

THE FLOW

FEBRUARY 2019

Upcoming Events



Main Event—Jacksonville
Thursday, Feb. 21st
6:00 p m
2 Hours Bowling
Tex Mex Fiesta Buffet



Annual Golf Tournament
Tuesday, April 2nd
St. Johns Golf & Country Club
Forms on page s12 & 13

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2019 OFFICERS & BOARD OF DIRECTORS

EXECUTIVE COMMITTEE

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Mike Kivlin, John Woody, Inc.

President-Elect

Chad Cockrell, A. J. Johns, Inc.

Vice President I

Gabriel Powers, Vallencourt Construction

Vice President II

Marty Adams, TB Landmark

Secretary/Treasurer

Rob Pinkston, Ferguson Waterworks

General Counsel

Tony Zebouni, Regan, Whelan, Zebouni &
Atwood

BOARD OF DIRECTORS

Rick Erickson, Beard Equipment Company

Billy Hood, J. B. Coxwell Contracting

Drew Lane, Advanced Drainage Systems

Jason Plauche, Petticoat-Schmitt Civil Con.

Justin Scarberry, ECS Florida

Jarod Wolford, Martin Marietta Materials

Jon Woodall, John Woody, Inc.

PRESIDENT'S MESSAGE

Dear Friends,

2019 is coming in with a roar! I hope you all are doing well and staying busy. As always, thank you to our monthly sponsors, we couldn't be as successful as we are without you!

On January 25th, the Executive Committee of NUCA of North Florida in partnership with NEFBA, met with JEA Representatives and discussed the new standards changes and the negative impacts they will have on our community. All things considered, the meeting was extremely positive. JEA put a hold on the manhole specifications for 2019 until further notice and was willing to work collaboratively going forward on other issues. Thank you all for your support on this. Once again, working together on a common cause shows how valuable this organization is to each of us!

2019 continues to be busy for NUCA of North Florida. On January 24th, we held our Installation of Officers meeting at Maggianos. It was great seeing everybody, and I am looking forward to working with the new Board of Directors. We also had a Safety Directors Forum at the offices of Cecil Powell on the 24th. The event was well attended and loaded with helpful information for our membership. On February 21st, we will be holding a Board of Directors meeting at The Main Event of Phillips Highway. This will be a social event and we are encouraging our members to bring some new/younger members to this meeting to get them excited about participating in future events! On February 26th, we will be having a Pre-Session Town Hall meeting with the Duval Delegation. This is a great chance to meet with our legislators and voice our thoughts to our local representatives. On February 28th – March 2nd, NUCA of Florida will be participating in the Andrew Scott Johnson Memorial Scholarship Bass Fishing Tournament. This tournament helps raise money for scholarships that are awarded to our members families! The NUCA National Annual Convention goes from March 14th-16th at the Naples Grand. On March 25th and 26th, NUCA of Florida will be walking the halls of the Capitol Building in Tallahassee. And finally, we have our Annual Golf Tournament at Saint Johns Golf and Country Club on April 2nd. This is one of our biggest events and it is always a lot of fun! Sign up quick, because space is limited.

As always, please continue to support our members and associates. If there is anything I can do to help you out, please do not hesitate to give me a call.

Sincerely,

Mike

Linda L. Daniels, CCIM
Licensed Real Estate Broker



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CALENDAR OF EVENTS

February 12th

Executive Committee Meeting

February 21st

Bowling Night

Main Event

6:00 pm

February 26th

**Pre-Session Legislative
Town Hall**

Feb. 28th to Mar 2nd

ASJMSF Bass Fishing

March 14th to 16th

**NUCA National Convention
Naples Grand, Naples, FL**

March 25th –26th

**NUCA of Florida
Legislative Days
Tallahassee**

April 2nd

**Golf Tournament
St. Johns Golf & Country Club**

The Law and Your Business

Architect's Determination is Binding on Subcontractor Unless There is No Dispute Between Contractor and Subcontractor Regarding the Scope of Work

By Rebecca Ross , Regan Whelan Zebouni & Atwood. P.A.

