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55 YEARS

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2021 has finally arrived - by Michael McDonagh

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2020 is now in the rearview mirror but after nearly a year of a deadly pandemic, the question on everyone's mind is where construction is headed for the next one to two years. Massachusetts has proven its resiliency since the start of the pandemic, and while significantly impacted, construction was not impacted as badly as the other industries such as food and hospitality. Dodge Data & Analytics recently predicted that nationwide construction will grow 4% in 2021. This follows a year where construction dropped 14% due to the pandemic. Market data closer to home continues to show improvement the recent post-holiday spikes have not helped.

ASM Members Remain Busy

Bright spots for local construction include the ongoing growth in lab development. This includes not just Boston and Cambridge but growth in along the 128 belt. Warehouse development (think Amazon distribution centers) is also proving to be a positive area for growth. These are certainly bright spots for the next several years and will help offset what is likely to be a slower pace in traditional office space development.

The return to the office as we knew it pre-pandemic is rightly causing owners, developers, and investors to question the future of office space. Adjusted work habits such as remote work is certainly here to stay, but that does not mean the end of the office. Workers will return, likely at a gradual pace, depending on the availability and effectiveness of the COVID-19 vaccine. In a recent survey by the Massachusetts Competitive Partnership, local companies report that they expect about half of their workforce to return by July 2021, and over 80% to return by 2022. This is good news for future construction and the overall health of our economy.

Those who perform public construction were greeted with positive news recently when the Commissioner Gladstone of the Division of Capital Asset Management and Maintenance (DCAMM) informed ASM members that state capital budgets were not being reduced. Public Construction remains a key sector and those not already certified by DCAMM to perform this work were

encouraged consider certification.

Court Upholds Massachusetts Prompt Pay Act

Subcontractors and General Contractors working on large private construction projects in Massachusetts need to take a second look at the Massachusetts' Prompt Payment Act, both to assert their rights and to protect themselves. The Act, advocated for by ASM and passed in 2010, dictates the timing and method of acceptance and rejection of applications for payment and change order requests submitted by anyone providing labor and/or materials on a project with lien rights, including subcontractors and their sub-subcontractors and material suppliers.

In *Tocci Building Corp v. IRIV Partners, LLC*, the Superior Court, for the first time, interpreted the act. Tocci was the general contractor on a large Boston construction project. From June 2018 through December 2018, Tocci submitted seven requisitions for over \$4.6 million. The owner, while causally communicating "rejections" by email, never included the specific requirements contained in the statute. The court rejected the owner's arguments holding that the law means what it unambiguously says. Failure to reject the requisitions according to the requirements of the act makes those sums due and owing; the act voids any contractual provision that conflicts with it; and the owner waived all defenses to payment by failing to properly reject the requisitions. The court then entered judgment for Tocci for \$4.6 million, plus nearly another million in interest. The owner has filed a notice of appeal giving the appellate courts the opportunity to confirm or reject this commonsense reading of the act.

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