & Bronx Building Association



16-66 Bell Boulevard #745, Bayside, NY 11360 • 718-428-3369 • fax 718-428-3494 • queensbronxba.com

Fall 2011

## QBBA Building Awards Entries Due Tues., Nov. 1

Owners, architects, and builders are cordially invited to enter this year's Queens & Bronx Building Associations' Building & Design Awards Program. If you are not an owner, architect, or builder, please let anyone in the above categories that you do business with know



about our competition. For entry forms, please contact the QBBA office.

The entries may be for buildings located anywhere in New York and must fit into one of these six categories:

- Residential (One, Two, Three Family, and Apartment Buildings)
- Commercial (Stores, Hotels, Restaurants, and Banks)
- Office Buildings
- Rehabilitations, Alterations and Additions (Exterior or Interior)
- Excellence in Craftwork
- Green/Efficient Building

No entry fee is required and the competition is open to members as well as non-members of the Queens & Bronx Building Association.

**A picture must be submitted with each entry in order to be considered for any QBBA Awards. Before and after pictures are needed for rehabilitations, alterations, and additions.**

Entries must be submitted on our official form with photograph(s) and are due at the QBBA office by Tuesday, November 1, 2011. Also please write a couple of sentences about the building including any unique problems encountered. Winners will be chosen in early November and notified immediately. Winning photos will be shown at the awards gala on December 3, 2011. All entries must be submitted to:  
Queens & Bronx Building Association  
Attn: Building Awards Committee  
16-66 Bell Boulevard, #745, Bayside, NY 11360

## Don't Forget! QBBA Annual Trade Show Thursday, Oct. 27, 5:30 'til 9



Last year's new location at the New York LaGuardia Marriott worked out well and we return Thursday, October 27 for another great association trade show. Invited are building owners, builders, developers, contractors, remodelers, architects, engineers, kitchen and bath companies, interior designers, and material suppliers. While you're there, help yourself to our delicious food and ample beverages served with our compliments throughout the event. There will also be prizes as well as our well-known raffle featuring, among other things, most desired electronics.

Admission is free to the trade with a valid business card. Come early and stay late for a fun-filled evening of conversation, networking, and education. You'll be glad you did!

PS: If you are interested in displaying your product or service, there is still time. Contact June at (718) 428-3369, fax (718) 428-3494, or [june@queensbronxba.org](mailto:june@queensbronxba.org).

### QBBA Annual Trade Show

Thursday, October 27, 2011, 5:30 to 9 pm

New York LaGuardia Marriott

102-05 Ditmars Boulevard, East Elmhurst, NY 11369

(718) 565-8900.

### Mixer at Cue Bar Nov. 16

Rack up our first networking mixer of the year at Cue Bar in Bayside on Wednesday, November 16 starting at 6 pm. You don't have to be a pool player to take advantage of a fun night of eating and drinking while meeting fellow members of the QBBA. See you there!

### Calendar Of Events...

**Oct. 27** QBBA Annual Trade Show

Thurs. 5:30 pm New York LaGuardia Marriott, East Elmhurst

**Nov. 1** QBBA Building Awards Entries Due

Contact June: (718) 428-3369

**Nov. 16** QBBA Fall Mixer at Cue Bar

Wed. 6 pm 45-18 Bell Boulevard, Bayside (718) 631-2646

**Dec. 3** Holiday Party and Building Awards Gala

Sat. 7:30 pm Terrace on the Park, East Elmhurst (718) 592-5000

Belonging to the Queens & Bronx Building Association brings you business! To learn more, call (718) 428-3369

Info/Reservations: e-mail [june@queensbronxba.com](mailto:june@queensbronxba.com) or fax: (718) 428-3494

# QBBA BULLETIN

QBBA Bulletin is the newsletter of the Queens & Bronx Building Association. For information regarding content and advertising, please contact our Executive Director, June Petrone, at our association headquarters, 16-66 Bell Boulevard, #745, Bayside, NY 11360, (718) 428-3369, fax: (718) 428-3494, e-mail: june@queensbronxba.com. Visit www.queensbronxba.com

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# News from the President

Ira Brown  
The Briarwood Organization



This is the Fall edition of the QBBA newsletter and as we leave summer behind we need to come together and get back to work as an organization. I am starting my second year as President and I am really looking forward to making this a great year.

Since creating opportunities for our members to be successful and to work together is our first priority, your board of directors and officers will refocus our energy on repeating fruitful events and looking for new ones to help our members. The Speed Networking event held last March which received a lot of positive feedback will likely be repeated. We will try and push the agendas of the committee responsible for finding ways for members to work together and the Green Committee so we stay on top of changing building methods. We will certainly be looking at other ways to help each other and encourage all of you to let us know your ideas on how we can achieve our goals.

