

Two keys to avoiding recreation lawsuits

by Jim Leatzow

Futurists continue to predict the tremendous growth for recreational activities in the United States. Unfortunately, this rise parallels the record number of lawsuits being filed against both the designers and providers of recreational areas, activities and equipment.

The designers and providers of this equipment are subject to an ever-increasing barrage of litigation. As a result, people who design these areas need to figure potential liability exposures in their plans.

As equipment designers or installers, you inevitably create exposures within the equipment, its overall design, and the proximity to other risks in the area. Exposure to lawsuits begin even with your drawings. The actual litigation, though, is likely to come after the facility has been in place for some time. Someone can get injured (real, or exaggerated with the urging of legal counsel) and file an action against you, your firm and every other perceived "deep pocket" involved with the equipment.

Because of this, you are being held to an ever higher standard of competence since your designs may come under close scrutiny—especially in court. It is no longer sufficient to merely produce a nice design that looks great. You must be your own best and worst critic: examine how your design could possibly cause or just contribute to someone getting hurt.

First, check those areas where people will most likely congregate. In these areas, avoid using potentially dangerous plants, such as those with sharp thorns or needles. Also, plants shouldn't interfere with a person's ability to steer clear of a dangerous situation.

Consider, too, situating the playing areas in such a manner as to maximize safety. Don't place a tot-lot immediately adjacent to a busy street with

Jim Leatzow is president of Leatzow & Associates, Glen Ellyn, Ill. He specializes in green industry matters.

out a significant fence or similar barrier. Likewise, you shouldn't place the outfield of a ball diamond near a busy street since you could reasonably predict that an eager outfielder would chase a ball without looking for



When designing or installing recreational equipment, it's best to plan for the worst.

traffic first. Noting the sun's position when locating sport fields is also a good idea.

You must be very critical of the equipment to be chosen or specified. It is not unreasonable to ask the manu-

You will be responsible for the design of anyone you hire as a consultant.

facturer for the product's safety record. Similarly, it is prudent to determine whether the manufacturer maintains product liability for its equipment. If a supplier doesn't carry product liability, it probably has had a problem with claims and can't find or afford much coverage. Though coverage today doesn't guarantee the manufacturer will be covered two years from now, it at least shows that you went beyond merely choosing the equipment out of a book.

Once you have specified the equip-

ment, it is equally important to select soft, cushioning material to surround it. On natural grass sport fields you need to consider some form of sprinkler system to keep the playing surface soft, healthy and resilient. There has been a dramatic increase in litigation stemming from sports injuries directly related to hard packed dirt where grass has been allowed to die. By making a written recommendation to your client, you have covered yourself professionally should an injury result from turf neglect.

If the specific area you are designing includes use after dark, be aware of the need for lighting to both illuminate the activities and provide security. Again, informing your client of your security concerns in writing goes a long way toward protecting yourself. If you hire a professional to handle the lighting design, make certain they carry professional liability too,

since you will be responsible for the design of anyone you hire as a consultant.

It is important to make sure the actual construction of your equipment is according to your plans and specifications. If a "creative" landscape contractor doing the installation altered your plan, the onus is on you to notify the client (again in writing) that a problem exists. You should also consider giving your client some information regarding the maintenance of your plan to preclude dangerous situations.

This might include such areas as directions for maintaining plant growth habit, annual replenishment of cushioning material and periodic safety inspections for the installed equipment to make certain hardware isn't missing and that the equipment is being used for what it was intended.

Follow these recommendations and make sure your file documentation is complete. With that done, you will be adequately prepared for the legal attack that ultimately can and will occur. **LM**