

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
CENTRAL FLORIDA CHAPTER

GREEN MATTERS

Welcome to the inaugural issue of "Green Matters", a publication of the Sustainability Committee of the NAIOP Central Florida Chapter.

The Committee was organized last year to assist our membership in understanding and implementing sustainable development of commercial real estate. From the NAIOP national association, to the local chapters, NAIOP has embraced sustainable development while striving to insure that requirements related to sustainable development do not unfairly burden the commercial real estate industry.

This newsletter will be provided quarterly to keep the members apprised of this fast moving and financially important aspect of our practice.

Of particular note is our committee's first annual "Green Summit" which will be held at the downtown Marriott on Friday, September 18th. We invite you to click on the link below to learn more about the summit. As you will see, we are making special efforts to focus on the financial and practical issues of green development with which our member must be familiar in order to understand the financial and other impacts of green building.

Please contact me if you would like to be included on the Committee.

Sincerely yours,

Terry Delahunty, Esq.



GREEN SUMMIT



**SEPTEMBER 18th from 2-7PM
Downtown Orlando Marriott**

Learn about **GREEN** developments from developer and broker points of view. We will examine the financial impact of sustainable development relative to traditional buildings and its impact on lease rates, resale value and marketability.

2-3PM Registration/Networking/Exhibit Booths

3-4PM General Session

4:15-5PM Breakout Sessions

5-7PM Networking Reception/Exhibit Booths

[For program details and to register, please visit www.naiopcfl.org](http://www.naiopcfl.org)

NAIOP Central Florida Chapter

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**Scott Batterson, P.E.,
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Will You Have To Pay If You Go Green?

By: Terry Delahunty, Esq., LEED AP
 GrayRobinson, P.A.

As green building becomes more mainstream, Central Florida will see more buildings incorporating green practices in order to remain competitive, reduce energy costs and lessen their carbon footprint. However, could these actions result in paying more ad valorem property taxes than if the building were not green? To the extent that the value of the property is increased due to receiving higher rents from tenants who are increasingly seeking green space, the answer would be yes. If the building has more income, then it is more valuable and ergo, its taxes would increase. This would be an acceptable tradeoff to most property owners as the increased taxes are a result of increased revenue.

Approaches that the appraiser can use include: cost approach (what would it cost to replace the building); market value (what would the sales price of the building be between a willing buyer and seller); and income approach (estimate the value bases on the discounted cash flow or on the capitalization of the rents). For most commercial properties, the "income approach" is used by the county property appraiser.

However, what about a building where particular green upgrades are made, such as installation of an expensive solar electric panel on the building's roof? Would the cost of the solar array be included in the property tax? If the building is appraised based on its market value or its replacement cost, this is a possibility. County property appraisers are required to assess the true value of the property, without regard to the positive effects that the improvements have on the environment.

In Central Florida, with just a few privately owned commercial buildings, the property appraisers have yet been presented with the question of assigning a value to "green". Property appraisers are monitoring this evolving aspect of our industry, to determine how this will be handled. At present, the Florida Department of Revenue has not instituted any rules that apply. They note that there are currently no codes in the appraiser process to address these items. Further, they believe that the value of green development on a property is currently unsettled and factors such as additional complications caused by having green improvements could possibly be considered a detriment to the property value.

It should be noted that, until the passage of a constitutional amendment in 2009, Florida law permitted exemptions to real estate taxes for "renewable energy source devices" and the real property on which they were located. The 2008 amendment, however, in extending the exception to improvements to resist wind damage, limited the renewable energy exemption to residential property.

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Green Development Certification Program

By: Bill Lites, Senior Ecologist, LEED AP
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The Florida Green Building Coalition (FGBC) Green Development Certification program was designed to evaluate green practices on horizontal land planning projects. This program will accommodate almost any horizontal development plan, from a small 3-acre housing project to a 15,000-acre Development of Regional Impact (DRI). A Florida Green Development Certification evaluates projects in the following six categories.

Category 1 – Protect Ecosystems and Conserve Natural Resources (P)

Category 2 – Circulation (C)

Category 3 – Green Utility Practices (U)

Category 4 – Amenities (A)

Category 5 – Covenants and Deed Restrictions (CDR)

Category 6 - Provide Educational Information to Help Achieve and Promote Green Living Practice (E)

Additional points can be obtained in all six categories for non-listed environmental benefits. Extra credits are given for green or sustainable practices that are not included in the reference guide.