Unfortunately since my last article in April, the housing market has not progressed as we all hoped. A number of factors should be helpful, however, in making the housing market move forward. Historically low mortgage rates, some absorption of foreclosed properties, and stable house prices should be a positive driving force. With some small recent gains in job creation, we believe that when people get back to work they will need places to live and offices to occupy. One of the biggest challenges that we face as a group is the difficulty of developers and homebuyers to obtain financing. We have to continue to be vigilant and lobby hard to open up the lines of credit so that the industry can move forward.

We will consider continuing to organize local Lobby Days as we did this past winter and spring as a substitute for or in conjunction with NYSBA, making the trek to Albany and pushing NYSBA's agenda. These groups will meet with the State Assembly and Senate members of your choice at their offices or at other events here in Queens and the Bronx to push our agenda. It appears these local Lobby Days had a positive impact. Together with other like-minded groups such as the NYSAFAH, we as an industry were successful in keeping a major cost of construction from impacting our work. That is Prevailing Wage. Through the grass roots efforts of our members and said other organizations we prevented our elected officials from making prevailing wage a requirement of receiving real estate tax abatements. Had we not been successful, costs to build would have increased approximately 20%. We will continue to oppose legislation that will make the cost of construction increase.

We are continuing to meet with DEP regarding their new restrictions on storm water flow and seem to be moving to a workable methodology to utilize drywells in appropriate situations. This has been a major problem for our members in the past. Fortunately or unfortunately we have had a recent change in City Hall with Deputy Mayor Goldsmith leaving and Mayor Bloomberg appointing DEP's Commissioner Caswell Holloway to the vacant post. This is unfortunate because Cas Holloway had made DEP more responsive to our needs and put the current discussions into motion. Fortunately, he is now Deputy Mayor For Operations and is responsible to oversee DOB and DEP. We will have to see how this develops.

*Ira Brown, continued on page 3*



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# City Government Update

by Robert S. Altman, Esq., QBBA Legislative Consultant

As many of you know, for some time, the Queens & Bronx Building Association (QBBA) has been working with its sister chapter, the Building Industry Association of New York City (BIANYC) to ensure that the City of New York properly implements its own rules with respect to drywells.



In the 1990s, jurisdiction for approval of drywells as a method of storm water management for certain dwellings (usually one- and two- family homes) was transferred from the Department of Environmental Protection (DEP) to the Department of Buildings (DOB). With this change, approvals for drywells were done early in the building plan review process rather than at the end. In this way, builders knew if they would be approved for a drywell or had to go through the lengthy process of connecting to a storm sewer well before any submission of paperwork to DEP.

In the early 2000s, DEP "reasserted" jurisdiction over drywells in a manner that QBBA and BIANYC felt was illegal. DEP didn't actually approve drywells, but it would not approve sewer connections until a builder had satisfied DEP's desires with respect to storm water management. And sometimes DEP required a connection to the storm water system, a connection that often was quite expensive and time consuming.

QBBA and BIANYC started teaming up in 2005. While DOB was convinced of the merits of our position, it did not take an active role in asserting its own jurisdiction. We received some help from Council Member James Gennaro who has attempted to get DEP to address this issue in a manner that he feels is more environmentally friendly (which drywells are). Finally, about one year after the appointment of a new DEP commissioner who promised to address this matter, earlier this spring, DEP and the two Associations met to discuss how to resolve their issues.

After five years of frustration, the two Associations and DEP have met in a series of meetings over the summer attended by DEP professional staff, builders from both Associations and their engineers. The results have been a frank discussion on how to set standards on when to use drywells. Both government and industry have reached agreement on various points for when drywells should be used and negotiations are progressing better than expected. While the ultimate result may have some DEP involvement in the approval process, it will be subject to a clear criteria and it will occur early in the construction process and in a timely fashion.

Details for about 80% of this have been worked out, and in the coming months we hope to address the rest of the various issues outstanding. But after years of no progress, and even threats of a lawsuit, progress is being made.

Sometimes it takes years to resolve a problem, but through persistence, your Association continues to work for you to achieve results for the industry.

*Ina Brown, continued from page 2*

The Mayor's Office of Operations through former Deputy Mayor Goldsmith in tandem with DOB Commissioner Robert Limandri and an outside consulting firm recently finished a study on how to improve DOB. As a result DOB is creating a new center for certain operations and is rolling out a comprehensive plan for overhauling the way the agency does business. We will all have to review what has been started and proposed very closely. Copies of the report of the consultant should be available to review.

