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Current Legal and Business Developments Affecting the Design, Construction and Real Estate Industries

Quarterly Review

Interview with Peter I. Weingarten, from FXFOWLE Architects

By Marianne Merritt Talbot, Esq. and Stephen T. Del Percio, Esq., LEED-AP

MMT: Peter, thank you for sitting down with us today. FXFOWLE is one of the leaders in the design of green buildings and you are a renowned architect in this field. What is your definition of green building?

PIW: Most people are aware that in order to meet the needs of future generations, we need to conserve and recycle resources. Sustainable building can play a significant role in this effort. Buildings have long been providers of shelter for living and working, an understood single purpose. Today, we know that buildings can serve multiple purposes — they can be self-sustaining through carbon neutrality, generate their own electricity, and even become an armature for food sources. Unfortunately, there are not a lot of built structures that serve multi-purposes today but it's a goal that is being aspired to.

MMT: In many of your lectures, you use the term footprint. Can you tell me what you mean by a footprint?

PIW: The impact a building has on the environment is its footprint. Keep in mind, however, that a building's impact on the environment goes far beyond the site it sits upon. During the construction phase, materials need to be transported to the job site and energy is



Weingarten

consumed in order to make the materials needed. Is the energy used for these purposes from low-efficiency fossil fuel burning or from renewable energy sources like wind or solar power? Beyond the building itself, there are many factors that, when combined, reveal the true nature and quality of a building's footprint.

SDP: How would you compare the footprint of an urban building to one in the suburbs?

PIW: For a recent study, our firm compared a commercial mixed-use Manhattan high rise of about a million and a half square feet to a building of the same square footage and use located in a suburban setting. In terms of the buildings themselves, you can control the energy consumption and you can right size the mechanical systems. In the end analysis, the amount of energy consumed is really about the same. One factor that differentiates the two structures and their environmental impact is the energy spent getting to and from these buildings by their inhabitants. In Manhattan, people generally commute using mass transportation

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What's New in Green Design?

By Peter J. Arsenault, AIA, NCARB, LEED-AP, Principal – Stantec Architecture, Inc. with contributing author Patti Bacon, Stantec Consulting, Inc.

What's new in green design? Virtually everything under the sun. As concern for our environment and increasingly warm climate grows, green design is showing up in myriad applications throughout the man-made environment. Old buildings, new buildings, government buildings, municipal facilities, airports, and public transportation systems are among the many LEED (Leadership in Energy and Environmental Design) certified projects being recognized for their positive contributions to reducing the impact of building construction on the natural environment.

But it doesn't end there. Even our natural environment is getting greener. Scores of environmental projects today incorporate sustain-

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University of Toronto Student Centre (UTSC)

Peter Weingarten Interview

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whereas in the suburbs, people generally commute individually by car. The energy expenditure associated with driving en masse to the suburban office park substantially increases the building's environmental footprint in a negative sense.

MMT: Tell us about projects that you've worked on and the sustainable components employed?

PIW: The firm has been following the trends domestically in building typology and we've focused a lot on residential structures. It started when FXFowle was commissioned to write the Battery Park City Environmental Guidelines. At the time LEED was still in its pilot phase and we really set the bar pretty high by mandating certain things as opposed to making them optional. We required photovoltaic cells to be used. We required that there be some form of black water/gray water treatment and so on. Recent projects would include The Helena, an apartment building located on 11th Ave and 57th Street that we designed for The Durst Organization with Rose Associates. We sought LEED gold status and recently received our certification. What's unique about The Helena is that it is a true private sector development on a typical New York block.

SDP: The water treatment facility impacts everyone on that city block, isn't that right?

PIW: This project was set out to have a rather large black water treatment facility to treat all water for the residential inhabitants. Since the owner controlled the rest of the block, we oversized the facility so that it can serve the entire area. This, in essence, becomes a distributed waste management system as opposed to an energy system. We're particularly proud of this feature.

MMT: Are advances in technology having an impact on how buildings are constructed?

