



REBNY Stay On Top
of New York.

The Real Estate Board of New York 2012 Annual Report

THE REAL ESTATE BOARD OF NEW YORK ANNUAL REPORT 2012

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INTRODUCTION

It was an active and challenging year for the Real Estate Board of New York in 2012. We saw many goals achieved, offered new and improved member services and moved forward with important issues on the city, state and federal levels for the betterment of the real estate industry.

In November, our great city, its people and our industry were heavily impacted by the incredible devastation of Superstorm Sandy which flooded homes and businesses in several coastal areas of Queens, Brooklyn and Staten Island and seriously impacted Lower Manhattan. Superstorm Sandy was the worst storm NYC has seen in decades. In addition to damaging thousands of homes and businesses, it also shut down the New York Stock Exchange for two days and halted our mass transit system—resulting in the worst damage in the subway’s 108-year history.

In the aftermath of Superstorm Sandy, the real estate community’s involvement in government’s efforts to recover and rebuild has been essential. One of our members joined other volunteers stationed at the Office of Emergency Management to serve as the eyes and ears of our industry, enabling us to get much needed and useful post-storm information to our membership on a daily basis. Other REBNY members are helping in many ways, including assuming leadership roles and actively participating in the Mayor’s and Governor’s efforts to

raise private funding to aid those displaced by the storm; the donation of equipment like pumps and generators to aid in the clean-up effort; the identification of temporary space to accommodate commercial tenants who were displaced by the storm; and in the collaboration between our members, government and utilities to get services restored to commercial and residential buildings.

REBNY
Stay On Top of New York.



STEVEN SPINOLA
REBNY PRESIDENT



ROB SPEYER
REBNY CHAIRMAN

INTRODUCTION



Photo credit: Spencer T Tucker

SUPERSTORM SANDY DESTRUCTION IN THE NEW DORP BEACH NEIGHBORHOOD OF STATEN ISLAND

The industry is currently working with the federal, state and city governments to fashion a housing recovery plan for those residents who will be without use of their homes for the foreseeable future. REBNY and its members have started to take active roles in the several public committees formed by Governor Andrew Cuomo and City Council Speaker Christine Quinn, who are seeking to craft solutions to many of the issues arising from Superstorm Sandy.

2012 also marked the final year of the three-year tenure of Mary Ann Tighe as REBNY Chairman. Chairman Tighe,

REBNY's first female Chairman in our 117-year history, provided extraordinary leadership during difficult times.

Chairman Tighe identified long-term challenges for East Midtown, in particular zoning impediments to build new iconic office buildings on overbuilt sites. Rezoning East Midtown will invigorate and strengthen its position as one of the world's preeminent office districts by attracting new businesses and will help keep New York City on a competitive footing with other world cities.

Additionally, her initiative kept the option open for a No. 7 line subway station at West 41st and 10th Avenue that will make the future station on the far West Side a reality.

During her tenure, Chairman Tighe joined many other members for the successful "Move the Trial Campaign," which was successful in moving the Terror Trials for 9/11 mastermind Khalid Sheikh Mohammed and others out of Lower Manhattan and to Guantanamo Bay. This Campaign demonstrated the power of combining the business and residential communities to advocate regarding, security concerns and economic impacts on the neighborhood.

During Mary Ann Tighe's three years as Chairman, REBNY successfully advocated for the renewal of two major NYC economic development programs: the 421a



Photo credit: Steve Friedman

MAYOR MICHAEL BLOOMBERG AND MARY ANN TIGHE

INTRODUCTION



Photo credit: Steve Friedman

STEVE SPINOLA, HOWARD J. RUBENSTEIN, GARY BARNETT, LEONARD LITWIN, MAYOR MICHAEL BLOOMBERG, LEONARD BOXER

Program and the Industrial and Commercial Abatement Program (ICAP). Both of these programs are critical and work to encourage capital investment in new housing, commercial development and renovation, as well as offset the heavy tax burden our real property tax system places on these properties.

Additionally, Chairman Tighe created a digital presence for REBNY by calling for an upgrade of the website, creating a new identity on social media outlets like Twitter and Facebook, as well as hiring a new media director to oversee those efforts. REBNY currently boasts more than 14,700 Twitter followers and more than 3,200 Facebook fans—a huge feat in such a short period of time.

