

Insurance problems concerning the design of lakes, ponds and water retention areas

by Jim Leatzow



Landscape managers with lakes and ponds on the property must take extra precautions when designing and maintaining water areas.

If you are responsible for designing public areas that contain lakes, ponds or water run-off retention areas, keep certain important insurance considerations in mind.

First, understand that water-filled areas are always viewed as an "attractive nuisance." That is—especially in the case of children—people will have a hard time avoiding such areas, even if they are trespassing.

Merely putting up a "No Trespassing" sign and assuming your job is done is not enough. Instead, you need to examine multiple design factors.

First, you need to consider the ultimate use for the specific water-filled area you are designing. If, in fact, people are encouraged to swim or boat, then you must proceed with caution to identify those areas where activities will take place. Facilities like docks, piers and location of emergency and lifesaving equipment must also be considered.

More commonly, though, is the design of lakes, ponds and retention areas for aesthetic purposes—areas not intended for public use. One of the biggest concerns with such a project is to make sure that the grade or shoreline slope precludes people—more importantly, children—from losing their footing. This is a consid-

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eration especially on wet grass or other surfaces so they do not tumble into the water.

Furthermore, you will want to consider using an expert in storm water drainage, when necessary, to assist you on such a project. Nothing will get you in trouble faster than overselling your capabilities and not using experts when you get into specific areas for which you have not had ample training.

It is better to make less profit on a project, but to have a plan that is safe and workable. Such an approach will not come back to haunt you in the form of a lawsuit from an injured person.

Along with the proper design of such areas comes the need to include some maintenance factors in your plan. You should make the owner of any facility you design provide periodic safety inspections so the facility continues to be safe.

In a lake or pond setting, this may include inspecting drains which are often installed for overflows. Such drains should include covers secure enough that kids cannot remove them.

Once a storm occurs, overflow drains become important factors in keeping the rising waters from overflowing the banks. If the overflow pipe is blocked with debris, and not checked periodically, one could allege improper design.

Conversely, overflow pipes become uncovered because grates were

removed, storm drains can become life-threatening whirlpools that can drown even a strong person, given the right circumstances.

As mentioned before, maintenance applies to other areas such as fencing and signage. Although you may not have any direct responsibility for the project once it is constructed, you go a long way in adding meaningful safety provisions. You should stress the owner's obligation to consider the maintenance needs once the project is built.

Depending on the type of project, erosion of the banking material is a potential source of design error claims. If water undercuts the banks, over time the ground will become considerably less stable. Thus, the chances of injury increase dramatically.

It is imperative to make on-sight observations while construction work is in progress, whether or not such is called for in your work agreement. I would even encourage liberally using a camera to make a periodic record of the construction phase.

That kind of documentation would be of utmost importance if a claim were to arise. Such measures, along with written confirmation of any changes to the plan, should be considered normal, customary documentation included in every job file.

When it comes down to "your word against theirs" in court, the design professional often comes up on the short end of the stick.

In short:

- Estimate the purpose of the water-filled area.

- Analyze who, if anyone, will be using the facility.

- Put in the necessary safety considerations. (Too much margin of safety is always preferable.)

- Employ other design professionals if you get into areas beyond your expertise.

- Stress the maintenance factors to the owner of the project.

- Visit and record the actual construction while in progress.

- Document, document, document your file as though you expect a claim. Because of some frightening recent interpretations of the Statute of Limitations, plan on being held responsible for your design for the rest of your life. **LM**