PIW: It's interesting that you ask. I recently received a copy of your firm's Quarterly Newsletter on Building Information Modeling (BIM). Architects and consultants have embraced new tools for design yet we're still dealing with the same labor practices of 40, 50 and even 60 years ago. Not much advancement has occurred on this end parallel to the professional side. Therefore, designers must still plot and produce paper documentation — a continued inefficiency. We just haven't connected with

the construction side to make all the information we, as the designer, have available to those in the field. This could eliminate a lot of redundancy, confusion, and change orders.

MMT: I know you've articulated some concerns about the current desire to have buildings made out of glass. What is your concern and how do those types of buildings impact the environment? What's the energy conservation of those particular projects?

PIW: The firm recently concluded a study called "Four Shades of Green." It was a study of four residential projects that we had completed ranging from LEED certified to LEED gold. What we found, and it

"LEED 3.0 is a really exciting opportunity for the USGBC. It's still in development, but as I understand it, they intend to streamline the process of certification and create a single umbrella system that is more like a bookshelf of credits from all of the current variations."

was shocking to us, was that all of the buildings didn't score very well in energy performance yet they were able to obtain LEED certification at the various levels. We attribute the low scores in energy performance to the popular and abundant use of glass. This is a result of the conflict between a desire to build a residential environment that is full of daylight with great views and connectivity to the outside world and practical energy-efficient decisions. In order to achieve the solar shading required to obtain 40% to 50% energy efficiency over ASHRAE, you have to go with really dark glass or really small windows — nobody wants either. We're in a quandary over this right now although glass technology gets better and better with each passing year. In one of our recent projects, the NY Times Headquarters, we went with completely clear glass but came up with a creative and energy efficient solution. Rather than frit-patterned glass or tinted glass, we put real solar shading on the outside of the building

by integrating a vial of ceramic tubes into the curtainwall design. It's as simple as putting an opaque object between you and the sun, it creates a shadow. This is more of a common sense solution than a technological solution.

SDP: Does FXFOWLE keep up with how the buildings perform? Is there any sort of data set that you look at?

PIW: The American Institute of Architects (AIA) and its Committee on the Environment (COTE), annually award the top ten examples of sustainable architecture and green design solutions. In order to submit a design for consideration, a lot of data is needed — data that is difficult, if

not impossible to come by. Entrants must provide specific answers to a multitude of questions on topics such as energy consumption, energy savings and water usage. Understandably, there is a general reluctance by owners to provide this data — especially data that pertains to indoor environmental quality issues because the true benefit is the health and productivity of the building inhabitants.

While we would love to be able to evaluate the on-going performance of our building designs, we have not been successful in obtaining this information with any consistency or consistent format.

MMT: What about retrofitting existing buildings? What incentives exist for owners?

PIW: Well, it really depends on the perceived investment vs. the return. If you add a feature that will save the owner significant money in the long run, the owner will likely make the investment. I love what my friend Mark McCracken does with thermal ice storage. He offsets peak energy demand with an off-peak energy usage at night that reduces the peak load during the day by creating ice with the chillers and then turning the chillers off during the day and using the cheaper energy to make ice at night to cool the building. This results in significant cost-savings. With that said, I can tell you that LEED for existing buildings is the most underutilized of the LEED products

in this city and we probably have the most to gain from this product. The existing building stock in this city is tremendous. Owners will need incentives — tax incentives, tax rebates, and maybe even increased floor area. This is where public/private partnerships will come into play. In his 2030 plan, Mayor Bloomberg has outlined some very progressive ideas about sustainability. This in conjunction with the recently passed environmental legislation, Local Law 86, that mandates LEED standards for city buildings is very encouraging.

MMT: If there is a drawback to green building, it's the cost. What is your take on this issue?

PIW: You can do a LEED certified green building at no additional cost. It's just about making the right choices — common sense choices. If you intend to go after the Platinum LEED certification, there will be additional costs, not necessarily substantial, but additional costs nonetheless.

SDP: The USGBC announced a new version of LEED — version 3.0. How will the new version differ from previous articulations?

PIW: LEED 3.0 is a really exciting opportunity for the USGBC. It's still in development, but as I understand it, they intend to streamline the process of certification and create a single umbrella system that is more like a bookshelf of credits from all of the current variations. This will allow the product to be custom tailored to meet specific project types and their needs more effectively. Making LEED easy and specific has always been a challenge, but the USGBC has demonstrated over the years the ability to adapt and improve so we expect great things from them as LEED 3.0 advances through its development.

