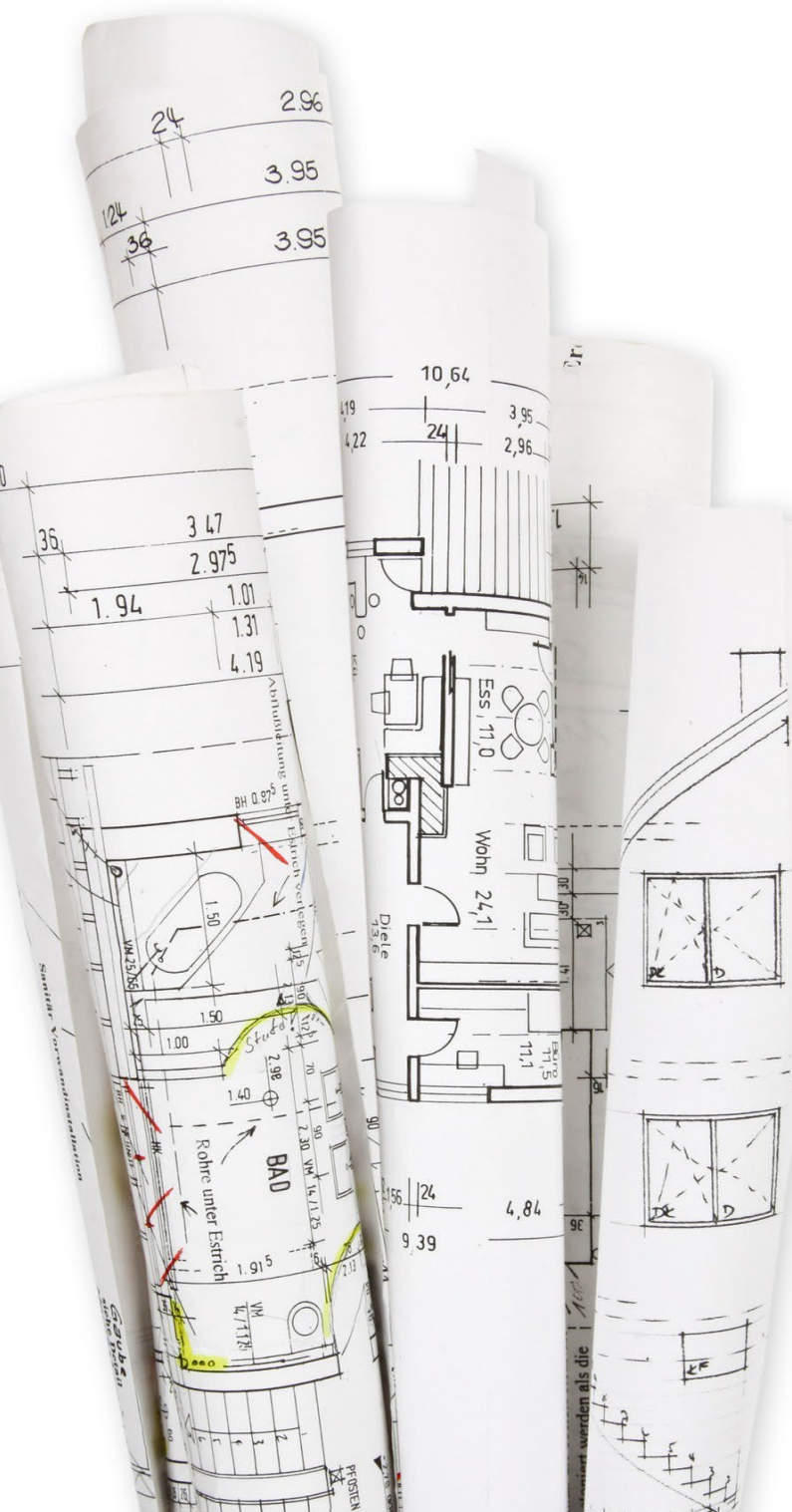


BUILDING BLOCKS

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As-Built Drawings vs. Record Drawings. Does it Matter What We Call Them?

