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Canadian  
Home Builders'  
Association



Association canadienne  
des constructeurs  
d'habitations

July 2, 2008

Derek Satnik  
Mindscape Innovations  
101 Fredrick St., Suite 401  
Kitchener, ON N2H 6R2

Dear Derek,

I am in receipt of your letter of June 17<sup>th</sup> regarding CHBA's *Position on Environmental or "Green" Labeling Initiatives*. I am pleased that you are in agreement with the Association's policy concerning the appropriate use of the EnerGuide Rating System, and on the use of green building programs as regulatory instruments.

However, I must disagree with your comments concerning the Association's position on LEED®, and on the Canada Green Building Council (CaGBC). The information provided by the Association to its members on these topics has a substantive basis. The CHBA would not have raised these issues if this were not the case.

I appreciate that, as a professional involved in green building and in LEED®, these issues are of concern to you. Let me lay out some of the background that underpins the CHBA's positions on LEED® and the CaGBC.

**1) The CaGBC's position on the adoption of LEED® standards as regulatory requirements**

Your points one and four both relate to questions the CHBA has raised concerning the CaGBC's commitment to ensuring LEED® remains truly voluntary and market-driven, so I will address both points together.

In your letter, you note that the CaGBC *"has repeatedly expressed that LEED® is to be a voluntary compliance standard, not a regulatory instrument"*. In a recent exchange of letters I had with Thomas Mueller, the President of the CaGBC, Mr. Mueller made much the same assertion.

As I pointed out in my response to Mr. Mueller, the content of published CaGBC material, and the organization's lack of action when its Trade Mark is referenced in regulation, clearly contradict this position. Let me be specific and offer you the "tangible evidence" you ask for.

CaGBC published material supports, and by implication, encourages regulation. First, I would refer you to the CaGBC's 2007 publication *Municipal Green Building Toolkit*.

In Section 2 of this document, the following observations are put forward, *“Municipal governments can influence green building through implementing various regulatory and non-regulatory measures. However, municipalities have limited powers when it comes to issues that fall within provincial or federal jurisdiction”,* and that, *“A multi-agency discussion between different levels of government is critical to successful implementation of green building regulatory measures<sup>1</sup>.”*

In addition, in Section 6.0 of the Toolkit, entitled *Greening Private Developments*, municipalities are provided with something akin to a blueprint for introducing green building regulation. Specifically, sub-section 6.3, entitled *Regulatory Measures*, examines various mechanisms that municipal governments can use to put into place what the CHBA refers to as “back door” regulation – municipally-mandated requirements related to green building measures, and that apply to private developments.

The section outlines a number of ways in which municipalities can effect such regulation through Development Cost Charges, the development approval process, bylaws, building permit requirements, rezoning and statutory building schemes. Specific instructions are provided to guide municipalities in enacting such green regulatory measures. Within the text it is noted that, *“The private sector may be resistant to regulated green performance. Municipalities must ensure that strategies are in place to assist the private sector in the implementation of performance bylaws<sup>2</sup>.”*

In the conclusion of this section of the Toolkit it is noted that, *“A combination of pricing, incentives, and regulatory measures may be the most effective approach to influence the private sector to go green<sup>3</sup>”.*

These statements are not consistent with an organization that is committed to voluntary, market-driven processes. If the CaGBC were truly committed to ensuring that LEED® remains voluntary, and that it is not used as a regulatory instrument, why has it developed and provided such information to municipalities?

The same sort of contradictory statements can be found in the CaGBC’s 2007 Business Plan<sup>4</sup>, which is freely available on the organization’s website. Here I would refer you to the Overview section entitled *“Setting the Stage for Change”*. Listed amongst the

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<sup>1</sup> *Municipal Green Building Toolkit*, CaGBC 2007, Section 2.0 - Greening Private Developments, page 6.

<sup>2</sup> *Municipal Green Building Toolkit*, CaGBC 2007, Section 6.0 - Greening Private Developments, page 7.

<sup>3</sup> *Municipal Green Building Toolkit*, CaGBC 2007, Section 6.0 - Greening Private Developments, page 10.

<sup>4</sup> *Canada Green Building Council – Business Plan 2007*, Updated March 2007, available online.

CaGBC's stated objectives is *"advocacy with policy makers and regulators to accelerate green building implementation"*. Under "Strategies" you will find the stated intention to *"engage local, provincial and federal governments to support performance improvements in buildings through greening of standards, codes and regulations, and incentives"*.

It is also worth noting that, in the section of the 2007 Business Plan that sets out the CaGBC's Guiding Principles, there is no mention of the organization's commitment to ensuring that LEED® remain a voluntary standard that is not to be used as a regulatory instrument.

This last point comes into clear focus when the CHBA considers the current regulatory climate, particularly at the municipal level. Any organization that operates a green building labeling initiative, and is truly committed to ensuring that its label remains outside the regulatory system, must take appropriate action when those in government violate this principle. This simply amounts to "walking the talk". To do less is to condone such regulation.

All of the green building labels currently operating in Canada, including LEED®, are registered Trade Marks. The organizations that own these Trade Marks have control over how their property is used by others, including by governments. They have the right to demand that any individual or organization that misuses or misrepresents their Trade Mark cease and desist. They can also take legal action to protect this right, if it becomes necessary.

With respect to the CaGBC, we would observe that, by allowing municipalities to reference the LEED® Trade Mark in municipal regulations that apply to private development (as opposed to municipally-owned buildings), the CaGBC effectively becomes a party to such practices. The most recent example of this is in the City of Vancouver, where the new EcoDensity Requirements adopted recently specifically reference LEED® Silver requirements in relation to all privately-developed buildings over four stories built in the city.