SDP: How is green building perceived in the international arena?

PIW: We have started to do a lot of work in India and the United Arab Emirates. Sustainability is really taking a strong foothold in these markets and it is very exciting. I just joined the Emirates Green Building Council, which is newly founded. We don't want these developing nations to emulate Western methodology by making some of the same mistakes along the way — like using coal-fired or fossil fuel dependent energy plants, for example. We'd actually like to see these nations leap frog and get right to the next generation of building. Our clients in India and the UAE have embraced this ideal.

SDP: What kind of projects are you working on

in those countries?

PIW: High-rises, for the most part, because we are encouraging higher density and more connectivity to mass transportation. We're doing an 85-story hotel and residential tower in Mumbai (formerly known as Bombay) which will be the tallest building in Mumbai. Interestingly, I was blown away when I met with the local architect who told me that rainwater harvesting is a code requirement. The Indian government has instituted this code because water is such a resource for them — especially clean potable water. In Mumbai, 100 inches of rain falls in a four-month period and the rest of the year is rather pleasant but dry. What they've smartly done is adapt certain sustainable strategies to maximize the resources the natural climate provides.

MMT: What do you think of Al Gore's initiatives? Have you seen his movie "The Inconvenient Truth"?

PIW: Yes. Many times. In fact, we have several copies in our office. Whenever we travel overseas, we always bring the movie and give it out as gifts. It is a very well put together synopsis of this important issue yet it's done in a way that makes it very palatable to many people who might otherwise feel the issue is too complicated to grasp. There is a lot of science there, but you don't have to be a scientist to get it. The face of the green movement is young and enthusiastic. In fact, the Emerging Green Builder program that we run through the USGBC-NY Chapter is one of the most successful programs we offer and this is in large part due to the young volunteers who are so passionate about sustainability. Therefore we like to lecture as much as we can at both colleges and universities and to students as well as faculty. It's important to reach out to the next generation of doers and leaders and focus their awareness on this issue.

MMT: Peter, your passion is obvious. Thank you so much for your time and participation in this interview.

What's New in Green Design?

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able design techniques with the overall goal of promoting environmental stewardship over the long term. Wind farm developments, brownfields reclamation, and wetland restoration are but a few.

What's behind this increasingly global trend to go green? After all, not so long ago being green often also meant being the most expensive choice for construction. First is a compelling set of facts as confirmed by numerous sources (see, for example, www.architecture2030.org or www.aia.org):

- Buildings and their embedded energy account for 48% of the greenhouse gas emissions that contribute to climate change.
- Buildings consume 71% of electricity produced at U.S. power plants.
- U.S. buildings account for nearly the same amount of carbon emissions as the economies of Japan, France and the United Kingdom combined.

In truth there are many factors driving the current push for sustainable design. These factors are producing professional and regulatory initiatives to create environmentally, socially and economically responsible projects. Some of these are described in their own words below:

- The American Institute of Architects (AIA) has adopted position statements to promote sustainable design and resource conservation to achieve a minimum reduction of 50% of the current consumption level of fossil fuels used to construct and operate buildings by the year 2010. As part of this initiative, the AIA will develop and promote the integration of sustainability into the curriculum for the education of architects and architecture students, so that this core principle becomes a guiding mindset for current and future architects.
- The U.S. Conference of Mayors voted unanimously to approve the resolution "Adopting the 2030 Challenge for All Buildings." The AIA position statement calls for the immediate energy reduction of all new and renovated buildings to one-half the national average, with increased reductions of 10% every five years so that all buildings designed by

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What's New in Green Design

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the year 2030 will be carbon neutral, which means that all buildings will use no fossil fuel energy.

