

## Message from Our Boston Office

In this issue Pepper provides clients and friends with vital information to stay afloat in these challenging times, as well as ideas for continued investment in the future.

Ms. Kirk and Mr. Berlin show real estate owners, tenants, developers and buyers eight ways to save money and salvage projects in today's tough market.

And we highlight two ways to lay the groundwork for better days. First, constructing and operating sustainable building projects that pays dividends now and in the future. In an online Peppercast with two attorneys from Pepper's Sustainability and Climate Change Practice, Ms. Hackenbrach and Mr. Delaney outline green benchmarks, LEED ratings and tips to help "green" projects succeed. Pepper's Sustainability practice helps clients meet the challenges of new regulatory mandates and business initiatives as government and private entities seek ways to protect the environment.

And we show how Pepper is among several national law firms helping small entrepreneurs, and in so doing, building relationships that can mean new business for sponsoring firms later.

Also, we celebrate the expansion of Pepper's IP practice as we welcome attorney Alexandra Fennell to the Boston office.

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## Finding Real Estate Savings in A Tough Economy: Eight Steps

Our country is in the midst of the worst fiscal downturn in decades. With anticipated revenues declining and expenses increasing, businesses are bracing for the impact, and savvy executives are looking at their expenses and determining ways to cut back. The real estate a company owns or rents is often one of its biggest expenses. Here are eight possible steps to maximize the investment in your real estate and reduce expenses and slow spending this year and next.

### Real Estate Tax Assessment Appeals

Payers of property taxes should consider real estate valuation appeals to reflect the recent reduction in real estate values. Both owners and tenants of real estate (in cases in which the tenants bear the burden of the taxes) may be able to file real estate assessment appeals. For retail properties, an anchor tenant or an out parcel tenant, on its own or ground-leased parcel, may be able to file a real estate tax assessment appeal depending on the terms of its lease. Our lawyers routinely help in these matters, and can review the assessment and assessment history. In the case of income-producing properties, our attorneys can review leases and net operating statements to determine whether the tenants have the right to appeal and whether owners or tenants would benefit from a successful appeal.

### Restructuring or Renegotiating Leases

Brokers of tenant office space are intensifying their efforts to reach out to tenants to analyze whether it makes economic sense, and is consistent with the tenant's business plan, to initiate discussions with landlords about possible lease extensions in return for current rent reduction. This could appeal to landlords who want to reduce the risk of vacancies and are willing to trade some current revenue for reduced financial risk in the future.

Retail tenants are also seeking rent reductions or reductions in leased space. Tenants who have excess space should consider (a) subleasing and/or (b) approaching landlords

to discuss partial surrender of space in return for lease extensions.

More frequently, corporate tenants whose lease expirations are imminent are considering the less expensive option to stay in place and renew/renovate/expand, over the option to relocate. Pepper's long-standing relationships and knowledge of the market can help tenants leverage their current occupancy and options in order to obtain better lease renewal terms.

### **Distressed Real Estate**

*Lender/Workouts:* Lenders who have foreclosed or taken back commercial properties are engaging developers to assist them in asset evaluation, management and turning around foreclosed properties or in finding government economic incentive programs to help them develop or redevelop their acquisitions. (More on this in Step 5.)

*Developers Interest:* Developers are contacting lenders to cherry-pick distressed real estate at bottom pricing or to generate fees by assisting banks in real estate workouts. Pepper has the expertise to represent lenders, developers or purchasers of such distressed property.

### **Like-Kind Exchanges**

In tight financial environments many transactions may involve like-kind exchanges. Generally, if you exchange business or investment property solely for business or investment property of a like-kind, no gain or loss is recognized under Internal Revenue Code Section 1031. Like-kind exchanges may reduce the need to obtain outside investors and may permit an owner to upgrade real estate investments with a small investment of cash or financing. Pepper has both real estate and tax expertise to assist clients who might find it attractive to sell and acquire properties in this way.

### **Government Economic Incentives Programs**

Increasingly, businesses that are opening new facilities or relocating will search for economic development incentives such as grants, low-interest loans, tax credits, tax exemptions, pooled financings and tax-exempt financing. Many complex projects, especially multi-use projects, also involve public/private joint ventures and operations. We are skilled at navigating through government bureaucracies and coordinating the requirements of government

## **Pepper's Boston IP Practice Expands**

In November, Alexandra C. Fennell, an associate concentrating on intellectual property litigation, joined Pepper's IP practice in the Boston office.

Ms. Fennell has experience handling patent litigation and antitrust matters. This has included the enforcement of patents in various technology areas. She also has conducted patent litigation defenses and defenses against allegations of misappropriation of trade secrets and trade dress.

Boston IP partner William D. Belanger said, "Alexandra's addition continues the rapid growth of our Boston office and its intellectual property litigation practice, and the IP litigation practice for the firm as well."

Ms. Fennell joined Pepper from Goodwin Procter LLP's Boston office, and also has practiced with Day Pitney LLP in Boston. She earned her J.D. from Boston University School of Law, where she was note editor for the *Journal of Science and Technology Law*, and her B.A. from Washington & Lee University.

programs with the private-sector portion of joint projects. Several Pepper lawyers are veterans of key government agencies and are experienced at bringing all the public- and private-sector components of a project together. In an economic downturn, while expansion may be placed on hold, infrastructure improvements to sustain jobs may be necessary. Pepper can represent corporations in bond financing for these economic incentive programs. An example of some of the economic incentive programs which may be of assistance include:

- *Tax exemptions* – Pennsylvania Keystone Opportunity Zones, New Jersey PILOT projects, Pennsylvania Local Economic Revitalization Tax Assistance Act abatements, Pennsylvania Tax Increment Financing Act and Michigan TIF districts
- *Tax credits* – Job Creation Tax Credits
- *Grants* – Pennsylvania Infrastructure and Facility Improvement Program, Pennsylvania Keystone

Opportunity, U.S. Department of Housing and Urban Development Brownfields Economic Development Initiative, and Pennsylvania Act 2

- *Low-interest loans/special loan programs* – Pennsylvania Capital Access Program, Pennsylvania industrial development loans
- *Pooled financing programs* – Pennsylvania Economic Development Financing Authority programs
- Tax-exempt financing for manufacturing facilities, parking facilities, solid waste facilities, mass commuting facilities
- Public/private infrastructure and multiuse projects (such as parking, utilities, river walks and air rights).