Tighe's hard work and exceptional leadership skills were a welcome asset to REBNY during some challenging years for our industry.

Tighe's successor as Chairman, Rob Speyer, the President and Co-CEO of Tishman Speyer, represents another historic milestone for REBNY. Taking over as Chairman in 2013, he will be the third-generation of his family to serve as Chairman as well as the youngest REBNY Chairman ever. With Rob Speyer at the helm, 2013 promises to be a very exciting and busy year for REBNY and our industry.

Also in 2012, we named esteemed industry veteran Leonard Litwin as REBNY's first ever Lifetime Honorary

Chairman for his countless contributions to the City, our industry and to REBNY throughout the years. Mr. Litwin has been a REBNY member since 1980. He was elected to the Board of Governors in 1985 and has served as Secretary since 1991. The honor was a small token of REBNY's appreciation for Mr. Litwin's extraordinary lifetime achievements.

On a sad note, we said goodbye to Sandy Lindenbaum, a 36-year REBNY member, who died in August. He served on the Board of Governors since 1988 and on the Executive Committee as Vice President from 1994. Mr. Lindenbaum was our industry's leading land use and zoning attorney.



Photo credit: Steve Friedman

SANDY LINDENBAUM



He provided the highest level of professional advice for many of the city's most prominent commercial and residential developments as well as New York's cultural, religious and educational institutions such as Carnegie Hall, Columbia University, the Museum of Modern Art, the Archdiocese of New York, the Guggenheim Museum and Weil Cornell Medical College. He will be greatly missed.

REBNY has many legislative achievements to be proud of in 2012. Details of our efforts can be found below, but this year, as always, we continued to push for policies to benefit our city and our membership. REBNY's advocacy was critical to the determination by the NYC Department of Buildings (DOB) to change the manner in which crane operators are trained and licensed. DOB's changes will result in a safer construction worksite moving forward. REBNY's advocacy was instrumental in the Department of City Planning's decision to move forward with the rezoning of Midtown East — probably the last of a string of unparalleled significant rezonings undertaken under Mayor Bloomberg and City Planning Chair Burden.

REBNY's involvement and support of the second year of the Committee to Save New York gave terrific impetus to the effort by Governor Cuomo and the State Legislature to put New York State on a sounder fiscal footing. On a federal level, REBNY played an important role helping to stem the abuses that had been occurring due to judicial interpretations of Interstate Lands Sales Act.

In December, we upgraded the REBNY Listing Service's (RLS) transmission system to a new state-of-the-art transmission engine provided by Stratus Data Systems. The system is overseen by REBNY's new RLS Director Freddy Sarabia, who brings more than 15 years of Regional Multiple Listing Service (MLS) operations experience to REBNY. Improving day-to-day operations, this new platform, based on national real estate data transmission standards, will improve the engine that enables sharing and distribution of residential sales and rental listings between participating firms. To ensure that the RLS operates efficiently and provides the most accurate and complete listing information to its participants, the Board of Governors approved several changes to the Universal Co-Brokerage Agreement.

Finally in 2012, we reached a historic high in membership with over 13,000 members. 2012 was indeed a busy year filled with many achievements. Our Annual Report compiles a detailed list of our activities in 2012. ■

MEMBER SERVICES

REBNY EDUCATION

REBNY's **educational offerings** have been numerous and varied and continue to be in great demand. We managed and hosted 38 special events and seminars. We offered over 50 Continuing Education and Qualifying Courses benefiting thousands of industry professionals. Our New York Residential Specialists designation course has awarded 230 stellar brokers this valuable honor. In 2012, 154 members earned the Certified Negotiation Expert (CNE) designation, bringing our total to 256 members. Additionally, more than 400 new members attended the Mandatory Ethics Course which was held nine times this year. This course emphasizes the importance of ethical business conduct and following REBNY standards.



REBNY
REAL ESTATE BOARD OF NEW YORK

WEB PRESENCE

Our web presence continues to improve qualitatively and quantitatively. Our Twitter feed serves more than 14,420 followers, double that of a year ago. On Facebook, our number of fans has also doubled to over 3,200. Our education section is the most visited section of the site, with more than 40,553 visits, boasting a 17 percent increase over last year.