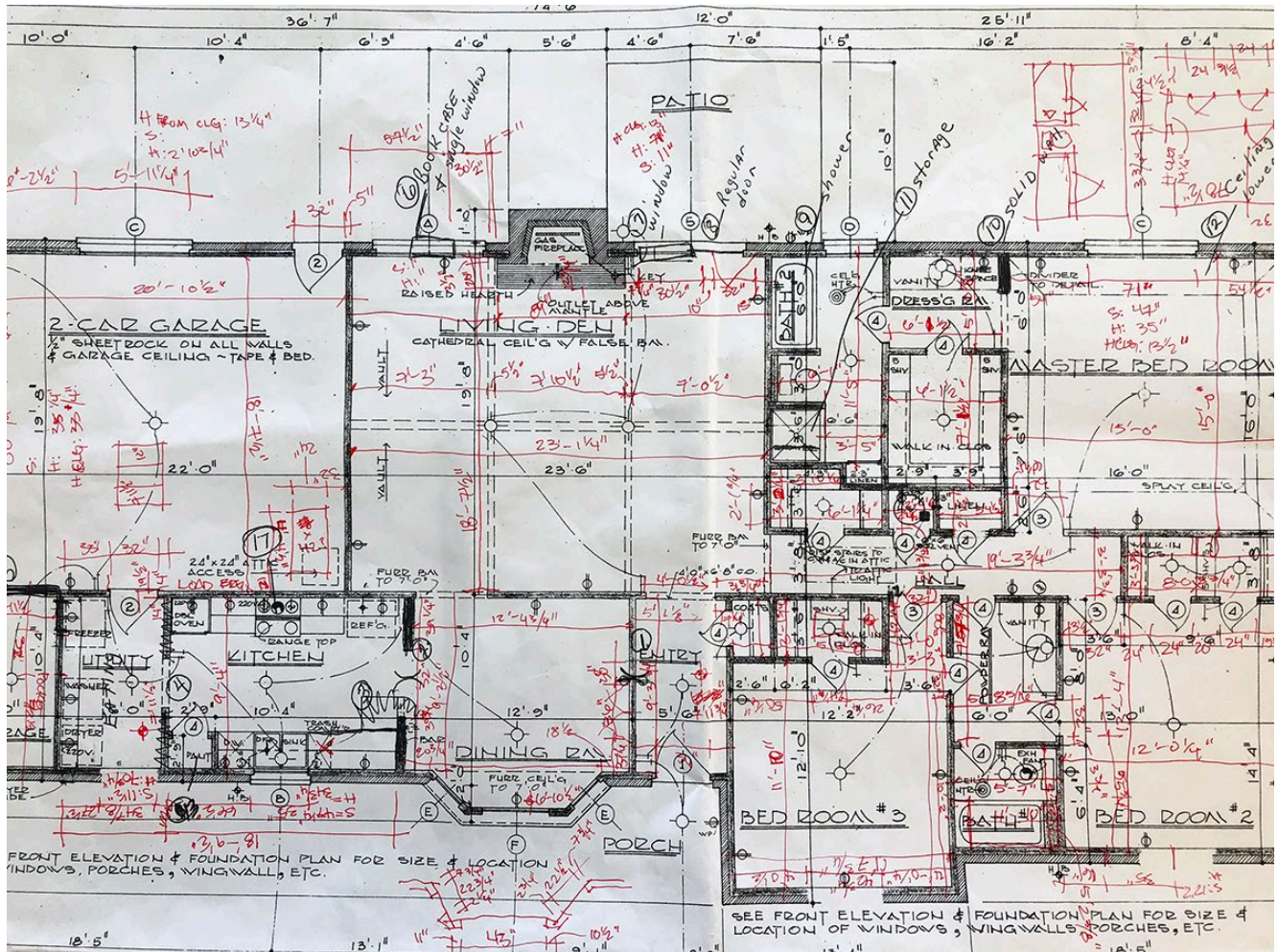
By: *Eric O. Pempus, FAIA, Esq., NCARB*
DesignPro Insurance Group

It is not hard to imagine, even with the smallest building, that no construction project is built exactly without any changes from its design. That being said, this risk management article is meant to encompass the topic of all of the “Record Documents” for a construction project—not only drawings, but specifications, change orders, requests for information, etc. It had been common in the design and construction industry in prior decades that everyone called the project documents, edited to include changes during construction, the “As-Builts.” However, in these litigious times, it is best to be precise with what we call these project documents.