- The mayors also passed a resolution titled, “Establishing a New Municipal Energy Agenda to Help Address the Nation’s Energy and Environmental Challenges and Improve Local Communities.” It contains the following goals:
 1. Reduce energy usage in municipal buildings
 2. Promote green buildings
 3. Ensure residential energy assistance
 4. Address climate change
 5. Encourage diversity in energy generation
 6. Improve municipal vehicle fleets
 7. Encourage incentives to improve vehicle fuel efficiency
 8. Invest in transit and walkable communities
 9. Share best energy practices among cities
 10. Encourage private sector initiatives
- The U.S. Green Building Council (USGBC) has emerged as a national organization with a rapidly growing number of members representing many building design organizations, companies, and design professionals. According to their web site, www.usgbc.org, the “USGBC is a community of leaders working to transform the way buildings and communities are designed, built and operated. We envision an environmentally responsible, healthy, and prosperous environment that improves the quality of life.” The primary USGBC tool for accomplishing this goal is the LEED Green Building Rating System, which has become increasingly recognized as a national benchmark for high performance green buildings and communities. LEED certification is awarded to buildings that prove their design and construction comply with the LEED rating system based on the levels of certified, silver, gold, and the ultimate, platinum.

State and federal governments have stepped up to become involved in these initiatives by offering a number of financial incentives

to building owners for both commercial and residential buildings such as the following:

- The New York State Energy Research & Development Authority (NYSERDA), is a public benefit corporation that helps businesses and municipalities address energy and environmental challenges. NYSERDA sponsors a variety of programs, including an energy rebate initiative for new and existing buildings, innovative alternative energy systems, and grants for special programs and projects.
- In New York State, recently enacted legislation provides for two new tax credits: the home heating system credit and the clean heating fuel credit. For tax years beginning in 2006 and 2007, an individual can take a credit against their New York State personal income tax based on the costs incurred that are directly associated with the replacement of an existing home heating system. Additionally, a tax credit of up to \$0.20 per gallon is allowed for bio-diesel fuel that is used for space heating or hot water production for residential purposes within New York State. The credit applies to bioheat purchased on or after July 1, 2006, and before July 1, 2007.
- The Federal Government offers The Energy Policy Act of 2005 (Public Law 109-58) as legislation that creates a tax incentive for constructing energy efficient commercial buildings. Specifically, it establishes a tax deduction for expenses related to the design and installation of energy-efficient commercial building systems. However, the deduction is only applicable to building systems installed before January 1, 2009, so it is important to take advantage of this deduction before its expiration. Pending legislation before Congress would also add a Federal Tax Credit (as opposed to a deduction) for certain energy improvements in commercial buildings.

In addition to all of the above, there is a real and growing degree of elevated public consciousness on sustainability issues. There’s a

very real fear taking root as people around the world ponder the potentially catastrophic consequences of global warming. Al Gore’s documentary “An Inconvenient Truth” has brought considerable attention to the topic. And even more recently, a 21-



University of Toronto Student Centre—exterior night

page report issued from Paris by the Intergovernmental Panel on Climate Change seemed to confirm the worst. “Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global mean sea level,” the report concludes. The cause is human activity that results in the copious emission of greenhouse gases. The resulting warming, the panel believes, will continue for centuries even with our best efforts to reduce greenhouse gas emissions.

With this sobering prognosis, sustainability is no longer an option, but the only real solution as part of good, responsible building design. My employer, professional design and consulting firm Stantec, for example, has made sustainable design the foundation of its corporate mission.

Accordingly, we have been privileged to participate in diverse recent projects that demonstrate the breadth of use of sustainable design in North America today. The following paragraphs provide a synopsis of just a few of those projects in the interest of sharing some examples of ways to address sustainability issues.



University of Toronto Student Centre
—skylights and green roof

**GULF ISLANDS NATIONAL PARK RESERVE OPERATIONS CENTER —
SIDNEY, BRITISH COLUMBIA**

The Canadian government issued a mandate in 2004 that all newly constructed federal buildings adhere to one of the highest standards in green building design – LEED Gold certification. The first new federal building to be constructed after this mandate took effect was the Gulf Islands National Reserve Operations Center in British Columbia.

Through several “eco-charrettes,” the design team, client and key stakeholders evaluated various sustainable solutions for the construction of this three-story, seaside facility. In the end, the design introduced such green components as native plantings on the site to eliminate a need for a permanent irrigation system; rainwater storage and collection to be used for toilet flushing and wash-

ing marina equipment; power efficiencies garnered from highly efficient lighting fixtures, occupancy sensors and photosensors; a building orientation that takes advantage of solar heating opportunities; the inclusion of exterior sunshades to reduce cooling costs; and in-slab radiant heating and cooling systems that incorporate a geothermal ocean loop, which eliminates the need for a traditional chiller system.