REBNY continues to enhance our **property database** to make it easier and more helpful to our members. This year we added a direct link to ACRIS. This link will take members to the ACRIS records for the property they are viewing, enabling users to quickly access the most complete information publicly available.

FUNDRAISING & CHARITY EVENTS



Photo credit: Jeanne Oliver-Taylor

REBNY agents read stories to children ages 6-12. The books were donated by Town Residential.

- Residential Deal of the Year Awards and Charity Gala – Raised more than \$56,000 for the REBNY Member in Need Fund
- Pro-Am Tennis Tournament – Raised a record \$101,900 for The Gift of Life Bone-Marrow Foundation
- Members volunteered at a soup kitchen, read to children and collected holiday gifts and shoes for donations

FUNDRAISING & CHARITY EVENTS

Our Residential Deal of the Year and our Pro-Am Tennis Tournament continue to raise funds for many deserving charities. The Residential Deal of the Year raised over \$56,000 for the REBNY Member in Need Fund, which provides funding for REBNY members who are experiencing extreme financial hardship due to extraordinary illness or crisis. The 25th Annual Pro-Am Tennis Tournament raised a record \$101,900 for The Gift of Life Bone Marrow Foundation in honor of REBNY Member Steve Siegel's wife, Wendy Siegel, who has been fighting leukemia.



Photo credit: Cindy Ramotar

STEPHEN B. SIEGEL, JAY A. FEINBERG (GIFT OF LIFE) WITH WENDY SIEGEL AND JONATHAN MECHANIC.

ALL PARTICIPANTS VOLUNTEERED FOR A MOUTH SWAB TO BE REGISTERED FOR A BONE MARROW MATCH.

Additionally, REBNY Committees have volunteered and collected donations for various charities. The Downtown Committee's Annual Holiday Gift Drive for Nazareth House donated more than 250 gifts for children. The Residential Sales Council Chair, Cindy Anish of Bellmarc Realty and members of the Committee donated their time to volunteer at a soup kitchen and hosted a dramatic reading for the children, with books donated by Town Residential. This year's Annual Summer Donation Drive provided shoes donated by the real estate community to Career Gear and Dress For Success, both of which provide business attire for interviews to help people land needed jobs.



REPORTS

REBNY continues to provide valuable reports for our members and the media. We produce the only citywide residential sales report. This comprehensive look at the residential sales market in all five boroughs and for all property types (coops, condos and single-family homes) provides an unparalleled view of New York City's housing market. Our semi-annual Manhattan retail report is an invaluable service to brokers, owners, tenants and the media seeking to understand this important market in New York City's economy.



Our consumer targeted website, NY1Residential.com, continues to increase the visibility of members' listings to those who want to buy or rent homes in NYC. REBNY's ongoing partnership with NY1 allows us access to 54 Time Warner channels to run television commercials to promote the website. We also continued with ad campaigns in other media outlets like the *New York Post* and *amNY*.

MEMBER SERVICES

AWARD WINNERS

Annually, we present a wide range of Award Winners for retail, residential and commercial deals that are the most highly regarded in the industry. We also recognize significant achievements in the residential and commercial management community at our annual breakfasts. At our

Annual Banquet, we present awards to members for their philanthropic activity and service to the industry and to the city. These awards are the highlight of our Annual Banquet and recognize the enduring contribution these members have made in these areas.

REBNY 116TH BANQUET AWARD WINNERS



Photo credit: Steve Friedman

STEVEN SPINOLA, REBNY PRESIDENT; HOWARD J. RUBENSTEIN, HOWARD J. RUBENSTEIN ASSOCIATES, THE HARRY B. HELMSLEY DISTINGUISHED NEW YORKER AWARD; GERARD V. SCHUMM, RFR REALTY, THE GEORGE M. BROOKER MANAGEMENT EXECUTIVE OF THE YEAR AWARD; PAMELA LIEBMAN, THE CORCORAN GROUP, THE KENNETH R. GERRETY HUMANITARIAN AWARD; DOUGLAS D. DURST, THE DURST ORGANIZATION, THE BERNARD H. MENDIK LIFETIME LEADERSHIP IN REAL ESTATE AWARD; DAVID E. GREEN, CUSHMAN & WAKEFIELD, THE YOUNG REAL ESTATE MAN OF THE YEAR AWARD; SIMON ZIFF, THE ACKMAN- ZIFF REAL ESTATE GROUP, THE LOUIS SMADBECK BROKER RECOGNITION AWARD