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Using the term “As-Builts” may suggest that an architect or engineer (A/E) assures the project owner (their client) that they have reviewed all of the project documents to include each and every change made during construction, to accurately reflect all of the contractors’ work performed. Such review and assurances of the contractors’ work, to accurately reflect all of the changes in the documents, is well beyond the normal and reasonable scope of services of a design professional. In fact, an A/E may not be able to conduct such a review, apart from their client’s unrealistic expectations



<https://theconstructor.org/construction/as-built-drawings-importance/186340/>

Should a design professional agree in their agreement with their client that they will provide “as-built” documents, it could be construed to be a warranty. Warranties are excluded from an A/E’s professional liability insurance. In fact, a design professional may likely not have insurance coverage for damages that result from someone’s unfounded reliance on the accuracy of the project documents. For example, such reliance could include facility maintenance, future remodeling of the construction project, or retrofitting the building to repurpose for another use.

The design professional’s agreement (along with all other project correspondence) with their client must make it clear that the documents supplied from the constructor are based upon a contractor’s information that has not been verified, and may be unreliable. To a jury or an unsophisticated client, the term “as-built” would mean just that—the project was built exactly that was depicted in the drawings, specifications and other project documents. Therefore, the term “Record Documents” is the best terminology to use.

Record drawings are documents compiled by the designer from the as-built drawings submitted by the contractor, as a record of the work. Since these are not confirmed in the

field by the designer, they are not “as-built” but a compiled record. Record Documents reflect how the project was built—folding the as-built revisions into the design documents, including addenda, post- bid bulletins and design revisions. *Cornell University Facilities & Campus Services*

PROFESSIONAL SERVICE AGREEMENTS

The Engineers Joint Contract Documents Committee, EJCDC E-500, Agreement Between Owner & Engineer for Professional Services, states that:

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

26. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

The American Institute of Architects’ (AIA) Standard Form of Agreement Between Owner & Architect, B101 (2017) states that the Architect will provide the following Supplemental Services if designated in the table below. Note the services § 4.1.1.15 and § 4.1.1.16 may involve the Architect if agreed to by the Owner and Architect.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect’s coordination of the Owner’s consultants	
§ 4.1.1.21 Telecommunications/data design	

Changes to the design in a project are not only unusual, they are anticipated in construction. That is why the AIA's General Conditions of the Contract of Construction, A201 (2017), states that:

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

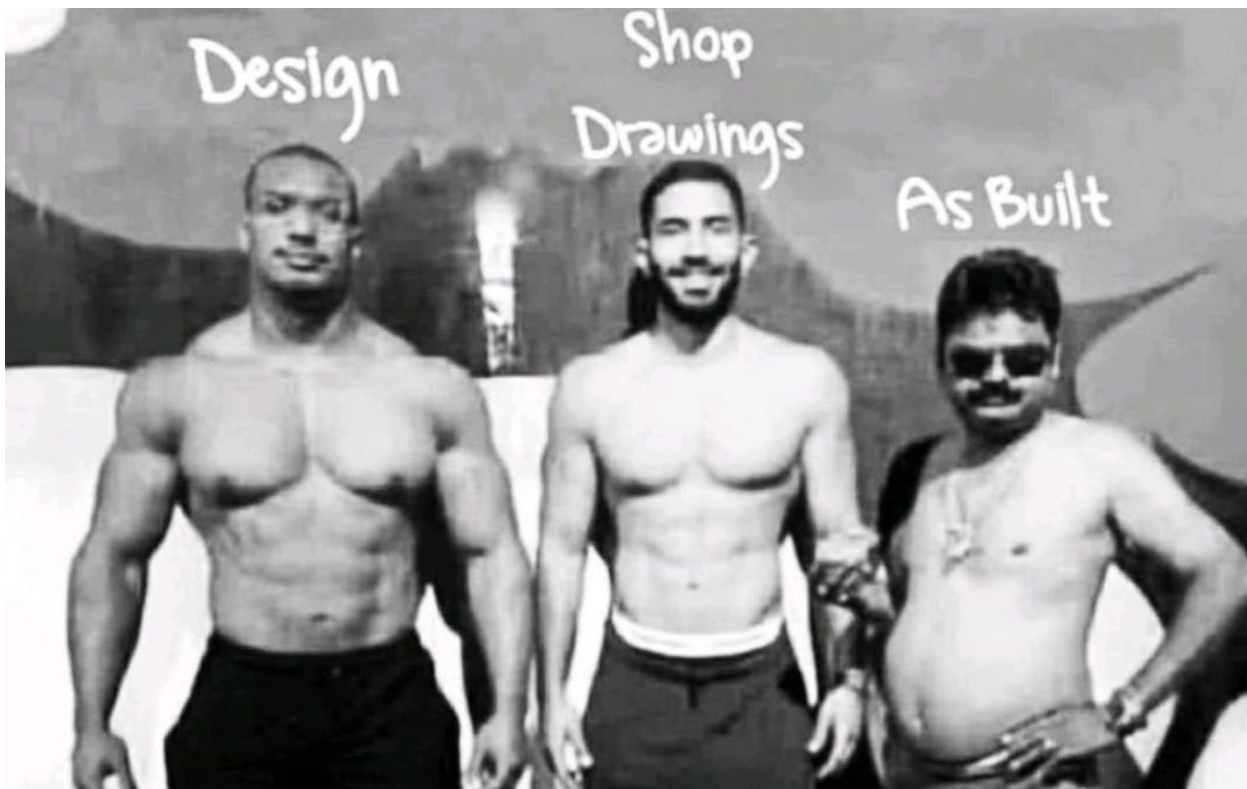
§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

Furthermore, should a design professional not be retained to provide construction phase services, it goes without saying that the A/E that would not want to be involved in compiling any documents showing deviations from the project's design. See the discussion of the DesignPro Insurance Group's risk management Building Blocks article "*Design Without Construction Administration Services & Construction Administration Services Without Design,*" September 2021.

CONCLUSION

To be clear, if the design professional is required to review and compile the construction documents, it is critical that the contractor has specifically identified everything contained in them that deviates from what was originally design for the project.



About the Author of this Risk Management Building Block Article

As a risk manager for the last 18 years for the design profession, Eric has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

Disclaimer: The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individuals, groups, or institutions. This article is an expression by the author(s) to generate discussion and interest in this topic.

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AIA
Ohio

AIA Ohio Design Community Conference, "Reconvene," Columbus, OH
September 10 – 12, 2023

AIA National's 2018 Code of Ethics & Professional Conduct that Addresses Sexual Harassment, Equity, Sustainability, and the Updates to the 2020 Current Code Revisions

September 11, 2023: 10:00 am – 11:00 am EST

A.I. & Architecture's HSW of the Public—a Case Study of the First Fatality Involving Tesla with Autopilot Engaged

September 12, 2023: 11:45 am – 1:00 pm EST



Southwest Chapter

Webinar, 11:00 am – 12:00 noon

September 25, 2023



Allocating Risks through Professional Practice Management and Contract Terms & Conditions
Ohio Society of Professional Engineers

November 3, 2023

Webinar, Time to be Determined, EST



Managing Engineering Liability and Risk
November 15, 2023 - Live Webinars

Reducing Risk for Yourself, Your Company and Your Clients
2:30 – 3:30 pm CDT

Minimizing Risk by Maximizing Compliance with Rules of Professional Conduct

3:30 – 4:30 pm CDT

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