Though the initial project goal was to obtain LEED Gold certification on this project, it ultimately achieved the highest standard in green building design – Platinum certification.

**APCO BROWNFIELD —
ROCHESTER, NY**

Amidst a sprawling residential neighborhood in Rochester, New York, a brownfield once owned by various developers and contractors served as a private dump for construction and demolition debris for nearly a century. The result was not only unsightly, but dangerously unsafe given the amount of asbestos, pesticides, mercury, petroleum and other contaminants present in the waste. Alarmed area residents formed an association to press their concerns about the site and demand action.

When the site owner declared bankruptcy and abandoned the property, the city stepped in. It authorized a \$4 million cleanup that was funded up to 75 percent by the state Clean Water/Clean Air Bond Act. The project team implemented a number of remediation technologies to turn the brownfield green again. Among them, an above-ground bioremediation cell constructed to treat more than 5,000 cubic yards of petroleum-saturated soil that had surrounded underground fuel storage tanks, and an in-ground oxygen injection system that reduced contaminant levels in plumes of groundwater flowing offsite to well below drinking water standards.

Today, 27 new middle-income residences rest atop the former brownfield in a new subdivision that blends seamlessly into the existing neighborhood.

UNIVERSITY OF TORONTO STUDENT CENTRE — TORONTO, ONTARIO

When the University of Toronto undertook the task of designing a new student center, it took some direction from its environmen-

tally concerned students. Through their Student Building Committee, the students espoused a desire for a sustainable student center that would give back to future generations of students.

Green design then became a guiding principle of the project, and the end result has not disappointed. The 50,700-square-foot building, which serves as a gateway to the university, boasts diverse green components. These include rainwater collection and storage to minimize demand on the municipal water supply; low volatile organic compound finishing materials to keep the air clean and occupants healthy; a vegetated “green” roof to help with heating and cooling; a site plan designed to integrate and encourage public transit use; renewable interior building materials such as bamboo floors; daylight management features and natural ventilation; a building orientation that provides solar heating benefits; expanses of open space; and tons of recycled steel incorporated into its structure.

The student center is currently under consideration for LEED Silver rating.

**STANTEC GREEN ROOF —
EDMONTON, ALBERTA**

At the Stantec corporate headquarters building in Edmonton, we added the first green roof in the city. Our roof works to help cool the atmosphere, to manage storm water runoff and to reduce water and air pollution. It also helps in some measure to cool the city by reducing the amount of rooftop asphalt exposed to the sun.

The green roof consists of a shallow layer of soil which supports diverse plants that thrive in Edmonton’s northern climate. It also helps us save money, since the plants protect the roofing material and provide insulation. In addition, they help keep the building’s temperature more constant. And finally, they provide an appealing view for the employees of the building’s North Tower, which looks out over this rooftop garden.

CONCLUSION

As the dire predictions about the consequences of global warming grow ever more real, sustainable design is less a choice than a requirement. The good news is that the state of green technologies, the commitment of design professionals, and the range of green design applications are all equal to this great challenge.

Building Green: Whether You Like It or Not

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By James H. Rowland, Esq. and Scott K. Winikow, Esq.

Although there is no universally accepted definition of green building, the term has become synonymous with both building an environmentally efficient building and, whether founded or not, significant additional first cost expense for developers and owners.¹ In 1998, the U.S. Green Building Council (USGBC) created the Leadership in Energy and Environmental Design (LEED) rating system in an effort to provide the building industry with consistent, credible standards for what constitutes a “green building.”² USGBC established LEED as a “voluntary, consensus-based, market-driven”³ national standard for developing high performance, sustainable buildings; however, certain local governments (both inside and outside New York State) are ignoring the voluntary aspect of LEED, but are instead requiring mandatory compliance with LEED, or similar green building standards. As a result, green building can no longer be viewed as something just for the environmental friendly element. Instead, green building is quickly becoming synonymous with another familiar term, mandatory.