RESIDENTIAL BROKERAGE AWARD WINNERS



Photo credit: Vince Collura, GOTHAM PHOTO COMPANY

STEVEN GOLDSCHMIDT, WARBURG REALTY PARTNERSHIP, SPECIAL ACKNOWLEDGEMENT WINNER; STEPHEN KLIEGERMAN, TERRA HOLDINGS DEVELOPMENT MARKETING, HENRY FORSTER MEMORIAL AWARD WINNER; WILLIAM MCBURNEY, JR., DOUGLAS ELLIMAN REAL ESTATE, RENTAL WINNER; ELISE EHRLICH, HALSTEAD PROPERTY LLC, MOST PROMISING SALESPERSON OF THE YEAR WINNER; NICHOLAS PALANCE, BROWN HARRIS STEVENS RESIDENTIAL SALES, 1ST PRIZE SALES WINNER; ADRIAN THOMPkins, HALSTEAD PROPERTY LLC, 2ND PRIZE SALES WINNER; ELAYNE REIMER, HALSTEAD PROPERTY LLC, 3RD PRIZE WINNER; SHEBRELE HUNTER-GREEN, HALSTEAD PROPERTY LLC, 2ND PRIZE SALES WINNER

MEMBER SERVICES

COMMERCIAL BROKERAGE AWARD WINNERS



RETAIL DEAL OF THE YEAR AWARD WINNERS

Photo credit Marc Becker

CHASE WELLES, CO-CHAIR OF THE RETAIL COMMITTEE, SCG RETAIL; WINNERS: MOST CREATIVE RETAIL DEAL: ALAN SCHMERZLER, C. BRADLEY MENDELSON, CUSHMAN & WAKEFIELD; RETAIL DEAL WHICH MOST SIGNIFICANTLY BENEFITS THE MANHATTAN RETAIL MARKET: SCOTT BLOOM, BLOOM REAL ESTATE GROUP

COMMERCIAL BROKERAGE AWARD WINNERS



SALES BROKERS MOST INGENUOUS DEAL OF THE YEAR AWARD WINNERS

Photo credit: Marc Becker

STEVEN SPINOLA, PRESIDENT, REBNY; PAUL GILLEN, DARCY STACOM AND WILLIAM SHANAHAN, CBRE, THIRD PLACE EDWARD S. GORDON AWARD; MICHAEL ROTCHFORD AND TARA I. STACOM, CUSHMAN & WAKEFIELD, FIRST PLACE HENRY HART RICE AWARD; WOODY HELLER, CHAIR OF SALES BROKERS COMMITTEE, STUDLEY; MARY ANN TIGHE AND GREGORY TOSKO, CBRE, SECOND PLACE ROBERT T. LAWRENCE AWARD

MEMBER SERVICES

COMMERCIAL BROKERAGE AWARD WINNERS



COMMERCIAL MOST PROMISING ROOKIE OF THE YEAR AWARD

Photo credit Steve Friedman

BILL MONTANA, REBNY CHAIR OF THE COMMERCIAL BROKERAGE DIVISION AND OTHER COMMERCIAL DIRECTORS OF REBNY WITH ADAM FRAZIER OF BOSTON PROPERTIES WHO RECEIVED THE MOST PROMISING COMMERCIAL SALESPERSON OF THE YEAR AWARD