To keep in touch with what is happening at QBBA, we encourage you to become more involved, come to general meetings, support our events and seek to join the leadership. We suggest that you check our website and social networking sites like Facebook and Twitter, that our tireless Executive Director June Petrone constantly updates, so that you have the latest information as to what is going on. We will continue to encourage developers and contractors who have work to list it on our website so other members can bid on it.

We have lost members in this economy, as you can expect, and

we encourage every member to try and bring potential new members to meetings and to attend our events. We have a lot to offer and the more members we have the larger voice we have and the stronger organization we will be.

Don't forget, any member who wishes to get up at a General Meeting with an issue or product they want to discuss may do so.

Besides the important objectives the board has for the organization, we promised to make being a member more fun. We expect to try more social events and welcome your suggestions. The hockey game last winter was a success and may be repeated and we are looking into an Atlantic City trip and fun events for next summer.

As always, our annual Golf outing was really a great success and I know everyone was raving about it. We look forward to next spring so that we have a capacity crowd for golf.

I will end this article the same as the others; I hope you will all give me and your board of directors your input, advice, comments, concerns, and support. I look forward to seeing you at our next event.



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# QBBA MEMBERSHIP MEETINGS



Peter F. Vallone, Jr.



Catching up from the summer, in June our guest speaker was Peter F. Vallone, Jr., City Council Member and a candidate for Queens Borough President. • Our September meeting was a full night of back-to-business networking among builders, associates, and friends of the industry. Congratulations to Vincent Furlong, retiring from National Grid, for his outstanding performance and dedication on the QBBA Board of Directors from 2002 to 2011. Vinny was recognized by our association at the September meeting. • Don't forget our upcoming events including our annual Trade Show at the LaGuardia Marriott on Thursday, October 27, a networking mixer at Cue Bar on Wednesday, November 16, and our Holiday Awards Gala on Saturday, December 3 at Terrace on the Park.



Congratulations to Vinny Furlong



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# Standard Close Out Documentation Insufficient to Release Mechanic's Lien

By Albert S. Tablante, Jr. Esq.  
Alvy & Tablante, LLP - Legal Counsel for QBBA



At the time of final payment and close out of a construction project, the owner makes final payment to the contractor, and the contractor gives the owner a release, indemnity, waiver of lien and related instruments. The owner seeks to make a final payment and in exchange therefore assure itself that no liens or claims will be filed against it and the property. In a recent case, the court explained how and why the standard close out documentation (herein a Waiver of Lien) may not always work to protect the owner.

In this case, the contractor had filed a mechanic's lien against the property and started an action to foreclose on the lien. The owner, waving a "Waiver of Lien", maintained that this released him from the plaintiff's claims and barred the mechanic's lien. He sought to have the lien and foreclosure action dismissed and judgment on the counter-claim.

The subject "Waiver of Lien" provided that in consideration of the receipt of monies, that the contractor released and discharged any and all claims, liens or rights of lien. The court stated that a valid, clear and unambiguous release creates a bar to an action, absent misrepresentation, duress, concealment, mutual mistakes and fraudulent inducement. None of the factors were present in this case, so it

would appear that the lien and the foreclosure complaint should be dismissed.

The court, however, upholds the lien and the foreclosure action. The court found that the parties intended the "Waiver of Release" to act as a partial Waiver of Lien. Based upon the course of dealing between the parties, the circumstances leading to the execution of the release and the defendant's conduct following the execution of the release, including the making of further and additional payments (which implicitly acknowledge the debt), the Court found that the Waiver of Lien was not meant to be a final bar to the contractor. Therefore, the court denied the owner's motion to dismiss.

This is an instructive case because it shows the importance of careful drafting of all closing documentation and the need to make sure that the closing documentation properly mirrors the particular facts and the transactions. Failure to do so can result in the defeat of the closing documentation and the filing of valid liens and claims.

## Acquittals in Deutsche Bank Trial

Two and a half years of criminal processes have come to a close without any significant criminal penalties to be had. This past summer, in various trials, asbestos abatement supervisor Salvatore DePaola, site safety manager Jeffrey Melofchik, and director of abatement at the building Mitchel Alvo were acquitted of all charges relating to the death of two firefighters who battled a blaze at the former Deutsche Bank Building in lower Manhattan. However, the John Galt Corporation, a subcontractor on the project, was found guilty of a misdemeanor charge of reckless endangerment. According to the New York Times, "This leaves much controversy over whether criminal charges are appropriate in cases where alleged malfeasance or negligence contributes to circumstances that lead to one or more deaths."