.In Westchester Fire Ins. Co., LLC v. Kesoki Painting, LLC, the contractor, Lee, directed the subcontractor, Kesoki, to perform extra work in the form of cutting window gaskets at 45-degree angles and applying sealant to avoid leaks. Kesoki and Lee negotiated the price of the change order for the extra work and then Lee submitted the change order to the County for approval. The County rejected the change order indicating that the cutting of the window gaskets was not extra work and was within the scope of work in the specifications. After the County rejected the change order, Kesoki filed suit against Lee's surety to recover for the extra work. Ultimately, the jury returned a verdict for \$91,904 in favor of Kesoki and against the surety for the extra work and the surety appealed. The Kesoki subcontract contained a pay when paid clause, but neither party raised the issue on appeal.

On appeal, the court reviewed Kesoki subcontract clause 2.5, which stated that if a dispute arose between the contractor and the subcontractor regarding the scope of work or the interpretation of the Contract Documents, and the parties could not promptly resolve, then the decision of the Architect was final. The appellate court confirmed that subcontract clause 2.5 would require the parties to be bound by the project Architect's determination as to the required scope of work in the event of a dispute between Lee and Kesoki. Here, the Architect had agreed with the County that the window gasket scope of work was within the specifications. The appellate court, however, found that the Architect's determination of the scope of work did not apply because there was no dispute between Lee and Kesoki regarding the scope of the gasket-cutting work. Additionally, the Kesoki subcontract allowed Lee to make additions to the work. Thus, Kesoki's judgment for \$91,904 was affirmed.

OFFICER INSTALLATION HIGHLIGHTS

We had a packed room at Maggiano's for our Officer Installation & Annual meeting on January 24th.

Our 2018 committee chairs and co-chairs were thanked for their service and presented them with certificates of appreciation.



(Left to right) Tony Zebouni, Legislative, Jon Woodall, Golf, Ashton Milam, Fishing, Marty Adams, Clay Shoot & Mike Kivlin, Co-chair Legislative.

Our 2018 Monthly Sponsors were recognized and presented with 2018 plates to be added to their sponsorship plaques. First year monthly sponsor Lippes & Bryan was presented with a plaque.



(Left to right) Jim Wells, Sterett Heavy Hauling, Mark Bryan, Lippes & Bryan, Mike Woodall, John Woody, Inc., Chad Cockrell, A.J. Johns, Inc., Kim Bryan, Petticoat-Schmitt Civil Contractors, and Rick Parker, Standard Precast. Sponsors missing from photo are Beard Equipment Company and ECS

Continued on next page

INSTALLATION OF OFFICERS (CONTINUED)

Mike Kivlin, John Woody, Inc. will continue to serve as President thru the end of June 2019 when Chad Cockrell will be installed. Mike installed the 2019 Officers and Board of Directors.

Annually, the outgoing President of the Association presents awards to those he feels have been the most helpful in his year as President. Mike presented Ashton Milam, Thompson Pump with the Outstanding Individual Contributor award. Ashton took over as Fishing Committee Chair this year and did an awesome job. Drew Lane, Advanced Drainage Systems and John Ellis III, Legacy Engineer were recognized with Leadership Awards for getting the Young Professionals Group up and running. Marty Adams, TB Landmark was presented with the President's Award for this mentorship to Mike and for his leadership with the Next Man Up training and in recognition of his continued dedication and service to the members of NUCA of North Florida. Congratulations to all of our award winners.



Outstanding Individual Contributor
Winner, Ashton Milam



President's Award Winner, Marty
Adams



Mike Woodall was recognized with
a Clock for his many years of
service on the NUCA of North
Florida Board of Directors



Leadership Award Winners : John Ellis (Left), Mike
Kivlin (center) and Drew Lane (right).



2019 Board of Directors



SAVE THE DATE

19TH ANNUAL

ANDREW SCOTT JOHNSON MEMORIAL SCHOLARSHIP FISHING TOURNAMENT

Get ready for the 2019 Andrew Scott Johnson Memorial Bass Tournament! Join us at a new location this year—Pier 2 in Okeechobee City—and a new weigh-in spot, C. Scott Driver Park on Lake Okeechobee.

On Thursday, Feb. 28 we will have dinner and Captain's Meeting at On the Dock and on Friday, March 1st we will dine at the Brahma Bull for dinner.

