

Going Green

“Green building”—where developers, commercial property owners, tenants, and homeowners incorporate environmentally sensitive design, practices, and materials into construction and ongoing office and home operations in an effort to minimize their environmental impact—has moved rather quickly from a rough concept to a full fledged movement across the United States. The trend already has had important impacts, both positive and negative, for Long Island’s land use and real estate development.

Consider, for example, that since Long Island’s first green office building, the Albanese Organization’s property on Franklin Avenue in Garden City, opened in 2005,¹ other builders have begun to follow suit. For example, an 800,000-square-foot “green” shopping mall, the Arches at Deer Park in the Town of Babylon, will open later this year.² Ground recently was broken in the Moriches, in Long Island’s Brookhaven Town, on a 10 acre, 78,000-square-foot, seven-building industrial park that is going to be the first “green” industrial park in the state.³ Suffolk County has announced agreements to purchase “green power” for the county nursing facility in Yaphank and two government buildings in Hauppauge, as well as solar panels for police headquarters in Yaphank.⁴

Out on eastern Long Island, a group of



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building contractors recently formed the Hamptons Green Alliance to help consumers make their homes environmentally friendly. And Long Island recently held its first Building Green Gala, sponsored by the U.S. Green Building Council’s Long Island chapter.⁵ Green building is here, and it is here to stay.

There are different ranges of steps that qualify as green building, including using building products made from recycled materials, installing low-maintenance, water-efficient landscaping and renovating older buildings rather than tearing them down. More formally, there is the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, a third-party certification program of the U.S. Building Council that created a green benchmark for the design, construction, and operation of green buildings. There are different LEED rating systems for new construction, existing buildings, commercial interiors, schools,

retail, healthcare and other buildings.⁶

Recently, the National Association of Home Builders created a National Green Building Program, emphasizing energy efficiency and eco-friendly materials when building and remodeling homes. The program grades homes in seven categories—design; resource, energy and water efficiency; indoor environmental quality; homeowner education; and global impact—and awards gold, silver, and bronze ratings.⁷ The Long Island Builders Institute reportedly will be issuing its own green building program later this year based on the Home Builders’ program, with modifications specifically designed for Long Island’s conditions that will promote tools such as whole house dehumidifiers.⁸

All of these efforts serve a variety of purposes. Many developers have found that green buildings have a certain cachet attractive to businesses and consumers, as well as to employees. More particularly, green building is intended to combat greenhouse gas emissions and the detrimental effects of the use of nonrenewable resources, among other things. Although there are many sources of environmental problems, the Energy Information Administration of the U.S. Department of Energy reports that buildings account for 36 percent of total energy use, 65 percent of electricity consumption, 30 percent of raw materials use, and 30 percent of waste output.⁹ This has led government officials and agencies,¹⁰ including on Long Island, to take action.

Now, the Long Island towns of Babylon and Brookhaven require that new commercial growth be green certified. Babylon believes its rules, including that all

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new residential construction meet "Energy Star" standards,¹¹ should reduce greenhouse gas emissions by 1.37 million tons, equal to removing 300,000 passenger cars from the road per year.¹² The Town of Huntington's building code encourages installation of energy efficient appliances and fixtures in all new residential construction.¹³

Tax Credit

A significant reason for building green is the New York State Green Building Tax Credit.¹⁴ Section 19 of the Tax Law encourages building owners and developers to design, construct and operate buildings that are energy efficient, utilize recycled materials, provide clean air, and incorporate renewable and energy efficient power generation. Regulations issued by the Department of Environmental Conservation (DEC) set forth certain standards and other requirements that must be met for a base building to be a green base building and for tenant space to be designated as green tenant space, as those terms are defined in Section 19 of the Tax Law, and the methods by which taxpayers must demonstrate compliance with those standards and requirements to be eligible for the green building tax credit.

The regulations explain the standards for each feature and category of consideration for green buildings and specify the methods for demonstrating compliance beyond basic written certifications of compliance by the owner, applicant and appropriate licensed professionals, as well as recordkeeping and reporting requirements.

As explained by the DEC, the Green Building Tax Credit provides for tax credits to owners and tenants of eligible buildings and tenant spaces that meet certain "green" standards. These standards increase energy efficiency, improve indoor air quality, and reduce the environmental impacts of large commercial and residential buildings in New York state, among other benefits.

