

GETTING GREEN BUILDING BACK ON TRACK

By Frank Dalene

“The green-building movement is coming like a freight train and the train is out of control,” declared a speaker at the Green Drinks gathering in Southampton. At the same time, concerned members of the building community were gathering at roundtable meetings, discussing the liability problems that might arise, caused by certain towns adopting a mandatory Energy Star Program. Meanwhile, other members of the building community took a proactive role to form an alliance designed to share their collective experiences on a solid foundation of building sciences to educate the public, develop best practices in green building and improve means and methods of green elements to prevent the green freight train from crashing and wrecking everything in its path. A freight train out of control is a shocking thought, but one I have known about for some time now and it is the motivating force behind the formation of the Hamptons Green Alliance.

Members of the East End Chapter of LIBI met last year to develop a policy to oppose the mandatory requirement of the Energy Star Program that was adopted as code in Brookhaven and other towns in Suffolk County. We discussed the potential conflict of interest to have a third-party inspector that is paid by the builder to certify a requirement needed to obtain the Certificate of Occupancy. We discussed the potential liability issues for builders and trade contractors using new products that were rushed to market to fill the needs for builders to obtain the Energy Star certification. New products suddenly appeared on the market without prior history and known performance expectations. Installation of new products did not conform to manufacturer’s specifications. Some manufacturers used deceptive marketing practices to represent their product for improper uses or applications contrary to building scientist’s objections. There were concerns about building airtight homes requiring mechanical air exchange provided by bathroom fans without the assurance the homeowner would properly maintain their home after it was constructed, possibly causing indoor air quality problems. Building science was left in the dust. Those in the building industry know that when problems such as these occur in homes, the builder is blamed and is the first to get sued. To add insult to injury, builder’s liability insurance contains language excluding coverage for any air quality problems, possibly leaving the builder totally exposed to the threat.

During the same time, I was invited to serve on the East Hampton Town Energy Star Committee representing the building industry. We addressed similar problems including potential town liability issues caused by mandating a program as code which designed originally as a voluntary program. We advised the town to slow down and take one step at a time before mandating the Energy Star Program. The committee developed and approved a prescriptive code that incorporated Energy Star specifications without requiring a third-party inspector and full certification. The “East Hampton Town Energy Savings Program” was enthusiastically supported by all stakeholders in the town and passed the Town Board unanimously in December 2007. For the residents in East Hampton Town, the freight train slowed down a bit and stayed on track.

It was reported by Ted Cushman, a contributing editor to *Builder Magazine* that Sam Rashkin, program director of Energy Star for Homes, made a statement for the record that the Environmental Protection Agency does not support the idea of making Energy Star performance standards into code. “Instead of making ‘Energy Star for Homes’ code, we encourage local governments to consider incentives such as expedited approvals, reduced or delayed permit fees, reduced utility hook-up fees, expedited field inspections, and facilitation of financial incentives with local lending institutions.” What does he know that the local governments don’t know? Why is LIBI taking the position to support mandating Energy Star as code contrary to the position of the Environmental Protection Agency? Undoubtedly this will be fodder for trial lawyers for years to come. It is difficult to imagine defending a town on a liability claim related to mandating the Energy Star program after Mr. Rashkin made this public statement for the record. This week I received a mailing for an educational seminar marketed to the building industry titled, “Mitigating the Risk in Green Building”. The speakers are lawyers in New York City. The legal industry appears to be anticipating potential claims and is gearing up.

Recently the town of Southampton approved a law mandating the Energy Star program as code. Town officials seemed to railroad it through the approval process. Southampton government officials are stating they are proud they implemented the most restrictive Energy Star law in the nation. Are bragging rights the real reason this was done? Was cost and potential health hazards of its citizens held in less regard? It is possible that towns like Southampton are making the decision to mandate Energy Star as code due to misinformation circulating in these discussions. When I served on the East Hampton Energy Star Committee and attended the public hearing in Southampton a statistic of 30% energy savings was used to justify building an Energy Star home. The statistic is fifteen years old since it is based on the 1993 Energy Code. About five years ago I attended the first seminar given by Conservation Services Group (“CSG”) who was hired by LIPA to implement LIPA’s Energy Star Program during the time it was still a voluntary program. To convince builders to join this voluntary program CSG representatives explained there was very little additional cost to build a home that met Energy Star specifications because of the more stringent requirements of New York State Energy Code at that time. Today, several years later the current New York State Energy Code is more stringent still and the energy savings is not as great as many believe. When I presented the evidence the 30% savings statistic was based on the 1993 Energy Code to the East Hampton Energy Star Committee, they took the information into consideration. At the public hearing in Southampton a town official quoted the 30% savings statistic. Following the town official a representative of CSG spoke, however he did not clarify the 30% savings statistic quoted by town official. Were the town officials and the public misinformed? Unfortunately I did not have an opportunity to speak at that hearing.

While serving on the East Hampton Energy Star Committee a LIPA representative offered to pay the town \$25,000.00 to mandate the LIPA Energy Star program as code. The payment was suggested to help the town pay for the costs of implementing the program. I remember feeling uncomfortable during the discussion since it reminded me of a kickback. Thankfully the Town of East Hampton turned down the offer from LIPA. Did other towns mandating Energy Star as code have similar offers from LIPA? If so, was the public informed during the approval process about LIPA’s offer to make payments? Was the decision to mandate Energy Star included in the settlement to bury the power lines? Reports of town officials back peddling appear to be an indication of a hasty decision. The freight train may be coming off the tracks in Southampton.

The surface has only been scratched by addressing the many potential problems arising from the green-building movement. We needed to do more. The green-building movement’s greatest motivational force is the cost of energy. Energy costs were rising at an alarming rate. Homeowners seeking renewable energy solutions are seeking other green-building elements. At the same time the consciousness level of homeowner is raised, the homeowner’s choice to improve the quality of our planet is increased. Not all products labeled green are actually green. Not all information is accurate or true. New phrases such as “sustainable homes,” “energy-free homes,” “carbon-neutral footprint” and “cradle-to-cradle design” need to be defined in a pragmatic way so the homeowner can understand what each means and make an informed decision to include certain green elements in their home to achieve a level of green they desire. Only through education will it be possible for homeowners to understand that choosing certain green elements has an upfront cost and the payback period is reasonable. Education will substantiate that the ROI (Return On Investment) is justifiable and at the same time the choice to go green will have an impact on a better future of the homeowner’s children and grandchildren. The challenge for the Hamptons Green Alliance, our industry, lawmakers, the public, and cities all across America is to keep the green freight train from crashing and wrecking everything in its path.

Frank Dalene is the co-founder of the Hamptons Green Alliance. He serves as Vice President for Hamptons Luxury Homes and the President of Telemark, inc.

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