**FOR HOTEL RESERVATIONS, CONTACT ALEX ARENA
OR KARI BLOOM HEBRANK AT 850-514-5183.**

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When General Contractors Require Fall Protection Around Trenches

Guidance to Keep Fall Protection Requirements out of Contracts with General Contractors (GC)

Increasingly, general contractors require utility and excavation subcontractors to use fall protection around trenches more than 6-ft. deep because OSHA's fall protection standard, 29 CFR 1926.500 - Subpart M, requires employers to provide fall protection to all workers exposed to falls of 6 ft. or greater

Utility contractors have a duty to comply with the required fall protection standards in the Code of Federal Regulations 1926. However, in 2002, OSHA issued an interpretation, "Clarification Concerning Fall Protection and Vertical Walled Trenches with Depth of 6 Feet or Greater and Use of Controlled Access Zones." In this interpretation, OSHA clearly states, **"unless the trench you are describing is obscured from view, there is no requirement for fall protection to be provided."** (Read OSHA's full interpretation [here](#) or included with these materials.)

Fall protection fatalities have risen steadily over the last seven years and remain the leading cause of work-related fatalities in construction; however, compliance issues or injuries related to falls around trenches rarely occur. Regardless, both residential and non-residential contractors are erring on the side of caution and including fall protection requirements in contracts where workers will be working along trenches 6-ft. deep or greater.

What's a Contractor to Do?

Read the Contract Carefully

Contracts between GCs and subcontractor once contained general contract language regarding OSHA compliance, EEOC requirements, in addition to traditional specifications—with no mention of specific OSHA standards. Recently, however, general contractors have been including requirements for specific standards in the contract language—and contracts that require fall protection systems for workers around trenches are on the rise.

GCs are changing contract language. Usually when a GC intends to require a subcontractor to use fall protection the common language in the GC's contract would be written something like this:

"Whenever a person at the "project site" is in a position where the fall potential is 6' or greater to a lower level, such person shall be protected by a fall protection system."

Contractors should review and make changes to language that requires your company to use fall protection along trenches, as OSHA's interpretation is clear and does not require fall protection along the edge of the trench that is visible [1926.501(B)(7)(i)]. If you, the subcontractor, signs this contract without removing the fall protection requirement, the GC may interpret the contract language as mandatory compliance, despite OSHA's interpretation to the contrary.

You should also review the "indemnification" language to ensure your company is not liable for the GC's required use of fall protection systems.

Discuss the FP Hazards Around Trenches With GC

If you are given a contract that requires fall protection around trenches, request a meeting with the GC and identify and explain the hazards of workers using fall protection around trenches (as described below). Also provide the GC with a copy of the 1-page document, "Why Utility Contractors Don't Use Fall Protection Around Trenches," included with these materials.

January 2019

NUCA

Naples, Florida

Annual Convention and Exhibit
March 14–16, 2019



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Early Bird Registration Ends December 31, 2018

WWW.NUCA.COM/CONVENTION

Railings / Guardrails:

Equipment operators who are lifting and lowering pipe and other materials into the trench often must lift these materials higher than normally necessary to avoid hitting the guardrails and/or railings. This could result in the boom being too close or hitting overhead powerlines, creating an electrocution hazard for the equipment operator and workers. Guardrails also pose a hazard to workers who could get caught between the railing and the material or excavator bucket.

Moving and relocating a fall protection system along the trench as the project moves along increases the possibility of a worker falling in the trench as they help to move and set up the fall protection system. Note many of these workers would not normally be near the edge of the trench if the guardrails/railing were not required. Therefore, the process of setting up fall protective systems creates a greater hazard when workers install them along the edge of a trench.

Fall Protection Arrest Systems (PFAS):

- Horizontal lifeline systems (HLS) use a flexible line that runs parallel to the edge of a trench connected to anchorages, or single tie-off points. While these systems may appear to give workers a wide range of mobility and the ability to safely travel between the anchor points, they do not and are rarely used by utility contractors.
- If a worker falls off the edge of the trench while using a PFAS, the fall arrest system will cause the victim to slam against the wall of the shield, shoring, or the cross braces. Subpart M for PFAS requires an uninterrupted fall area when using an HLS or PFAS.
- Tie-off blocks require a professional engineer to design a rebar-reinforced concrete block weighing roughly 7,000 lbs. When used for a flex line that runs along the trench, the blocks add 14,000 lbs. to the sidewall of the trench causing an excavation surcharge, or extra load, which could cause a cave in.
- Single tie offs restrict the movement of workers, as well as create entanglement problems, limiting the workers' ability to complete the assigned task(s).
- An accidental strike of an underground utility can expose workers to flammable gas, as well as other unknown hazards and risks. Should an emergency occur, workers must be able to immediately evacuate the area unhampered by a PFAS attached to an anchorage point(s).

