



Sustainable Buildings: Risks, Process and Viewpoints



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Questions

- Risks?
- Process?
- Divergence Points?
- Means of Risk Mitigation?
- What Does the Future Hold?





Legal Context

- Cases? What Cases?
- Need to use pre-existing basic principles
- Need to overlay specific process and context analysis

Subtle Differences

- Growing influence of entitlement process
- The bleeding edge, the wave, and the tried and true
- Transformation of LEED, original conception versus widespread adoption

The Same, But Different

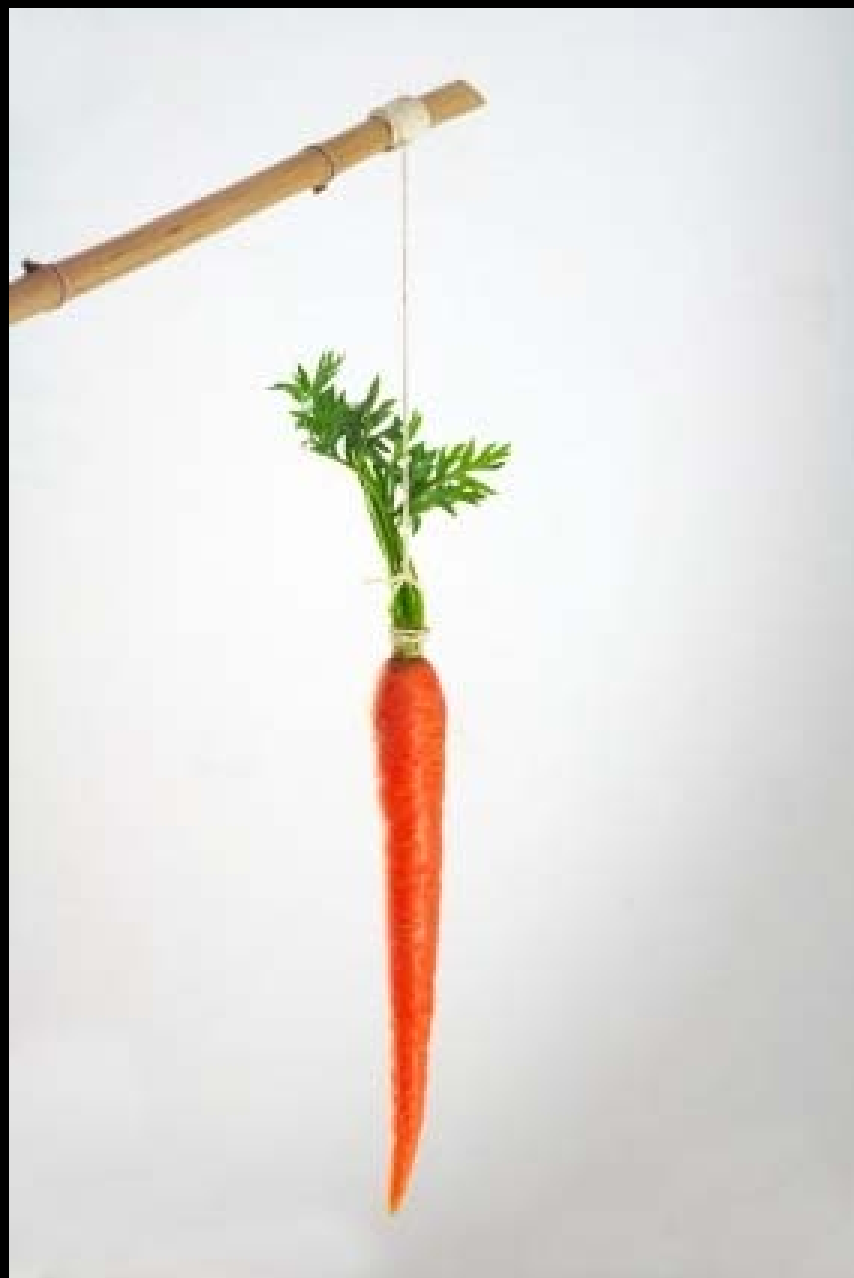
- The same: construction costs
- The same, but more: delays
- The same, but different: certification related claims and damages

Timing is Everything

- Existing Virginia statute of limitations
- Extensions of duties after the use permit?
- Extensions of claims after occupancy?







