



Environmental Due Diligence Guide

REPORT

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An Insider's Perspective

Green Building Criteria and Benchmarking Evolving Rapidly in Marketplace

The emerging market evolution of benchmarking and rating criteria for energy-efficient buildings continues to move swiftly and is forcing commercial real estate stakeholders to determine how climate change and sustainability issues should be integrated into property transactions and redevelopment strategies, a Michigan attorney told BNA May 18.

In addition to voluntary certification programs, like the Environmental Protection Agency's ENERGY STAR and the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) programs, individual cities and states are mandating green building requirements and public disclosure of property energy efficiency and the sustainability performance of buildings, Mark Bennett explained. Bennett is senior counsel and the head of the climate change practice at Miller Canfield.

Recognized Standards

ENERGY STAR, Bennett said, is "out there as a broadly recognized baseline standard" being used by building owners and operators trying to assess the energy use and performance of their buildings. "It does have its limitations due to the

dated nature of its database and small sample sizes with certain property types," he continued. ENERGY STAR is a "necessary but not sufficient part of the process," according to Bennett.

LEED, including the LEED standard for existing buildings (LEED-EB), continues to gain footing. "While LEED is considered to be costly and more than what is required in a lot of transactions," the LEED framework and the transparency it provides is very helpful for certain transactions, Bennett said.

As part of this evolution, states like California are incorporating ENERGY STAR benchmarking criteria into legal mandates that will require commercial building owners and operators to disclose energy consumption information to prospective lessees, purchasers, or lenders providing financing for the building, Bennett said. California AB 1103, enacted in January, mandates these disclosures effective January 2010.

The District of Columbia and New York City have passed similar laws, and federal climate change legislation requiring transactional disclosure on a national basis is anticipated, Bennett said. As these developments continue to drive the growing focus on energy efficiency and sustainability of real estate portfolios, "we are trying to make order out of chaos," Bennett said. These new frameworks will become significant for the due diligence process, he added.

CMP's Green Value Score

While ENERGY STAR and LEED are the most well-known green building certification programs, Bennett said, each has its limitations. As such, alternative approaches are being developed, like the Capital Markets Partnership (CMP) "Green Value Score."

Bennett described CMP as a growing, nonprofit, consensus-based coalition of city, state, and federal governments; countries; investment banks; investors; insurers; and nongovernmental organizations that have developed a set of underwriting standards that incorporate green building attributes into standard real estate underwriting practices. It also is an American National Standards Institute accredited standards developer, he said.

Essentially, CMP's Green Value Score dovetails the best of ENERGY STAR and LEED with emphasis on the value-driving components. Unlike ENERGY STAR, it requires an environmental professional to make a legal certification regarding the score and how certain criteria were weighted. "It is not simply a cookie cutter approach," Bennett explained. "Rather, it requires professional opinion and ensures data is not being manipulated." The Green Value Score also incorporates "climate neutral certification" as the benchmark for eliminating carbon-based energy use, he added.

The benefit of the Green Value Score, Bennett said, is that it will "lead to improved underwriting and

investment decisionmaking, while allowing financial market mechanisms to distinguish risk and associated monetary value of real estate assets based on these characteristics.”

ASTM Developments

ASTM also is developing an information-gathering standard to address energy performance disclosures, Bennett explained.

According to a press release, the goal of the task group is “to standardize the way that building energy use numbers are determined and reported in commercial real estate

transactions, with particular focus on how they have been normalized. . . . In this way, prospective purchasers of properties will understand the numbers when they are disclosed, either voluntarily or in response to regulatory requirements.”

Bennett is a member of the task group developing the “Energy Performance Disclosure for Buildings Involved in Real Estate Transactions” standard. Anthony Buonicore is heading up the committee. Those interested in participating can contact Buonicore at ajb@bepinfo.com.

According to Bennett, the ASTM standard is not intended to displace the other approaches but instead “will serve as an entree to get the necessary data gathered so that all transaction participants are reviewing a common set of information.”

An article providing analysis of energy efficiency benchmarking criteria, requirements, and standards written by Bennett will be published in an upcoming issue of EDDG. He can be reached via e-mail at bennettm@millercanfield.com.