



Overcoming a variety of barriers to sustainable development

As a real estate attorney who's had the privilege to work on several projects that attempted, sometimes successfully, sometimes not, to implement new sustainability initiatives, I've come to learn that it's not so simple to implement these plans, despite the well-meaning intentions of the parties. So, as the world of commercial real estate ever so slowly moves in the direction of sustainable development, the question must be asked – what's the holdup? On paper it certainly sounds like a good idea. The environment is benefited. The real estate developer gets credit for implementing "green" initiatives. The tenant can promote an "eco-friendly" store or apartment complex to its customers, enticing them to shop and protect the environment or live "green" at the same time.

So the question remains, why isn't it that easy? The fact is, a great deal of initial tenant education and planning needs to be performed by the developer, and quite frankly, it simply isn't; that is, the necessary education and planning doesn't happen until it's too late. Without educated tenants and a concrete plan to put sustainability initiatives into place, good intentions are doomed to fail before they can even begin. I've seen first-hand how new so-called "green" technologies are received without the detailed information necessary to answer all of a prospective tenant's questions. They are not received well. So what are some of the initial barriers to sustainability and how can they be overcome?

■ **Barrier No. 1: lack of tenant education.** As a developer, are you perhaps looking to implement a new HVAC system at your property utilizing state-of-the-art ground source heat pumps? How about installing greywater cisterns for reclamation and reuse of water to irrigate the property? To most people, that sounds good in theory. Who doesn't want to be able to promote sustainability and help the environment? However, the problem quickly becomes, how does one go about explaining



Andrew J. Hayden
Attorney, Ryley Carlock & Applewhite, Denver

these various technologies? Invariably, tenants are going to have questions. Tenants always are going to ask what these technologies are and how they differ from "standard" systems used in existing stores all across the country. They are going to ask who maintains these systems and what happens if (and when) there is a problem. Further, they are going to ask who installed it and what happens if (and when) the current developer/owner sells the property. What then? Is the new owner going to come in and maintain these systems? The tenant is going to want all of the specifics regarding how these questions will be addressed.

So how can a developer prepare? The answer is, start early. Talk at length with engineers and consultants. Ask the tough questions. How long do these systems take to implement? Are there local companies available to perform the necessary initial construction and maintenance? Are these technologies reliable over the long term or will there be constant maintenance headaches? If a developer doesn't ask these questions, the tenants certainly will. And worse, if a developer doesn't ask these questions, they won't have the answers; ultimately dooming their sustainability initiatives before they can even begin. Prepare an informational package detailing the scope and function of all of the sustainability initiatives that you want to implement and get it in the hands of potential tenants upfront; the earlier the better. Don't wait until the lease stage to start having these discussions. Inevitably, by that time, the tenant (particularly large national retailers)

will have spent significant time and money planning its store with conventional systems, which is going to lead to the dreaded statement no developer wants to hear, "Sounds good, but maybe next time."

■ **Barrier No. 2: lack of proper planning.** While in the process of educating tenants on sustainability initiatives, it is important not to lose sight of the next significant barrier to sustainability – planning. Without proper and thorough planning, it is next to impossible to successfully implement sustainability initiatives, even if a tenant agrees to participate. Again, it is important to note two critical factors. The first is that planning really can't start soon enough. Secondly, starting planning during the lease negotiation stage is simply too late. Planning how to implement sustainable initiatives takes time – and resources. Engineers and consultants need to get involved. Developers need to determine if their initiatives will apply to the entirety of their property or just a portion of it.

Additionally, the planning stage also requires a thorough knowledge of the realistic constraints on the property, including economic constraints, particularly for any sustainability initiatives that will not be on new or ground-up construction. For example, existing buildings may need to be retrofitted to accommodate new technology. Another example of an issue in this area that I have seen come up time and time again relates to the installation of photovoltaic power systems to harness solar power. While this certainly could be a great selling point to prospective tenants or equity investors, the problem comes into play when it is discovered that an existing building, or perhaps a newly designed building that is already in the permitting phase, doesn't meet the structural requirements necessary to hold a rooftop-mounted PV system. Simply put, this could have been avoided with proper planning.

Another issue that can be avoided with proper planning is the overall disruption to the property that the

implementation of sustainability initiatives may entail. For example, a practical issue that I have been faced with is how to implement ground source heat pumps into a property when all of the parking already is completed. As the developer, we were faced with questions about how much, if any, of the parking areas had to be dug up or closed off, even for short periods of time. Proper planning was necessary to implement this technology without interfering with the business of existing tenants. No matter what the potential future cost savings, no tenant will want its customers' shopping experience disrupted because a developer failed to account for possible interference at the property due to the installation of its sustainability initiatives (not to mention that it will surely be a breach of the terms of your lease). When all is said and done, at the end of the day, it comes down to planning. If you start early, sustainability initiatives can, and will, be implemented.

■ **Other barriers.** Without a doubt, there are numerous other factors that can influence whether or not sustainability initiatives can be implemented at any given property. Of course, cost issues immediately come to mind and initial cost objections on the part of a tenant can and will be another major challenge. In reality, cost objections to the implementation of sustainability initiatives is a complete topic unto itself; one that I will be addressing in my next article. Even with proper tenant education and planning by the developer, the question of cost always will loom in the mind of all parties involved.

However, sustainability is such a vast topic that it is best to address each step one at a time. With proper education and planning, the initial barriers to sustainability can be overcome, and sustainable development will have a chance to flourish as a result. As someone once said, "One step at a time is good walking." Or in this case, good development.▲