Arlington – The Carrot

- Bonus Density (post 3/14/2009)
- **LEED Level** **Office** **Residential**
- Certified *0.05- FAR* *0.10- FAR*
- Silver *0.15-* *0.20-*
- Gold 0.35 **0.40+**
- Platinum **0.45+** **0.50+**

Arlington – The Stick

- Posted bond or letter of credit to secure performance
- Amount calculated based on bonus density
- Tiered Forfeiture

Compare DC

- Over 50k Sq. ft, LEED certified after 1/1/2010 if acquired from DC
- After 1/1/2012, all non-residential must be LEED certified
- (Educational can meet LEED or II system that requires full scale commissioning)

DC's Unicorn ©

- Statute originally called for a green performance bond
- Amended to just a “bond”
- Still does not exist, will likely end up being cash or LOC
- Trademark shout out, along with LEEDigation © (?) to Mr. Cheatham





LEED Changes

- Long standing energy critiques
- LEED process and energy focus changes from LEED 2.2 to 3.0
- Press and blogosphere grabbed hold of a couple examples and ran

New York Times Firestorm



“But the building is hardly a model of energy efficiency ... the building’s cooling system, a major gas guzzler, was on culprit”



Reality or NYT Slant?

- No EA-1 Points requested
- Urban brownfield site, previously paved
- Reduction of impervious surface 58%
- 72% waste recycled
- 62% local materials
- Not 75 pts to qualify for Energy Star, but a respectable 58 pts
- Every other GSA study project was Energy Star

Regional Green Building Case Study Project: A post-occupancy study of LEED projects in Illinois

Year 1 Final Report
Fall 2009

A collaboration between



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Illinois Findings 1, 2, 3

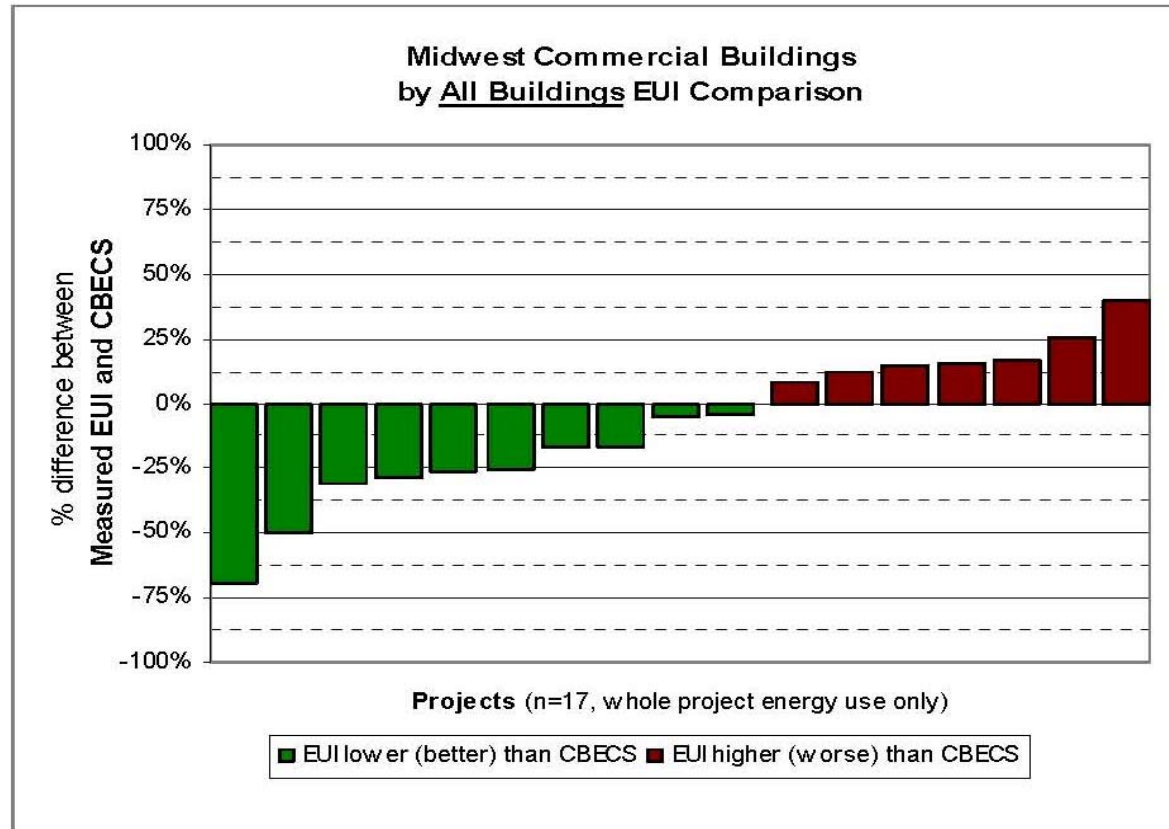


Figure 10: EUI performance compared to CBECS All Buildings

Source: CBECS Table C5. Consumption and Gross Energy Intensity by Census Region for sum of Major Fuels for Non-Mall Buildings, 2003. Midwest Region.

