

GET OUT YOUR CHECKBOOKS

All Existing High-Rises May Be Required to Retrofit Fire Sprinklers

By Jeffrey A. Sirot, Esq.
Greenbaum, Rowe, Smith & Davis LLP.

On October 8, 2007, a raging fire engulfed the top floors of a luxury waterfront high-rise under construction in Jersey City. According to firefighters, the blaze began in an elevator well situated between the 17th and 18th floors, and quickly spread as it fed on lumber that was to be used for framing sections of the building's upper floors. According to fire officials, the fire could have been extinguished sooner had the building's water supply been activated higher than the 14th floor.

While this Jersey City fire is suspicious (the FBI has joined in an arson investigation) and occurred in a vacant building during construction, this incident and similar fires throughout the country have been emphasized by supporters of a pending rule proposal by the Department of Community Affairs ("DCA") that would require older high-rises (buildings more than six stories or more than 75 feet above the lowest level accessible to a fire department vehicle) to add or upgrade to approved fire suppression systems. The proposed amendments to the fire code, N.J.A.C. 5:70-4.17 (the "Sprinkler Retrofit Amendments") would require the installation of an automatic fire suppression system in existing high-rise buildings of Group B (business or office) and Group R-2 (residential). This amendment will impose substantial costs upon condominium, co-op and other community associations. The DCA comment period for this rule proposal expired on December 17, 2007, and as of this writing, the DCA's decision of whether to adopt or reject the Sprinkler Retrofit Amendments is imminent. If adopted, condominium and co-op high-rise buildings would have up to four years to install an approved fire suppression system.

The Cost

Differing sources place the number of high rise residential buildings lacking adequate fire sprinkler protection in New Jersey between 416-624 buildings. The New Jersey Apartment Association and New Jersey Tenant Association estimate that the aggregate cost of retrofitting sprinkler systems in these high-rise buildings is approximately \$2.4 billion, which translates into an additional \$200-\$400 per month for each unit owner or renter over a 10-year period. The New Jersey Fire Sprinkler Advisory Board (a fire sprinkler advocacy group) estimates the cost to be \$5-\$7 per square foot with a total cost between \$447 million-\$546 million. Unfortunately, estimates from non-interested parties have been difficult to ascertain, and the DCA has failed to publish any meaningful cost estimates. However, according to numerous sources, the cost of installing sprinklers into a new construction project is approximately \$1-\$2.50 per square foot, so the retrofitting costs of \$5-\$7 per square foot for retrofitting seems reasonable. Regardless of the source of the cost estimates, retrofitting is undoubtedly very expensive and the burden will be borne primarily by unit owners.

The Benefit

Sprinkler systems save lives. There is no credible argument to the contrary. In a study completed in 2005 for the National Fire Protection Association ("NFPA"), the statistics demonstrated that deaths in manufacturing properties were 2.0 per thousand fires in non-sprinklered buildings compared to 0.8 in those that were protected. In stores and offices, the figures were 1.0 to 0.3, respectively; in health-care facilities for the aged or sick, 4.9 to 1.2; and in hotels and motels, 9.1 to 0.8 (a 91-percent reduction in deaths). Although the study did not consider high-rise buildings, the authors of the NFPA study estimated the impact of sprinklers in small residential properties would result in 74 percent fewer deaths.

There may be other benefits to retrofitting sprinklers into high-rise buildings. Indeed, sprinklers are likely to reduce property damage. The U.S. Fire Administration (an entity within the Federal Emergency Management Agency) notes that sprinklers release eight to 24 gallons of water per minute compared to 50 to 125 gallons per minute released by a fire hose. Thus, if a sprinkler can control or minimize a fire, the fire department will pump less water into the unit. Moreover, the National Association of Home Builders notes that many insurance companies offer discounted premiums for buildings with sprinkler systems. Thus, the above-cost savings should also be considered when evaluating the total costs of retrofitting.

Deviation from International Code Council

The International Code Council ("ICC") is a nonprofit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes, referred to as the International Fire Code ("IFC"). Currently, the DCA adopts the 1996 Building Officials and Code Administrators (BOCA) Fire Prevention Code, with amendments, as the State Fire Prevention Code. The DCA is proposing to replace the 1996 BOCA Fire Prevention Code with the 2006 IFC, with amendments.

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Interestingly, the DCA states that the proposed amendments to the 2006 IFC are made primarily to retain provisions of the current BOCA Fire Prevention Code and to eliminate conflicts with the Uniform Construction Code, N.J.A.C. 5:23. Despite the DCA's contention that the amendments are primarily administrative, the Sprinkler Retrofit Amendments deviate from the BOCA Fire Prevention Code and the IFC, both of which require new constructions to contain sprinklers, but do not require retrofitting sprinklers into existing high-rises. Thus, the DCA seeks to materially alter both the current BOCA Fire Prevention Code and the proposed IFC by requiring such retrofitting.

The DCA's proposed deviation from the IFC is significant because the DCA seeks to amend a code which was adopted after rigorous expert analysis, debate and public comment. The ICC's code development procedures are extensive and provide for substantial review and analysis by experts in the field, as well as, members of the general public. It is noteworthy that New Jersey has determined to accept the IFC in nearly all respects, with the exception of the Fire Sprinkler Amendments. Certainly, many will argue that the IFC and BOCA have already considered the cost of retrofitting to be prohibitive, while the DCA has rushed through an amendment without careful consideration of the cost.

Legal considerations

When promulgating regulations, the DCA is required to "take into account, to the greatest extent prudent, the economic consequences of the regulations". N.J.S.A. 52:27D-198(c). There is scant evidence that the DCA has undertaken any meaningful study or consideration of the cost. Indeed, the DCA has not released or referenced any such studies in its public statements and filings to date. The DCA's apparent failure to comply with the requirement to consider the tremendous financial impact on the individual unit owners in high-rise buildings and, particularly, to condominium and co-op owners will likely lead to immediate litigation challenging the enforceability of the Sprinkler Retrofit Amendments. This issue has been raised before the DCA by objectors and it remains to be seen whether these legal considerations will scuttle the Fire Sprinkler Amendments or lead to further cost studies by the DCA.

Conclusion

The DCA is unquestionably interested in adopting the Sprinkler Retrofit Amendments. Indeed, the DCA has already acknowledged that the costs "may be significant," but has stated "it is the Department's position that because this is a life-safety issue, the cost is justified." Thus, New Jersey's condominium unit owners and cooperative owners should prepare for the adoption of the Sprinkler Retrofit Amendments. There will

likely be legal challenges, but the prudent course for all of New Jersey's existing high-rises is to begin to plan for the expensive task of retrofitting and to identify sources of funding. ■

Jeffrey A. Sirot is an attorney concentrating in community association law at the law firm of Greenbaum, Rowe, Smith & Davis LLP. Mr. Sirot maintains offices in Woodbridge and Roseland, New Jersey and can be reached at (732) 549-5600 or via email at jsirot@greenbaumlaw.com.

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