New York City firefighters Robert Bettia and Joseph

Graffagnino died in August of 2007 due to a lack of water supply caused by the previous removal of a 42 foot section of standpipe in the building's basement. This was during the time that the building, a victim of September 11, 2001, was being demolished. As per the New York Times, "Defense lawyers have argued that their clients were scapegoats, and that various city, state, and federal agencies were to blame for missing crucial inspections and failing to fulfill other duties."

Charges that originated from a 16 month criminal investigation by then Manhattan District Attorney, Robert M. Morgenthau, and pursued by current District Attorney, Cyrus R. Vance, Jr., may not have been successful, but at the time of the indictments decisions were made to implement changes in construction safety practices at city agencies including the fire department of New York City.

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## Our Condolences

The Queens and Bronx Building Association offers our condolences to the families of two QBBA members on the loss of Frank Ventimiglia, husband of Margarita (Venti) of Hudson Insulation of New York and their daughter, Carolyn Venti of Galli Engineering, P.C. in Melville, Long Island. Frank was a US Marine Corps Vietnam veteran who served two tours in country, earned two Purple Hearts, and fought in the battle of Khe Sahn. According to the Patriot Guard Riders of New York, he passed due to complications from being exposed to Agent Orange. Mr. Ventimiglia was laid to rest at Calverton Memorial Cemetery with a full Marine Honor Guard and Patriot Guard attending. Frank is also survived by his and Margarita's son, Joe, who is also a combat veteran and Purple Heart recipient.

We also offer our condolences to the family of Norman Bluestone who passed away this past June at the age of 84. He was the senior partner in The Bluestone Organization, a prominent builder and developer in the New York City area. Norman is survived by his wife Joan, brothers Harold and Eli, sisters-in-law Gilda and Emma, and an extended family of nephews, nieces, grand-nephews and nieces.



Frank Ventimiglia

## Welcome New Members

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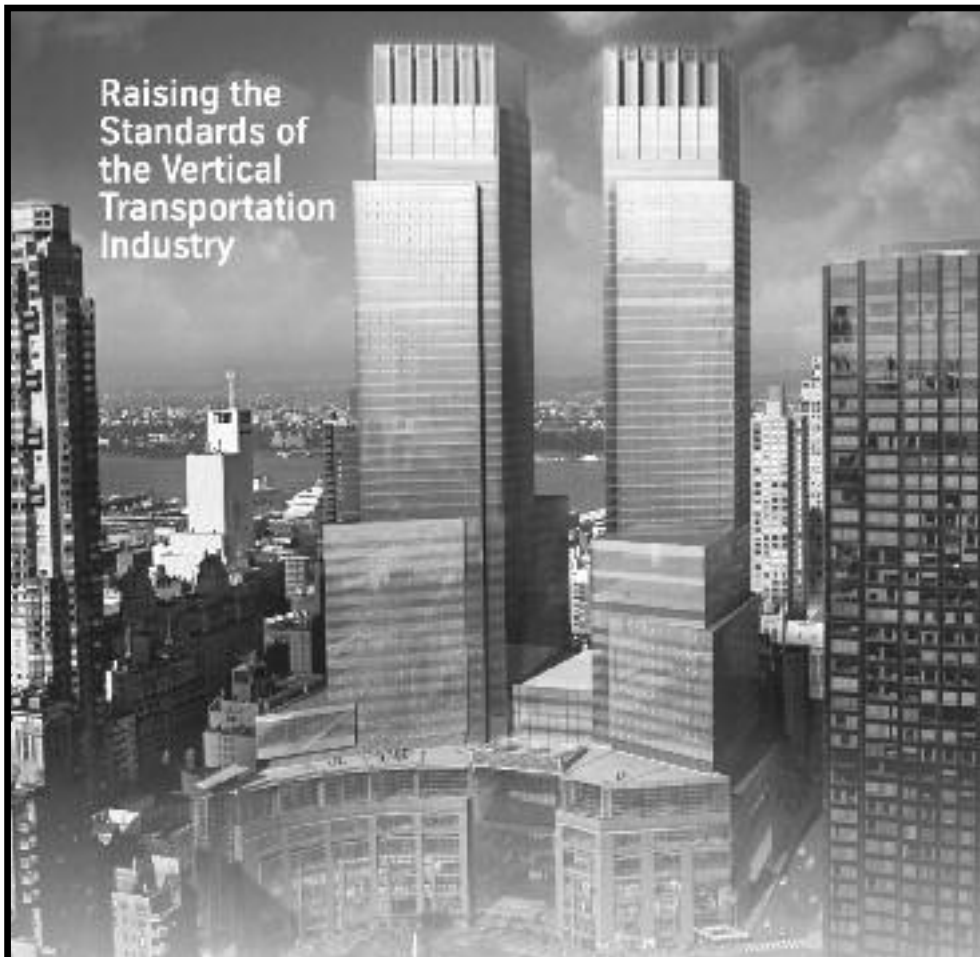
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## November Dinners to Benefit Two Charities