Babylon and Beyond

In February 2006, Suffolk County passed Resolution 1028-2006 requiring the Department of Public Works to achieve LEED Certification⁴ of all new construction or major renovation projects over \$1 million.⁵ In New York City, Local Law 86, which became effective on January 1, 2007, requires LEED Silver certification on all new construction, additions, and reconstructions of City-owned buildings with construction costs over \$2 million.

With its recent enactment of Local Law 40⁶, the Town of Babylon has taken the concept of building green and LEED certification one step further by becoming, according to Town of Babylon Supervisor Steven Bellone, “the first municipality in the country to adopt a comprehensive Green

Building Code for all new commercial, industrial and multi-residential buildings over 4,000 square feet.”⁷ By enacting Local Law 40, Babylon extended government mandated LEED certification beyond public funded construction and has now made LEED certification mandatory on private sector construction. In particular, for projects in which a building application is not received by the Town by December 20, 2007, Town of Babylon Local Law 40⁸, requires that all new construction of commercial, office, industrial and multiple residence buildings of 4,000 square feet or more obtain LEED certified status as a condition to obtaining a Certificate of Occupancy. While other cities and local governments have passed similar requirements for public works and large scale buildings⁹, the Town of Babylon is the first municipality in the Northeast to require LEED certification on non-publicly funded construction.¹⁰

Although Local Law 40 does not become effective until December 20, 2007, the Town of Babylon is giving incentives to those projects which satisfy LEED standards through an expedited permit process.¹¹ In addition to the fees which must be paid to the USGBC to obtain LEED Certification, Local Law 40 also requires that every applicant pay a fee of \$0.03 per square foot, not to exceed \$15,000, to the Town of Babylon Green Building Fund. While the Town of Babylon will refund the fee paid to the Town upon obtaining LEED Certification, it appears that developers and owners will not be reimbursed for any fees paid to the USGBC.

One troubling aspect of Local Law 40 is its provision that no Certificates of Occupancy shall be issued unless the LEED review documentation or local variant of Green Building documentation demonstrates that the proposed building shall attain LEED certified status or the local variant acceptable to the Building Inspector. The adopted Local Law 40 does not provide for the issuance of a Temporary Certificate of

Occupancy if the building is completed, but has not yet been LEED certified. Since certification from the USGBC is a protracted process which can take several years to achieve, developers and owners may face inordinate delays in obtaining a Certificate of Occupancy. Obviously, these delays can have far reaching implications, both financially and legally, and should be addressed preemptively in all contracts and financing agreements in an effort to avoid future disputes and litigation.

The construction of the Tanger Outlet Center in Deer Park, New York will provide an opportunity to witness the implications of requiring green building in the Town of Babylon. Although Local Law 40 is not yet effective, the Blumenfeld Development Corporation (BDC) has agreed to build the Tanger Outlet Center in accordance with LEED Certified standards.¹² Supervisor Bellone, of the Town of Babylon, observed that “the Tanger development will help establish a new and better way to build on Long Island.”¹³ In order to reach LEED certified standards, BDC plans to use most materials at the construction site, including wood and concrete from pre-existing buildings that need to be demolished. Plans include the use of the old concrete as a base for the new parking lot.¹⁴ Additionally, BDC has agreed to use a new 700 yard railway spur line in order to transport construction materials and debris to and from the Tanger Outlet site. Although the rail spur purportedly will cost \$1 million, it is anticipated that the use of the railroad spur line will reduce emissions by keeping 5,500 trucks off the Commack Road corridor.¹⁵

It will be interesting to observe the impact Local Law 40 will have on the the cost of the project. The Town of Babylon argues that the LEED requirements will only “minimally increase construction costs”¹⁶; whereas, BDC anticipates that obtaining LEED Certification would entail a “significant seven-figure increase in construction costs.”¹⁷

Conclusion

In its Green Building Action Plan for 2006, the USGBC recommends that state and local governments use “the carrot,” including financial incentives, such as New York State Green Building Tax Credit Program, and fast track permit processes, and not “the stick” to motivate private developers and owners to build green.¹⁸ Coupled with long term energy savings, increased financing

specifically targeted to green building, potential increased rental income, these financial incentives could help reduce fears over increased first costs sufficiently to make even the most skeptical private-sector developers and owners consider building green. Despite the USGBC's recommendation, however, the Town of Babylon has decided to forego the carrot by enacting Local Law 40. It appears the Town of Babylon may be at the forefront of an emerging green trend of social engineering through government mandate. As such, there is little doubt that developers and owners will be required to develop a better understanding of both green building and LEED Certification.