### Sustainability Initiatives

Increasingly, companies are looking at whether sustainability or green-building initiatives can reduce operating costs and whether governmental incentives are available to assist with the up-front capital cost of going green. There are many environmental, economic and social benefits to green building. Some of the economic benefits include reducing operating costs, enhancing asset value and improving employee productivity and satisfaction. Pepper's Real Estate Group and Sustainability and Climate Change Team have the knowledge of the various programs and LEED® standards to assist companies with these matters. Two of our lawyers are LEED Accredited Professionals and are available to assist our clients. LEED, the "Leadership in Energy & Environmental Design" Green Building Rating System, is the nationally accepted standard for green buildings developed by the United States Green Building Council membership.

### Sales/Lease/Capital Transactions

Equity investors are looking for sale-leasebacks involving high quality properties with low-risk tenants. Corporate owners still would prefer to lease real estate rather than own it, for reasons of flexibility. Pepper's knowledge of the market and experienced real estate professionals who specialize in these transactions can assist in matching owners with the right deal and buyer. Pepper has experience with lenders in handling these types of sales for buyers.

### Delayed or Cancelled Projects – Contracts Counseling

Developers are looking to share the risks imposed by the current economy. This means project cancellations, postponements or delays, deal renegotiation and restructuring. Pepper's real estate attorneys can assist clients in all of these areas, since we are experienced in representing all parties involved in real estate projects and we understand the perspective brought by each party.

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## Peppercast: Incorporating Sustainable Practices into Development Projects

Building "green" and operating properties in a "green" manner are becoming increasingly important goals for the construction and real estate industries. In this podcast, Pepper partner Joyce Hackenbrach, a member of the firm's Construction Practice, and Pepper associate Sean Delaney, a member of the firm's Real Estate Practice, discuss the main points of their recent article entitled "Incorporating Sustainable Practices into Development Projects." They cover topics such as commonly identified "green" benchmarks for development and operation, the U.S. Green Building Council's LEED Green Building Ratings and an overview of some tips for insuring that "green" projects are successful.

Listen today by visiting the Sustainability and Climate Change section of Pepper's podcenter at [www.pepperpodcasts.com](http://www.pepperpodcasts.com).

## Firms Develop Clients Through Biz School Ties

*Sponsorship of business-plan competitions is one of many 'tools.'*

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Lawyers are fostering connections at their local business schools and adding former student entrepreneurs with growing companies to their client rosters.

Lawyers develop relationships with students by sponsoring business-plan competitions or school entrepreneurship centers and advising participants. The lawyers and firms say they invest substantial time and sponsorship money up front to reap rewards down the road, when the former students' companies are up and running.

Philadelphia-based Pepper Hamilton sponsors the business-plan competition at Babson College in Wellesley, Mass., and the annual, so-called "rocket pitch" program that gives students a chance to present business ideas to a large audience, including venture capitalists.

But corporate and securities partner Matthew S. Gilman of the firm's Boston office invests his own time by critiquing students' business plans and rocket pitches before the events, holding office hours once a semester at the school and teaching occasional seminars at the school. "This is a long-term investment from the law firm perspective," Gilman said. "It's not like these students have all sorts of money to pay legal fees ... Eventually, the hope is that they have work that they can pay for." Gilman has expanded his client list as the students he's met have grown businesses. A few of his many clients from Babson include nanotechnology company Inanovate Inc. in Research Triangle Park, N.C.; children's modular furniture maker P'kolino LLC in Dania Beach, Fla.; and online jeans retailer True Apparel Co. in Woburn, Mass.

Wilmer Cutler Pickering Hale and Dorr has sponsored many business-plan competitions throughout the years, but has most consistently sponsored the Massachusetts Institute of Technology's \$100K Entrepreneurship Competition, said John Chory, who chairs the WilmerHale Venture Group in Waltham, Mass. MIT's \$100K competition, which awards cash to teams of students with winning business plans, is open to students at MIT Sloan School of Management and MIT's other schools. WilmerHale has garnered many relationships with startups through this work, and got in on the ground floor with

the now-public company Akamai Technologies Inc. of Cambridge, Mass., whose technology helps clients manage Web delivery of content. The firm's legal work for the startups runs the gamut from corporate to licensing, patent and trademark work to real estate, Chory said.

On the West Coast, Morrison & Foerster sponsors events at numerous California business schools, including the University of California, Davis Graduate School of Management, that school's Center for Entrepreneurship and the University of California, Berkeley Haas School of Business. Relationships with business schools are critical for firms with emerging-company practices, said Suz Mac Cormac, a San Francisco corporate partner and co-chairwoman of Morrison's venture capital/emerging companies group. Even if the students don't form their own companies, many eventually work for firm clients and potential clients, Mac Cormac said.

The firm's sponsorship and judging of the Global Social Venture Competition at the Haas School has been particularly fruitful. Morrison & Foerster's client roster includes past competition winners such as healthy school lunch vendor Revolution Foods Inc. in Alameda, Calif., and MicroEnergy Credits Corp. in Seattle.

### Pepper Hamilton LLP Attorneys at Law

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