Credit certificates issued during the years 2000 to 2004 are allowed for taxable years through 2009. The credit is for a percentage of "allowable costs" (generally, those costs properly chargeable to capital account,

other than for land) and paid or incurred by the taxpayer after June 1, 1999. The credit is allowable against various taxes, including taxes imposed under Tax Law Articles 9 (Tax on Certain Business Corporations and other Business Entities), 9-A (Franchise Tax on Business Corporations), and 22 (Personal Income Tax).

Eligible buildings include certain hotels and office buildings having at least 20,000 square feet of interior space, residential multi-family buildings having at least 12 units with at least 20,000 square feet of interior space, and residential multi-family buildings, at least two units, part of single or phased construction, with at least 20,000 square feet of interior space, provided at least 10,000 square feet is under construction or rehabilitation in any single phase.

There are six different credit components for which a taxpayer might be allowed a credit. The components include a whole building credit component (where the base building and all the tenant space is green); a base building credit component; and a tenant space credit component.

Legislation passed in 2005 amended the program and provided an additional \$25 million in credits with the aggregate amount of credit components permitted for each building being \$2 million. Under the new legislation, the DEC has five years, from 2005 through 2009, to accept applications for and issue credit certificates for the additional \$25 million, allowing tax credits to be received from 2006 through 2014. The existing regulations are being updated and applications for credit component certificates for this period will not be accepted until the updated regulations are promulgated.

This legislation includes two contingencies that were not included in the initial enactment. First, if under this second period, credit certificates have not been issued for the entire amount of \$25 million by the close of 2009, the program will be extended into 2010 in an attempt to exhaust the allocation. Second, if a taxpayer issued a credit certificate is unable to claim all of the credits provided pursuant to the certificate, the unclaimed amount of credit could be allocated to either a taxpayer who already has

been issued a credit certificate or to other taxpayers who could apply for and be issued a credit certificate.

Conclusion

Green buildings use resources, including energy, water, materials, and land more efficiently and effectively and provide healthier environments for working, learning, and living. Green buildings minimize the negative environmental consequences by lessening changes to the natural environment, using recycled or recyclable material, incorporating renewable and energy efficient power generation systems, using water resources more efficiently, and producing less waste.

We undoubtedly will continue to see more and more green building on Long Island, and elsewhere through New York and the country. Indeed, construction that is not green-sensitive is likely to be dwarfed by green building techniques sometime soon.

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1. Elizabeth Moore, "Buildings go 'green' to save energy," *Newsday* (May 14, 2007), available at http://www.albaneseorg.com/property/pdf/1001%20Franklin%20Ave_Newsday%20May%2014%202007.pdf.

2. David Winzelberg, "In Suffolk, green building codes in fashion," *Long Island Business News* (Dec. 14, 2007).

3. Patrick Whittle, "Moriches complex to be 'green,'" *Newsday*, p. A32 (Feb. 28, 2008).

4. "Suffolk County Executive Steve Levy Announce Agreements for Green Power Purchases at Three County Buildings and Solar Panels at Police Headquarters," available at <http://www.co.suffolk.ny.us/County%20Executive/Green%20Power%20Purchases.pdf>.

5. David Winzelberg, "Real Deals," *Long Island Business News* (Jan. 18, 2008).

6. See <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=222>.

7. See <http://nahbgreen.org/>.

8. See Gary Dymski, "Local builders welcome green standards," *Newsday*, Feb. 13, 2008.

9. See <http://www.eia.doe.gov/>.

10. See, e.g., <http://www.nyserda.org/programs/state.asp>, discussing New York State Executive Order 111 issued by former Governor George E. Pataki to provide green building guidelines for all state executive branch agencies, departments, public benefit corporations, and authorities. See also Assembly Bill 2005, passed unanimously by the state Assembly on Feb. 25, 2008, and requiring all new construction and substantial reconstruction projects undertaken by the state to comply with green building principles.

11. See http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_technical_resources.

12. See Winzelberg, *supra* n. 2.

13. See <http://www.greenbuildingsnyc.com/2008/02/26/huntington-village-long-islands-surprising-green-side/>.

14. See <http://www.dec.ny.gov/regs/4475.html>.