Two hundred points are required to be certified as a Florida Green Development. Each category has a minimum and maximum number of points, so that all of the points are not obtained in one or two categories. There is a penalty for not obtaining the minimum number of points in each category.

The application fee includes a base fee of two thousand dollars (\$2,000.00), plus one dollar per acre, up to a total of five thousand dollars (\$5,000.00). A pre-submittal application can be submitted to begin the process with FGBC and to obtain a third party Project Evaluator. The Florida Green Building Coalition web page (www.floridagreenbuilding.org) includes a useful interactive spreadsheet to help evaluate projects prior to submittal.

A project can be certified at any stage of the process, from conceptual design through completion. But it is typically much easier to certify it at the conceptual stage, before hard commitments and construction level designs have been permitted. This helps to avoid pro forma pitfalls or costly redesign to achieve the Green Development Certification.

The developer, local municipality, and end users benefit from achieving the Green Development Certification in many ways. A developer gains valuable promotion and advertising, third-party environmental verification, differentiation of the development from the competition, and potentially lower infrastructure costs and higher absorption rates. The municipality potentially obtains more green and recreational open space, natural resource conservation and habitat management plans, less water and air pollution, and less traffic congestion than a standard development. The end user obtains reduced expenses, healthier living for employees and residents, potential financing incentives and pride in purchasing a designated - Florida Green Community.

Legal Implications of Green Development

By: Jarrett D. Bingemann, LEED AP

Akerman Senterfitt and Heather M. Himes, LEED AP, Akerman Senterfitt

Public and private entities throughout Florida and the United States have recognized that green development is a necessary step in the evolution of the real estate development industry. This realization is evidenced by the green development programs and legislative efforts that are emerging across the state and country. Although the definition of what constitutes green (also “sustainable” or “high-performance”) development is evolving, the term is generally applied to development projects that have been designed and built with the goals of promoting resource efficiency (energy, water, etc.); minimizing the impacts on the surrounding environment; and promoting occupant health.

Parties that are involved in green development should be aware that there is a significant amount of legal risk associated with green development activities and services. In parts of the United States where green development is prevalent, there has been increasing amounts of litigation related to green development activities primarily because there is no universally accepted standard for what qualifies as green development and consumers that have paid a premium for green development activities have heightened performance expectations. Consequently, architects, engineers, planners and environmental consultants offering green development services may face accusations of fraud, negligence, breach of contract, or violations of unfair competition laws if such parties fail to accurately define the scope of services in their marketing materials and service agreements; do not meet previously quantified green performance expectations; or do not attain final certification under the applicable rating system.

Parties offering green development services should obtain legal counsel with experience in green development to confirm marketing materials, service agreements and insurance policies related to green development in order to mitigate the new and evolving risk of litigation in this area. Further, consumers and local governments that engage third parties to provide green development services should obtain legal counsel with experience in green development to explain the nature and extent of green development services being contracted, and the potential means of recourse in the event that their contractual expectations are not satisfied.

In addition to legal liability, green development will also impact many areas of Florida land use and local government law. Currently, despite efforts to promote green development, many jurisdictions have conflicting structural constraints in their zoning, land use and land development codes, especially in the areas of stormwater management design, transportation management, and landscape regulations, which effectively prohibit the use of green development strategies. Further, if local governments mandate that projects achieve certification from a rating system or standard as a condition of a development approval, despite the fact that certification may only be achieved following construction, there are questions as to how such mandates may be enforced or interpreted by the courts. For example, if a local government requires a project to achieve LEED certification as a condition of receipt of a zoning approval and the project ultimately does not obtain LEED certification, could the project lose its zoning after it is already constructed? See, e.g., *Sindel v. Pincrest Lakes, Inc.*, 75 So.2d 191 (Fla. 4th DCA 2001). Finally, local governments must determine how they will ensure that green development projects will maintain their applicable rating or certifications once construction is complete and the operation and maintenance phase of the green development project begins.

As the aforementioned legal considerations gain increasing attention across the country and in Florida, it is important to understand that green development is comprised of intricate rating systems, standards, and programs, as well a dynamic regulatory landscape, which requires increasing specialization to avoid legal liability and ensure the success of a green development project.