¹ In Chapter 2 of the 2006 Building Design & Construction, White Paper on Green Building and the Bottom Line [hereinafter WHITE PAPER], the author notes that despite numerous studies which purportedly show that green buildings can be constructed at little or no dollar premium, the fear of added "first costs" remains strong among developers and property owners. BUILDING DESIGN & CONSTRUCTION, WHITE PAPER ON GREEN BUILDINGS AND THE BOTTOM LINE (Nov. 2006) available at <http://www.bdcnetwork.com/article/CA6390371.html?nid=2073> (last visited Jan. 22, 2007).

² See LEED: Leadership in Energy and Environmental Design, U.S. Green Building Council, at <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19> (last visited Jan. 22, 2007).

³ See LEED-NC, Green Building Rating System For New Construction & Major Renovations, Version 2.2, Oct. 2005 [hereinafter LEED Ver. 2.2] available to download at <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=220>.

⁴ LEED-NC Version 2.2, the Green Building Rating System for New Construction and Major Renovation, which became effective in October 2005, contains four levels of certification. To obtain a Certified Level, the lowest level of LEED certification, a building must earn at minimum of 26 points. A Silver Level certification is achieved at 33 points, a Gold Level certification is achieved at 39 points and a Platinum Level certification is achieved at 52 points.

⁵ LEED Initiatives in Government and Schools, U.S. Green Building Council, December 2006 (updated February 1, 2007) available to download at <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1496>.

⁶ Local Law 40 was enacted, pursuant to Resolution No. 860, on December 20, 2006.

⁷ See Town of Babylon, News, at <http://www.townofbabylon.com/news.cfm?id=182&searchDate=2007-01-01> (last visited Jan. 16, 2007).

⁸ See Brandon Bain, Newsday, December 21, 2006, Long Island, Babylon, *Town Board Approves 'Green' Building Code*, at <http://www.newsday.com/news/local/longisland/ny-ligree215023910dec21,0,22285742.story>.

⁹ On December 5, 2006, the Washington, D.C. City Council passed bill #B16-0515 requiring that all publicly-owned, non-residential commercial projects achieve LEED Silver Certification. The bill further requires that, by 2009, all new construction or major renovations to non-residential private buildings of 50,000 square feet or more must submit a checklist outlining green features that will be pursued and that by 2013, non-residential and post-secondary education facilities must achieve LEED certified status. Further, Boston is amending Article 80 of its Zoning Code to require LEED certifiable design and construction for all development projects over 50,000 square feet.

¹⁰ See LEED Initiatives in Government and Schools, USGBC (updated February 1, 2007) available at <http://www.usgbc.org/showfile.aspx?documentID=691>.

¹¹ See Town of Babylon, News, at <http://www.townofbabylon.com/news.cfm?id=182&searchDate=2007-01-16> (last visited Jan. 16, 2007).

¹² *Supra*.

¹³ See Town of Babylon, News, at <http://www.townofbabylon.com/news.cfm?id=175&searchDate=2006-11-09> (last visited Jan. 16, 2007).

¹⁴ See Brandon Bain, Newsday, January 12, 2007, Long Island, Deer Park, *Train a Green Machine at Building Site* at <http://www.newsday.com/news/local/longisland/ny-ligree125049336jan12,0,2215628.story>.

¹⁵ *Supra*.

¹⁶ See Town of Babylon News, *Supra* Note 14.

¹⁷ See Bain, *Supra* Note 15.

¹⁸ See WHITEPAPER, page 60.

CORRECTION NOTICE: In our previous issue on BIM, in the article titled, "Digital Design and the Age of Building Simulation," the center circle in figure 1 was incorrectly labeled as "Computational Fluid Dynamics" and should have been labeled "Contract Documents." We regret the error.

SAVE THE DATE

Thursday, June 28, 2007

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Retrofitting Green: Why it Makes (Dollars and) Sense!

The existing building stock in
New York City is tremendous.
However, the most underutilized
LEED product—and the one from
which we have the most to gain—is
LEED for Existing Buildings.