On Wednesday, November 2 at the Crest Hollow Country Club in Woodbury, Long Island, the Construction Financial Management Association (CFMA) will be honoring Bryan Sumcizk of Capital Concrete, Inc. as Construction Executive of the Year. Proceeds will benefit Contractors for Kids. Contact (631) 617-5152 for reservations. On Monday, November 21 at Cipriani Wall Street, 55 Wall Street in New York City, the St. Mary's Tribute Dinner will honor Pat A. DiFilippo of Turner Construction Company. Chair for the event is Vincent L. Riso of The Briarwood Organization, co-chairs are Jeffrey E. Levine of Douglaston Development/Levine Builders, and Ark M. Latt and Vincent J. Massucci of Turner. (718) 281-8816.



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# QBBA 2011 Golf Outing





Congratulations to this year's Morehouse Scholarship winners, funded by NYSBA's Research and Education Foundation and the QBBA.  
L-R: Ms. Lourdes Nasongkhla, LaGuardia Community College Construction Program Coordinator, students John Gonzales, Jamal Jones, Joshua Hart.

# Two Area Contractors Charged with Criminally Negligent Homicide in Death of Construction Worker



Staten Island District Attorney Daniel M. Donovan, Jr.

This past spring, Richmond County District Attorney Daniel M. Donovan, Jr. announced the unsealing of a five count indictment against Michael Fazio (50, of Short Hills, N.J.) and Anthony Malfi (43, of Staten Island) on charges that include criminally negligent homicide in connection with the death of 59 year old construction foreman Robert McGee of Bohemia, Long Island on February 12, 2009. Mr. McGee had been kneeling on the second story floor of the 1514-1522 Bay Street construction site in Rosebank, Staten Island that morning when he was crushed by a newly built 100 foot long, 60 foot tall concrete wall that was

suddenly toppled by a gust of wind.

An intensive two year investigation revealed that the wall, built by Malfi and his company, Well Built Development Corporation, did not meet the approved engineer's specifications and was not properly mortared or reinforced. Furthermore, Fazio's company, Woodrow Builders, LLC, the general contractor for the site, left the wall in that hazardous condition for three weeks. According to prosecutors, the wall was built too long, too tall, and without the proper reinforcement or inspection by a professional engineer who should have been on the site while work was being done, as is required by the City Building Code. It is reported that the wall was swaying in the wind just days before the accident.

Specifics in the indictment state that the wall stood 5 feet taller and 7 feet longer than the specifications on the engineering plans approved by the city; that vertical rebar was spaced out in gaps wider than the 24 inches required by the plans; that the "lap length" of the rebar connecting the first and second floors was not sufficient; that the type of rebar used at the corners had a shorter diameter

than what was listed in the plans; that the mortar work was "poor" and "did not adhere the masonry units that comprise the wall"; and that the contractors did not use lateral bracing or temporary shoring and bracing to keep the wall from collapsing.

"These charges send a clear message that if you cut corners on the job site, you will be held accountable," said New York City Buildings Commissioner Robert LiMandri.

Defendants Fazio, Woodrow Builders, and Well Built Development were each indicted by a Richmond County Grand Jury on charges of criminally negligent homicide, which carries a penalty of up to 3 years in prison. Defendants Malfi and Well Built Development were each indicted on charges of second-degree reckless endangerment, which is punishable by up to one year in prison. Both contractors were arraigned in State Supreme Court before Justice Robert Collini and released on their own recognizance.

The case is being prosecuted by Mark Palladino, Deputy Bureau Chief of Investigations, and Assistant District Attorney Jeffrey Curiale.

As noted by the district attorney's office, the charges contained in the indictments are merely allegations, and the defendants are presumed innocent unless and until proven guilty.

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For more information on becoming an exhibitor or for general show information, please contact June Petrone, our Executive Director for the Queens & Bronx Building Association at (718) 428-3369 or email [june@queensbronxba.com](mailto:june@queensbronxba.com)



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