Conclusion

Fall protection around a working trench creates several recognized safety hazards likely to cause serious physical harm and creates a greater danger to employees. OSHA recognized these hazards when writing Subpart M and specifically included 1926.501(b)(7)(i), an exception for fall protection along the trench if the trench is visible.

OSHA exceptions should not be taken lightly and are explicitly put in place for instances such as these.

SAFETY NEWS

By Jeff Blomgren

What's involved in a healthy new year?

By the time you read this most new year's resolutions will have been forgotten. All the good intentions for a new healthy life filled with good things gets waylaid by the schedules we keep, the grab and go fast food line and instant gratification of that donut. Like anything else, any project that is expected to be successful takes planning and execution. We are in the building business. We know how to build things. The process of making a good product is the result of good planning, goal setting, engineering out the hazards, execution, scheduling, tools and equipment, teamwork and follow through. How does that apply to a good health plan for our lives? We need to understand what the goal is. We need to have a realistic plan on how to get where we need to be.

Get an estimate. Project what it will take to get where you want to be. Research the best products. Find what's best for you. Are you looking for weight loss, fitness, sugar balance, medical solutions? Whatever it is, there's a solution. It's always best to consult a physician before starting anything. Realize that the results won't be instantaneous. Habits may need to be broken and it could involve a lifestyle change. What's important to understand is that anything you do in the way of diet and exercise will benefit you and may have a profound effect on those around you.

Here's some hints; Eat a high protein breakfast. Avoid sugary drinks. Drink water half an hour before eating. Eat weight loss friendly foods. Drink coffee or tea. Eat whole unprocessed foods. Eat slowly. Weigh yourself every day. Get a good night's sleep. The rest of the plan is up to you. You need to look up what kind of protein breakfast, and find out what unprocessed foods are but it's really not that hard. It's much easier with a friend or family member. Find what fits for you and do it! You will be glad you did.

NUCA of North Florida, Inc.
Cordially invites you to attend the

Annual NUCANF Spring Golf Tournament

St. Johns Golf & Country Club
205 St. Johns Golf Drive (Off 210 West)
Tuesday, April 2nd, 2019
11:30 a.m. "Shotgun" Start

\$150 Per Person includes 18 Holes of Golf, Greens Fee & Cart, Boxed Lunch, Beer and water at stops on the course, Team Handicap, Format (4-Man Captains Choice), Prize Holes and Door Prizes. Award Ceremony will be held in the Dining Room immediately following the end of play. **Price after March 8th, \$700 per team.**

Non-member Cost: \$800/team, \$900 after March 8th

Please fill out the entry below & mail (OR FAX) with payment to NUCANF by Friday, March 22nd.

Name	Company
Phone	Fax

Golfer: _____ Handicap: _____
Golfer: _____ Handicap: _____
Golfer: _____ Handicap: _____
Golfer: _____ Handicap: _____

Payment: _____ Check (NUCANF) _____ Bill my account _____ Charge credit card*

Visa/MC/AX: _____ Exp Date: _____ V-Code: _____

(The V-Code is the last three digits in the signature strip on the back of the credit card (Visa/Mastercard) or the digits on the front on the card for American Express.

Name on card: _____

*A 5% processing fee will be added to all credit card charges.

If there are any special billing instructions, please state: _____

Dress Code for Golf Course & Driving Range: Slacks or Bermuda shorts and collared golf shirt for men. No jeans, cutoffs, t-shirts or tennis attire.

Mail or Email this form to: NUCANF, PO Box 16810, Jax, FL 32245,
Ph: 296-1230 Email: nucanf@gmail.com

2019 NUCANF Golf Tournament Sponsorship Opportunities

For all sponsorships, your company will be acknowledged at the awards dinner the evening of the tournament and your company will be recognized in the NUCANF newsletter, The Flow, and the state association publication, The Ditchmen.

\$700 Gold Vendor Showcase

Your showcase includes Domestic beer (or several other options) at your hole, plus a 6 foot table and two chairs and a tee/green sponsorship. You will need to provide anything else that you need. Your company name will be prominently displayed on a sign at the hole. Also available are a bloody Mary Station, Jell-O-Shot Station, Cigar Station, or Hot Dog Station, or Arnold Palmer's Station. First come, first serve based on availability. Holes will be assigned in the order received.