LEED-EB has been specifically
crafted to offer incentives to those
building owners who choose to
retrofit their buildings with green
design elements. Hear from owners
such as Tishman Speyer and NYMEX
who are at the forefront of green
construction retrofitting along with
representatives from the USGBC,
the Bloomberg administration,
Cushman & Wakefield, FXFOWLE
and the New York State Energy
Research and Development Authority
(NYSERDA) as they discuss this
important issue and the significant
added value it can offer to the
sustainability movement.

Green Building and the Clinton Climate Initiative

By Marianne Merritt Talbot, Esq.

It no longer makes sense for us to debate whether or not the earth is warming at an alarming rate, and it doesn't make sense for us to sit back and wait for others to act. The fate of the planet that our children and grandchildren will inherit is in our hands, and it our responsibility to do something about this crisis. — William J. Clinton

The rapidly deteriorating state of our environment and the preservation of natural resources appears now to be an issue that is moving to the forefront of our national consciousness, perhaps driven by recognition of global warming (the ten warmest years on record have all occurred since 1990) and the dramatic increases in oil and gas prices. It is also galvanizing action in attempts to stem, and perhaps even reverse, ongoing environmental degradation. To that end, in August 2006, Bill Clinton and the Clinton Foundation launched the Clinton Climate Initiative (CCI), the goal of which is to “fight against climate change in practical and measurable ways.”

The first initiative of the CCI is a partnership with the Large Cities Climate Leadership Group, an organization comprised of many of the largest cities in the world, all of which have pledged to reduce greenhouse gas emissions. Members of the Leadership Group include New York, Chicago, Paris, London, Mexico City, Buenos Aires, Istanbul, Seoul, Johannesburg and Cairo. The importance of specifically and integrally involving large cities in the process to protect the environment is apparent, as 75 percent of the world's greenhouse gases are produced in urban areas.

What appears to make the CCI partnership a potentially potent ally in efforts to protect the environment is the utilization of a market-driven solution to reduce greenhouse gasses. Pursuant to this plan, the CCI seeks to create a consortium that will pool the purchasing power of cities in order to reduce the prices of energy-saving products and accelerate the development of energy-saving technologies. This approach is akin

to the Clinton Foundation's AIDS initiative, which has formed consortiums to reduce the cost of lifesaving AIDS drugs and effectuate their widespread distribution.

The construction industry is an integral part of the CCI's environmental designs. On August 8, 2006, the CCI signed a Memorandum of Understanding with the U.S. Green Building Council (USGBC), whose green building LEED rating system is in use across the United States, as well as twenty countries worldwide. Pursuant to this Memorandum of Understanding, the USGBC has agreed to work with the CCI in disseminating technical expertise in green building practices in order to increase the number of green buildings internationally. Another organization involved in this green building component of the CCI includes the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

An additional component of the CCI's project blueprint is the creation of measurement systems that will allow cities to assess and set baselines on their current greenhouse gas emissions, thus providing them with a means of measuring changes in emissions levels. The program is additionally intended to promulgate methods through which cities around the world can communicate with each other as to what are the most effective (or ineffective) emission reduction means.

Notably absent, however, from the impressive roster of cities involved in the CCI/Large Cities Climate Leadership Group are any cities in China. China has the dubious honor of being home to the top ten most polluted cities on the globe. Pollution clouds originating in China have been tracked traveling to the United States and Europe. The impact that China, with portions of its massive population migrating to cities and purchasing automobiles, will have on the global environmental condition may be vast, dramatic, and potentially catastrophic. It is thus imperative that

China become part of the global community united to protect the environment, by and through its cities' membership in the CCI and Large Climate Leadership Group, promoting or mandating green building practices, or adopting other means through which to exercise appropriate environmental responsibility for the benefit of not only its own country, but the international community.

The CCI is committed to making a difference in the fight against global warming and will continue to work with the world's largest cities to reduce greenhouse gas emissions.

Greenbuild 2007

November 7-9

Greenbuild 2007 in Chicago will be an event like no other. For 3 days in November, more than 15,000 building professionals will come together in one of the most exciting cities in the world to connect with one of the most important movements of our time. For more information, go to www.greenbuildexpo.org.

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