Illinois Findings 1, 2, 3

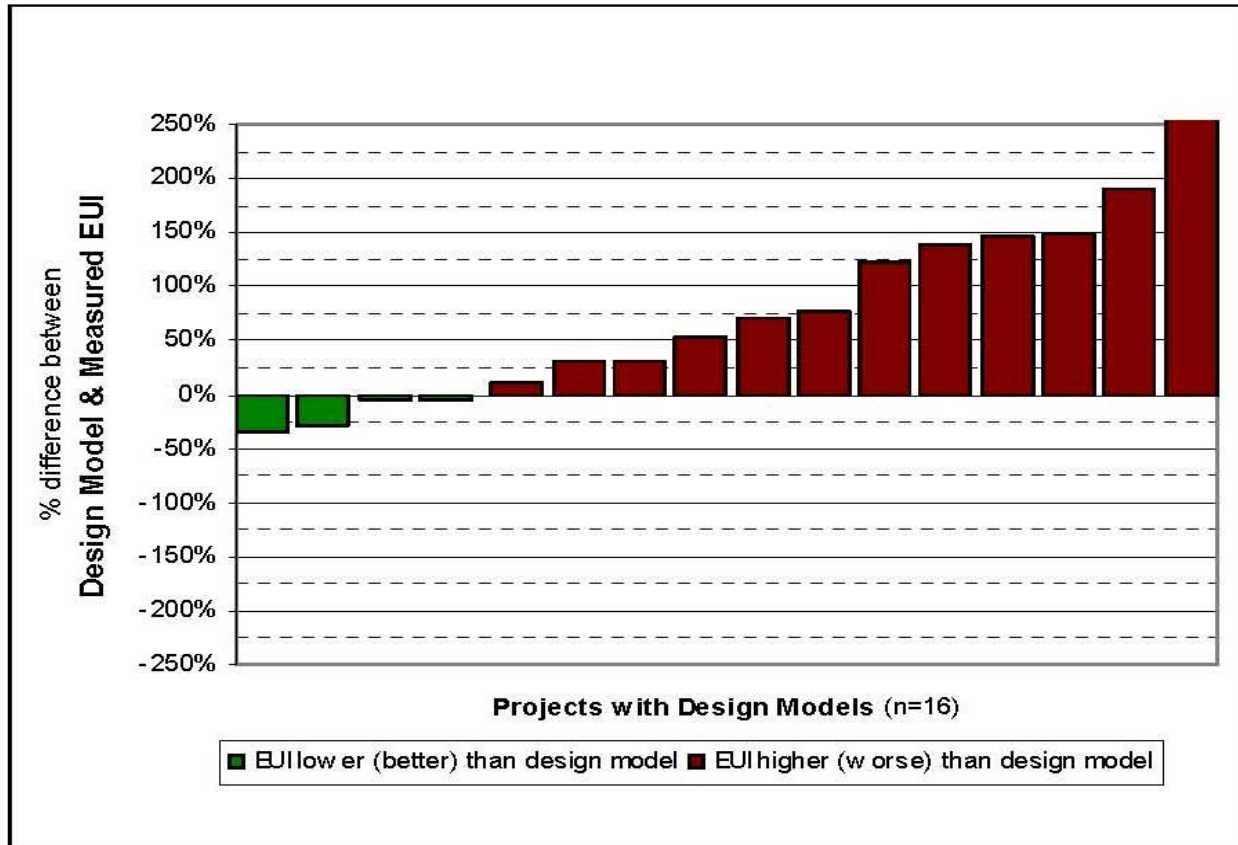


Figure 14: Design Model and Measured EUI Comparison

Illinois Findings 1, 2, 3

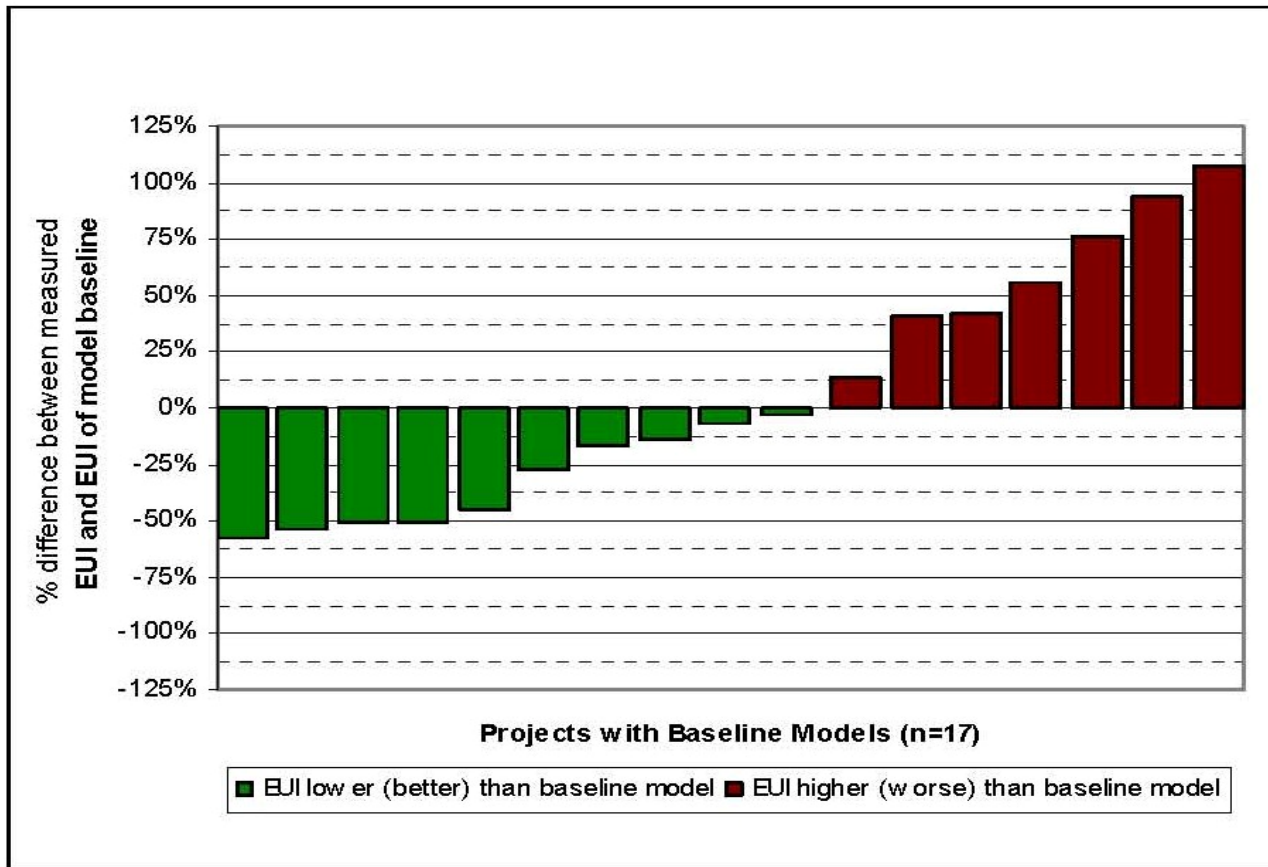


Figure 15: Baseline Model and Measured EUI Comparison

LEED Today

- MPRs
- Discussion of de-certifications
- “Challenges” and their implications

Substituting LEED for Code

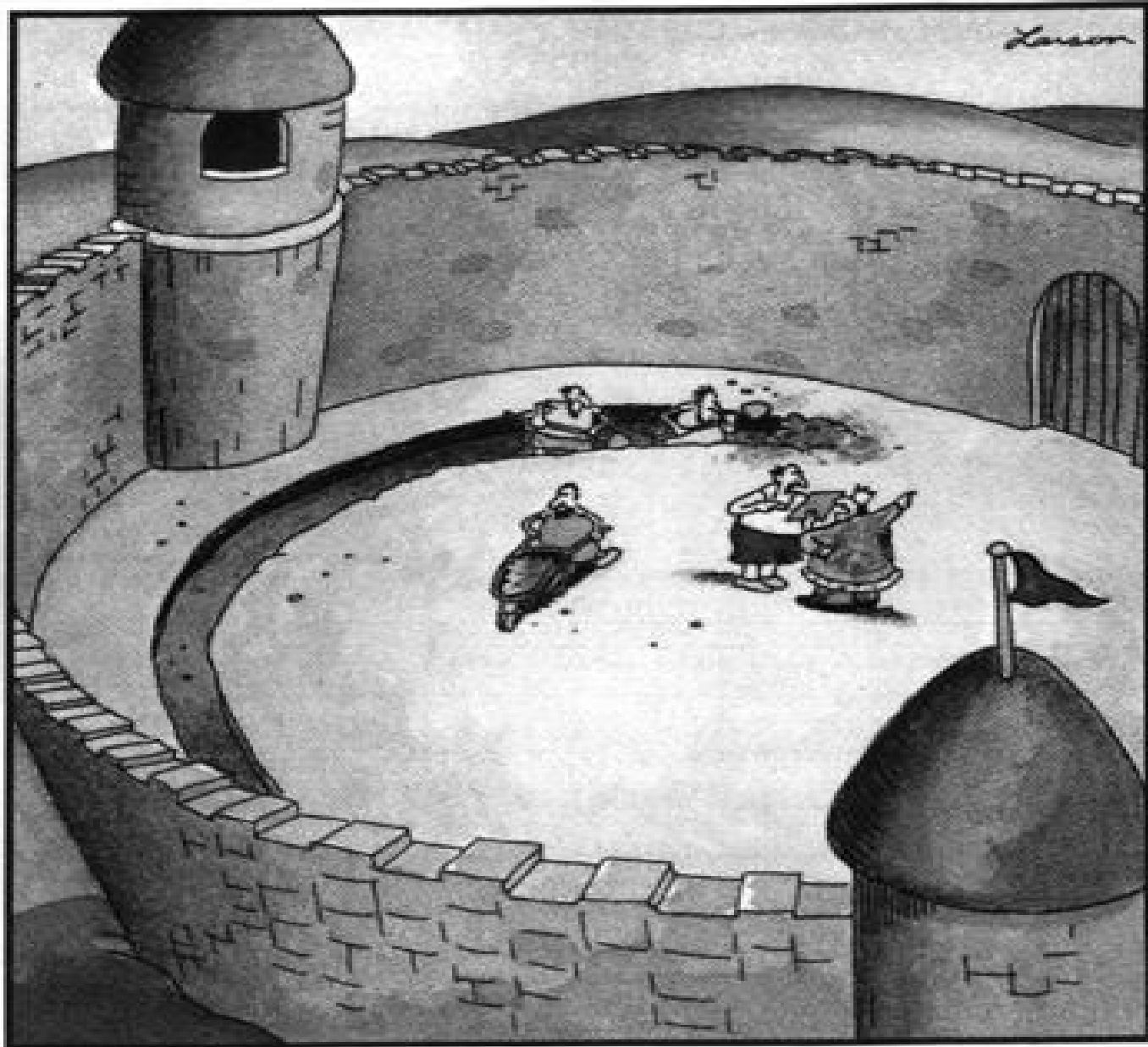
- Jurisdiction?
- Evidence and subpoena power?
- Legal appeal process?
- Ability to force reason via litigation?
 - Note GBCI's changing role

Differing Views

- Contractors are from Mars ...



Finger Painting Got A Little Out Of Hand



Suddenly, a heated exchange took place between the king and the moat contractor.



Change Order

Original Contract



Architect Legal

- Standard of care
- Growth of certifications and impact
- Insurance issues

Contractors

- Careful with guaranty/warranty
- Bonding capacity
- Compliance with plans and specs, pushing knowledge downstream
- Consequential damages, timing issues, added potential impacts

Owners

- Compliance with entitlement, permit issues
- Tenancy or purchaser driven issues, especially with federal projects
- Timing driven concerns (i.e. post-occupancy)

Risk Reduction

- Education, education, education
- Design coordination early and often
- Pulling trades into design process if possible
 - Difficulties in competitive bidding environment
- Serious attention to contracts
- Project and location specific risks

Architect Pointers

- Limitation of liability clauses, status and history
- Downstream consultant coverage
- Know your limitations (and repose, and economic loss, and insurance ...)

Owner Pointers

- Insurance terms, enforcement and follow-up
- Bonding?
- Beware of the very low bidder

Contractor Pointers

- Team/collective approach, be wary of dividing the spec pile
- Communicate early and often on compliance and documentation requirements
 - Ex – recycling, project air handling, et c.

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