Hole Request Preference: 1st Choice _____ 2nd Choice _____ 3rd Choice _____

\$500 Silver Vendor Showcase

Same as Gold Vendor Showcase but no beer will be provided.

\$450 Trophy Sponsor (limit one)

Sponsorship includes signage at event.

\$450 Registration Sponsor (Limit one)

Sponsorship includes signage at event.

\$450 Longest Drive/Closest to the Pin Sponsor (limit four)

Sponsorship includes signage at the hole.

\$450 Beverage Cart Sponsor (Limit two)

Sponsorship includes signage at event

\$450 Dinner Sponsor (Limit four)

Sponsorship includes signage at event

\$450 Lunch Sponsor (Limit four)

Sponsorship includes signage at event. Your company will be acknowledged at the awards dinner that evening and your company will be recognized in the NUCANF newsletter, The Flow, and the state association publication, The Ditchmen.

\$300 Green Sponsor (unlimited)

Sponsorship includes signage on the tee or green. Your company will be acknowledged at the awards dinner that evening and your company will be recognized in the NUCANF newsletter, The Flow, and the state association publication, The Ditchmen.

Payment: _____ Check Enclosed _____ Please invoice me for total amount

Charge my credit card:* _____ For total amount _____ For monthly installments(Feb & Mar)

*(Please complete Credit Card Authorization form. A 5% processing fee will be added.)

Company Name: _____ Your Name: _____

Phone: _____ Signature: _____

Return with payment to: NUCANF, PO Box 16810, Jacksonville, FL 32245



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Contact (904) 636-9700 for more information.

JEA MANHOLE SPECIFICATIONS

On January 25th, the Executive Committee and NEFBA Representatives met with Deryle Calhoun, Raynetta Marshall, Deanna Davis, Carole Smith, Steven McNall, and John McCarthy of JEA to discuss the new 2019 JEA Standards. The meeting was positive for all parties involved. We discussed the manhole standards, as-builts, and CCTV of sewer laterals amongst other things. Until further notice, all jobs with 2019 JEA Availability numbers are to be bid under the 2018 JEA Standards with regards to manholes. The other issues that we discussed are being reviewed by JEA staff to ensure the need of those specifications and will be addressed at a follow up meeting. JEA showed interest in working collaboratively with NUCA of North Florida and NEFB going forward, and I believe this is trending in a positive direction for the future. If you have further questions, please do not hesitate to contact Mike Kivlin at (904) 982-1254

FEBRUARY 2019 FEATURED SPONSOR



Beard Equipment Company was founded in 1970 as a John Deere Construction & Forestry Dealer. Over the years, our company has expanded with locations in Mobile, Alabama, Pensacola, Panama City, Freeport, Tallahassee, Perry, Jacksonville, Lake City, Palatka and Ocala, Florida.

Three generations of the Beard family have operated the business for over 45 years with the family approach to customers and employees as a key ingredient to our success. The company continues to operate with these values at the core of our philosophy. Today more than 300 hardworking employees serve customers across all of our equipment divisions; linked by one common goal: Focusing on our customers and their equipment needs.

Beard Equipment product lines include John Deere Construction & Forestry Equipment, Commercial Worksite Products, Commercial & Consumer Equipment, Golf Equipment, STIHL and many other allied equipment suppliers - some products vary by location. Also, as one of the south's largest rental fleets; from Mobile, Alabama to Ocala, Florida you can find a fully stocked inventory of John Deere construction and BOMAG compaction equipment to assist you in getting your job done. We offer an extensive selection of pre-owned equipment as well. You can view our pre-owned inventory online at beardequipment.com under the PRE-OWNED EQUIPMENT tab. To support our growing customer base across all the product lines, we have 10 full service locations throughout South Alabama and North Florida.

Beard Equipment is a proud member of the NUCA, NUCA of North Florida, NUCA of Northwest Florida chapter, the Florida Transportation Builders Association and Alabama Utility Contractors.



Beard Equipment Company
6870 Phillips Highway
Jacksonville, FL 32216
904-296-5000

Visit beardequipment.com or call
800-848-8563 to find a location near you!