

Incentives for Going Green in Maryland: Property Tax Credits

By Dino C. La Fiandra

Partner, Whiteford, Taylor & Preston LLP

Phone: 410.832.2084

Email: dlafiandra@wtplaw.com

By now, you know that there are many good reasons to consider building or operating your building to an environmentally friendly “green” standard like LEED (Leadership in Energy and Environmental Design). The so-called “sustainability dividend,” also known as the “green premium,” is the economic benefit to the developer/owner/operator of building or operating to a green standard. Depending on the level of green achieved, the construction costs for a green project may run as much as six percent greater than construction costs for a comparable non-green project, perhaps even more. Although building or operating to a green standard may foster a sense of altruism and social responsibility, particularly in a difficult real estate market the increased construction costs of a green building must be outweighed by the sustainability dividend of the green asset in order to make the green building an economically feasible endeavor.

Some of the natural consequences of greening that we typically discuss include lower energy costs, increased rental occupancy, increased rents, reduction in water consumption, and increased market value/sales price of the real estate, among other items. Tax incentives for greening, however, are equally important in considering and maximizing the anticipated sustainability dividend of a proposed green project. There are numerous types of tax incentives offered to promote sustainable development. This article focuses on property tax credits available under state and local law. Other tax incentives exist and will be discussed in future articles.

Property Tax Credits

One of the primary ways that state and local governments encourage sustainable development is through property tax credits. In Maryland, property taxes are regulated largely at the state level; however, these regulations are implemented and administered by local county and city governments. Under this regulatory framework, the state has authorized the counties to provide property tax credits for green buildings and energy conserving green devices. Maryland Code, Tax-Property Article, § 9-242 permits property tax credits for “high performance buildings.” Under that section, a high performance building is one that achieves a LEED Silver rating or higher or a comparable rating under another appropriate rating system. Section 9-203 allows the counties to grant a property tax credit for “qualifying energy devices” including solar and geothermal energy devices, and other energy conserving devices. Under each section, the State allows the counties to determine the amount of the tax credit, the duration of the credit, and other particulars of the local regulations that implement the tax credit. In accordance with this authority, several Maryland counties have granted these property tax credits.

Baltimore County

Baltimore County provides a property tax credit for buildings that achieve certain LEED ratings. The amount and duration of the property tax credit is based on whether the structure is commercial or residential, the LEED rating system pursuant to which the building is certified, and the level of certification within the rating system. For commercial buildings, Baltimore County recognizes three of the LEED rating systems: LEED-NC (New Construction/Major Renovation), LEED-CS (Core & Shell), and LEED-EB (Existing Buildings). Residential buildings must be rated under LEED-H (Homes) In order to qualify for a property tax credit, the commercial building must actually achieve a LEED rating of Silver or greater within one of the recognized rating systems.

The following table identifies the amount and duration of the property tax credit for commercial buildings:

Baltimore County Property Tax Credits For High Performance Buildings			
LEED Rating System	Duration of Tax Credit	Level Achieved	Property Tax Credit (as a percentage of the total property tax assessed)
NC (New Construction)	5 years	Silver	50%
		Gold	60%
		Platinum	80%
CS (Core & Shell)	5 years	Silver	40%
		Gold	50%
		Platinum	70%
EB (Existing Building)	3 years	Silver	10%
		Gold	25%
		Platinum	50%
H (Homes)	3 years	Silver	40%
		Gold	60%
		Platinum	100%

There are certain requirements and limitations for these property tax credits. Predictably, a building may not receive more than one tax credit. The Director of Budget & Finance may terminate a property tax credit if he/she finds that the building has been altered so that it no longer complies with the rating system that was the basis for granting the tax credit. Finally, the application of the property tax credit must be filed on or before June 1 immediately preceding the first taxable year for which the credit is sought.

Howard County

Howard County has adopted a property tax credit system similar to that of Baltimore County, although there are important differences. As in Baltimore County, eligibility for the property tax credit for commercial “high performance buildings” is tied to actually achieving a LEED rating of Silver or greater in the LEED-NC, CS or EB rating systems. However, in Howard County, the Director of Inspections, Licenses and Permits may adopt by regulation equivalent rating systems, thereby potentially expanding the sets of rating criteria that would qualify for the property tax credit. Furthermore, Howard County provides a back-up property tax credit for LEED certified buildings that do not qualify for the high performance building property tax credit. Finally, as discussed more fully below, Howard County provides property tax credits for green homes in a manner completely independent of LEED certification.

The following table identifies the property tax credit for LEED-NC, CS, and EB buildings in Howard County, as well as for buildings meeting equivalent criteria as adopted by regulation. Under Howard County’s regulatory framework, these high performance buildings will typically be non-residential or multi-family buildings. Residential buildings are addressed separately.

