



Avoid Costly Construction Delays

What you can do to expedite the process and get it back on track

The building process is more complex than most other buyer-seller transactions, extending over a longer period of time and involving many different individuals – leaving the door open for delays and disputes.

According to Allen Link, president of Link Associates, Inc. in Waukesha, the most common time for delays is before construction even begins. Regulatory and review processes, approval requirements, design plans and delivery of materials take time to coordinate. And if one thing goes wrong or one subcontractor misses a deadline, everything else is affected. “It’s kind of like an orchestra,” Link says. “When one misses a beat or cue, it messes up everything else.”

Gina Hansen, executive director of the Wisconsin Chapter of the National Association of Industrial and Office Properties (NAIOP), agrees that local, state and federal approvals can stall a project. She says there are few ways to avoid these delays, so dealing with them as patiently as possible is often the best course. “Communication is always important,” she says. “Be flexible, clear about expectations and timelines, and establish consequences if those don’t happen as they should.”

Link says this pre-construction process is by far the most time consuming and vulnerable to delays. He estimates that this pre-construction phase lasts, on average, one to two years, but can go as long as two to three years. Part of the reason, he says, is Wisconsin’s complex, multi-layered governmental structure that allows multiple city, town, county and state requirements to affect one building project. “And each type has a unique process that you have to follow in order to get your approvals,” Link explains.

Link says that delays are to be expected in this part of building, and agrees with Hansen that good communication is key to keeping the process moving. He says there is often no one solution that can be applied to every project. “Building is a creative process,” he says. “You’re constantly creating new solutions to situations you have never seen before.”

Environmental issues are also a common roadblock for building projects. After a phase I and/or phase II environmental assessment has been completed, you may need to clean up the site before you can build on it. According to Rick Marlow, president of Hardy-Marlow real estate services in Waukesha, this can take up to \$500,000 or more and months – or even years – to complete.

But that financial responsibility doesn’t always fall on the shoulders of the buyer. Marlow says that buyers can restructure the purchase so the burden is on seller to clean up the site. To keep the sale moving during clean up, buyers can set up an escrow account that will pay for the cleaning with proceeds from the sale. Then the remainder is paid to the seller.



Hansen of NAIOP also notes that certain endangered animals and habitats may require special consideration, which can hold up projects for many months. It's worth investigating this possibility beforehand to avoid this issue altogether.

Most issues can be resolved with communication and common sense, but, in some cases, more extensive steps need to be taken to get the project back on track. In these situations, arbitration and mediation may be a good way to get your project moving again.

Mediation and Arbitration

Link says that in 53 years of business he can count on one hand the times a dispute has caused major problems. But it's inevitable that projects sometimes will go awry. If a mutually satisfactory solution to a problem cannot be reached between you and your contractor, either party may begin a civil lawsuit, which normally involves a significant commitment of time, energy, money and frustration. In order to save precious resources, mediation or arbitration may be a viable option for you and your contractor.

Mediation is a non-binding procedure in which a neutral intermediary, the mediator, assists the parties in reaching a mutually satisfactory, agreed settlement of the dispute. The non-binding nature of mediation also means that a decision cannot be imposed on the parties. In order for any settlement to be concluded, the parties must voluntarily agree to accept it.

Arbitration is a procedure in which the dispute is submitted to one or several arbitrators who make a binding decision (an "award") on the dispute. As opposed to mediation, arbitration involves the adjudication of rights by a tribunal composed of one or several arbitrators who have the power to render a decision that is binding on the parties. The decision rendered by the arbitrator(s) in the form of an award is final and binding on the parties and not usually subject to an appeal on the merits to a court of law.

Of course not every factor can be controlled. From weather to plan changes to community objections, almost anything can hinder a commercial building project. But with clear communication, reasonable expectations and a flexible frame of mind, your building project should go as smoothly as possible.