The CHBA's concern over the insertion of LEED® requirements in municipal regulations in Canada is spurred on by the trend in the U.S., where it was recently reported that 128 municipalities have now done this, effectively bypassing, and undermining, the Code development process.

Given that the CaGBC controls the LEED® Trade Mark in Canada, it has the right to demand that municipalities like Vancouver cease and desist from appropriating its

Trade Mark in this manner. We are not aware that the CaGBC has asserted this right. If the CaGBC allows governments to utilize its Trade Mark when enacting regulations, when it clearly has the power to stop this practice, its commitment to voluntary uptake cannot be taken seriously.

**2) LEED® standards are not subject to the discipline, rigour or transparency that characterize Canada's system of Codes and Standards.**

Whether LEED® standards are subject to the same type of process as that used by Canada's National Standards System is not an issue for CHBA as long as these standards remain strictly voluntary. I have already outlined the CHBA's concerns in that regard.

However, when LEED® is used within regulations, this becomes a real concern.

The USGBC have indeed been accredited as a Standards Developing Organization by the American National Standards Institute (ANSI). However, this does not indicate that LEED® standards are ANSI-compliant. As reported in Environmental Building News on June 1, 2008, *"the LEED-AP program is ANSI-compliant, but LEED rating systems are not."* In this article, Michelle Moore, Senior Vice-President of policy and public affairs at the USGBC, is quoted as saying *"we haven't made that decision yet for LEED"* in reference to the organization considering adopting an ANSI-compliant process.

The lack of a disciplined process gives rise to anomalies within LEED® standards, such as the exclusive recognition of FSC certified wood for LEED® credits. Given that the vast majority of Canada's certified forests are certified by CSA, and that the two regimes are equivalent, such a requirement would not be acceptable if LEED® standards were subject to a more disciplined, open and accountable process.

The CHBA is committed to the type of open, transparent and accountable Code development process followed by the CCBFC. If the CaGBC believes that current or pending aspects of the Code create barriers for those wishing to develop green buildings, these matters should be on the Commission's agenda so that they can be addressed. As a participant in this process, the CHBA has not encountered any such representations from the CaGBC on any aspect of the Code.

**3) CHBA concerns about the LEED® for Homes points structure.**

The issue you raise regarding CHBA's position on the points structure of the current U.S. version of LEED® for Homes overstates our position on this matter. Our concerns

focus on the potential negative impact of having a single prerequisite requirement for energy performance, rather than a series of increased prerequisite requirements for each higher certification level.

You point out that “*one cannot attain the highest levels of LEED® certification without greatly exceeding this level of (prerequisite) energy performance*”. While this is the case, it is not the issue the CHBA has raised. The Association has simply pointed out that, based on the current published LEED® for Homes Checklist, it is possible to have two homes certified to different levels (for example, “certified” and “silver”) that deliver the same prerequisite energy performance.

Other successful industry-supported initiatives such as Built Green™ require increased energy performance at each higher label level, ensuring that this problem cannot occur, and that higher energy performance is assured when a home earns a higher certification level.

In my correspondence with the CaGBC, I made the point that this problem is linked to the broad basis upon which LEED® for Homes points can be earned, whereas energy performance accounts for only 28% of total available points (under the *Energy and Atmosphere* category).

The CHBA believes that this weighting of points in LEED® for Homes does not accurately reflect the true environmental impacts of a home. Operational requirements for energy, over the minimum of 60 to 80 years the average home will exist, are widely recognized as a dominant, if not overwhelming, source of house-related environmental impacts.

While it is entirely up to the CaGBC to determine how to structure the point system in LEED®, the CHBA has no desire to see green home labels fall into disrepute should LEED® for Homes recognize homes with the same energy performance characteristics at different label levels. I would add that the CHBA is certainly not the first organization to raise legitimate questions concerning how LEED® points can be earned.

### **Other Issues**

In relation to your call that the CHBA engage with the CaGBC regarding its policies and LEED®, as I indicated previously, I have recently responded to a lengthy letter from Thomas Mueller. My detailed response addressed the issues that you have raised, as well as a number of others. On this basis, I believe that the CHBA has very clearly laid out its position and concerns to the CaGBC.

In terms of further engagement with the CaGBC, the CHBA takes the position that it will not collaborate with any organization on matters that could result in inappropriate regulation of our industry through mechanisms outside of the established Codes and Standards system. As I have made clear in this letter, the CaGBC's statements on its commitment that LEED® be a fully voluntary initiative are inconsistent with other policy statements and information put out by the organization. The CaGBC needs to address these inconsistencies, and take unequivocal action to protect its Trade Mark from inappropriate use as a regulatory instrument.

The CHBA is fully involved in the current Model National Building Code of Canada process through the Canadian Commission on Building and Fire Codes. Further, we are seeking the refurbishment of the Model National Energy Code for Houses and hope that this can be undertaken in an accelerated manner. To the best of my knowledge, the CaGBC has not involved itself in either process.

If the CaGBC believes that there are Code- or Standards-based barriers to the voluntary uptake of green building practices by the industry, it should consider participating within the legitimate processes available for addressing these issues.

Derek, I trust that this letter provides you with a better understanding of the CHBA's position on both LEED® and the CaGBC. The issues that the Association has raised are serious and specific, and reflect its core principles, as adopted by the CHBA's membership.

In your letter to me, you accuse the CHBA of acting unprofessionally and of misrepresenting matters. I must disagree with you on this, as I believe the Association has, and is, acting responsibly in these matters.

Yours truly,

A handwritten signature in black ink, appearing to read "John Hrynkow". The signature is written in a cursive, flowing style.

John Hrynkow  
President

cc: CHBA Board of Directors