Howard County Property Tax Credits For “High Performance Buildings”			
LEED Rating System	Duration of Tax Credit	Level Achieved	Property Tax Credit (as a percentage of the total property tax assessed)
NC (New Construction) or CS (Core & Shell)	5 years	Silver	25%
		Gold	50%
		Platinum	75%
EB (Existing Building)	3 years	Silver	10%
		Gold	25%
		Platinum	50%

As noted above, there is a “back-up” property tax credit available for green buildings that do not otherwise qualify for a property tax credit based on the high performance building criteria. For these buildings, the property tax credit is based on the level of LEED certification achieved and is in an amount equal to a certain percentage of the eligible costs associated with the acquisition and installation of an energy conserving device that receives a credit (point) under a LEED rating system. Under Howard County’s current regulatory framework, this property tax credit would benefit the owner of a building that is rated under a LEED rating system other than NC, CS or EB, or the owner of a building that receives a LEED certification, but does not achieve the Silver or higher level. The following table identifies the particulars:

Howard County Property Tax Credits For “Green Building Energy Conservation Devices”

LEED Rating System	Duration of Tax Credit	Level Achieved	Property Tax Credit (as a percentage of the Eligible Costs* of the Qualifying Energy Conservation Device/s**)
Any	3 years	Certified	14%
		Silver	16%
		Gold	18%
		Platinum	20%

* “Eligible Costs” are those costs incurred within the 36 months preceding the initial application for the property tax credit, and include the costs of device itself, as well as those for any necessary parts, components or accessories, and installation.
 ** “Qualifying energy conservation device” means an energy conservation device that receives a LEED credit, including but not limited to a solar energy or geothermal energy device, that is utilized by a structure that achieves any LEED certification, regardless of level. A qualifying energy conservation device is one that is used to heat or cool the structure, generate electricity for use in the structure, or provide hot water for use in the structure.

Lastly, Howard County provides a property tax credit for green residential buildings regardless LEED rating system or level of certification, if any. This property tax credit is similar to the property tax credit for qualifying energy conservation devices discussed in the preceding paragraph and table in that it is based on the eligible costs of a *solar energy device* or a *geothermal energy device* used within a residential structure. Unlike the credit for qualifying energy conservation devices, it is limited to solar and geothermal energy conservation devices, it is not tied to LEED or any other rating system, and it is not based on achieving any level of certification. Eligible costs are limited to those incurred within the 12 months prior to the application for the credit. The property tax credit is equal to 50% of the eligible costs, not to exceed \$5000 for a heating system or \$1500 for a hot water system.

Montgomery County

Like Howard County, Montgomery County's property tax credit program provides a property tax credit based on the level of LEED certification achieved. Other factors that come into consideration include the gross floor area of the building, whether the building is residential or commercial, and the LEED rating system (or equivalent system) that provides the basis for certification. The following table provides the details:

Montgomery County Property Tax Credits For “High Performance Buildings”

Building Type	LEED System Rating (or equivalent)	Duration of Tax Credit	Level Achieved	Property Tax Credit (as a percentage of the total property tax assessed)
Newly constructed or extensively remodeled non-residential or multi family residential building with at least 10,000 sq ft of gross floor area	NC or CS	5	Gold	25%
			Platinum	75%
	EB	3	Gold	10%
			Platinum	50%
Any other building (any residential building (except multifamily) or any non-residential building with less than 10,000 sq ft gross floor area)	NC or CS	5	Silver	25%
			Gold	50%
			Platinum	75%
	EB	3	Silver	10%
			Gold	25%
			Platinum	50%

Like Howard County, Montgomery County also provides a property tax credit for qualified energy conservation devices, although they approach it a bit differently. Montgomery County allows a property tax credit equal to 50% of the eligible costs of a solar energy device or a geothermal energy device, not to exceed \$5000 for a heating system or \$1500 for a hot water system. In addition, Montgomery County provides a property tax credit of up to \$250 per fiscal year for energy conservation devices such as programmable thermostats, insulation, and caulking and weather stripping for doors and windows.

Conclusion

Particularly during these tumultuous times in the real estate market, developers of green buildings need every advantage available to them to enhance the economic viability of green projects. Other aspects of the “sustainability dividend” may soften, or may simply not appear. For example, in a depressed market, increased rents and occupancy rates as compared to those of non-green alternatives may not be sufficient to make a green project feasible. Developers interested in green projects may find that the tax incentives discussed in this article move such projects toward feasibility. As the green revolution continues to take hold, perhaps more Maryland counties will provide similar tax incentives for green projects.

407709v2