COMMERCIAL MANAGEMENT AWARD WINNERS



Photo credit: Cindy Ramotar

ANGELA PINSKY, REBNY AND MICHAEL NORTON, COMMERCIAL MANAGEMENT COUNCIL CHAIR, TISHMAN SPEYER WITH AWARD WINNERS KEITH GARCIA, PARAMOUNT GROUP, THE PORTER OF THE YEAR AWARD WINNER; MARITZA MOHR, BOSTON PROPERTIES, THE RISING STAR OF THE YEAR AWARD WINNER; EDWARD FALLON, BROOKFIELD PROPERTIES, THE JOHN M. GRIFFIN COMMUNITY SERVICE AWARD WINNER; PATRICIA REVELLESE, SL GREEN REALTY, THE ON-SITE MANAGER OF THE YEAR AWARD WINNER; BRIAN McCANN, CUSHMAN & WAKEFIELD, THE PORTFOLIO MANAGER OF THE YEAR AWARD WINNER; ELIZABETH TAYLOR, BOSTON PROPERTIES, THE SECURITY PROFESSIONAL OF THE YEAR AWARD WINNER; GASTON SILVA, VORNADO REALTY TRUST, THE EDWARD A. RIGUARDI COMMERCIAL MANAGEMENT EXECUTIVE OF THE YEAR AWARD WINNER; JOSEPH BRUNO, CUSHMAN & WAKEFIELD, THE ENGINEER OF THE YEAR AWARD WINNER; WITH OTHER MEMBERS OF THE COMMERCIAL MANAGEMENT COUNCIL

MEMBER SERVICES

RESIDENTIAL MANAGEMENT AWARD WINNER



Photo credit: Cindy Ramotar

EVA TALEL, STROOCK & STROOCK & LAVAN LLP; MICHAEL WOLFE, MIDBORO MANAGEMENT, INC., RESIDENTIAL EXECUTIVE OF THE YEAR AWARD WINNER; STEVEN SPINOLA, REBNY; ELLEN GRIBBEN BORNET, ROSE ASSOCIATES, INC.; ELLY PATERAS, PRUDENTIAL DOUGLAS ELLIMAN PROPERTY MANAGEMENT; DONALD H. LEVY, BROWN HARRIS STEVENS RESIDENTIAL MANAGEMENT, LLC; ANITA SAPIRMAN, SAPARN REALTY, INC.; PAM MILLER, PLYMOUTH MANAGEMENT; BENJAMIN C. KIRSCHENBAUM, COOPER SQUARE REALTY, INC.; LESLIE BOGEN WINKLER, PENMARK REALTY CORP. ; PAUL R. GOTTSEGEN, HALSTEAD PROPERTY MANAGEMENT COMPANY, LLC

NEW FOR 2012

We established a new feature providing answers to commonly asked residential brokerage questions on our Legal Line Question of the Week. REBNY Residential Counsel, Neil B. Garfinkel, partner-in-charge of real estate and banking practices at Abrams Garfinkel Margolis Bergson, LLP provides the answers and chooses one inquiry to serve as the Question of the Week. It is then disseminated to benefit our entire membership.

In addition, we launched a new service for our residential brokerage division—Numbers You Need to Know. Every other week we provide some facts about the city and the industry that we think will be interesting and informative, such as the number of housing permits issued and current employment numbers. The Numbers You Need to Know segment has also proved popular with the press which has reported on the information we have provided.

REBNY also created a confidence survey, modeled on the very popular and highly useful US Consumer Confidence Survey. The goal of the Brokerage Division Confidence Survey is to measure both residential and commercial brokers' confidence in the market now and six months from now. Surveying our many brokerage division members, who see first-hand the activity in the real estate market, provides a unique perspective on the market which can be shared with their clients. ■

NUMBERS YOU NEED TO KNOW

A REBNY Research Newsletter

New York City Park Space and Land Area

According to the NYC Green Book, there is 304.8 square miles of land area that make up New York City. Of that total, 14.7% or 44.7 square miles of that area is park space.

Manhattan is the smallest borough in land area with 22.8 square miles and has the least amount of park space with 4.2 square miles.


Queens is the largest borough in land area with 109.7 square miles. It is tied with Staten Island for the borough with the most park space at 11.4 square miles. However, Staten Island has 58.5 square miles of land area, almost half of the land area of Queens.

The Bronx has the greatest percentage of park space to total land area 25.6%.

Brooklyn has the lowest percentage of park space to total land area 9.7%.

Borough	Park Space (sq. mi.)	Total Land Area (sq. mi.)	% of Park Space
Manhattan	4.2	22.8	18.4%
Bronx	10.8	42.4	25.6%
Brooklyn	6.9	71.5	9.7%
Queens	11.4	109.7	10.4%
Staten Island	11.4	58.5	19.5%
NYC Total	44.7	304.8	14.7%

*Green Book: the Official Directory of the City of New York.



Legal Line Question of the Week

Painting an Apartment Every Three Years

Q: Is it true that a Landlord is required to paint a rental apartment in New York City every three years?

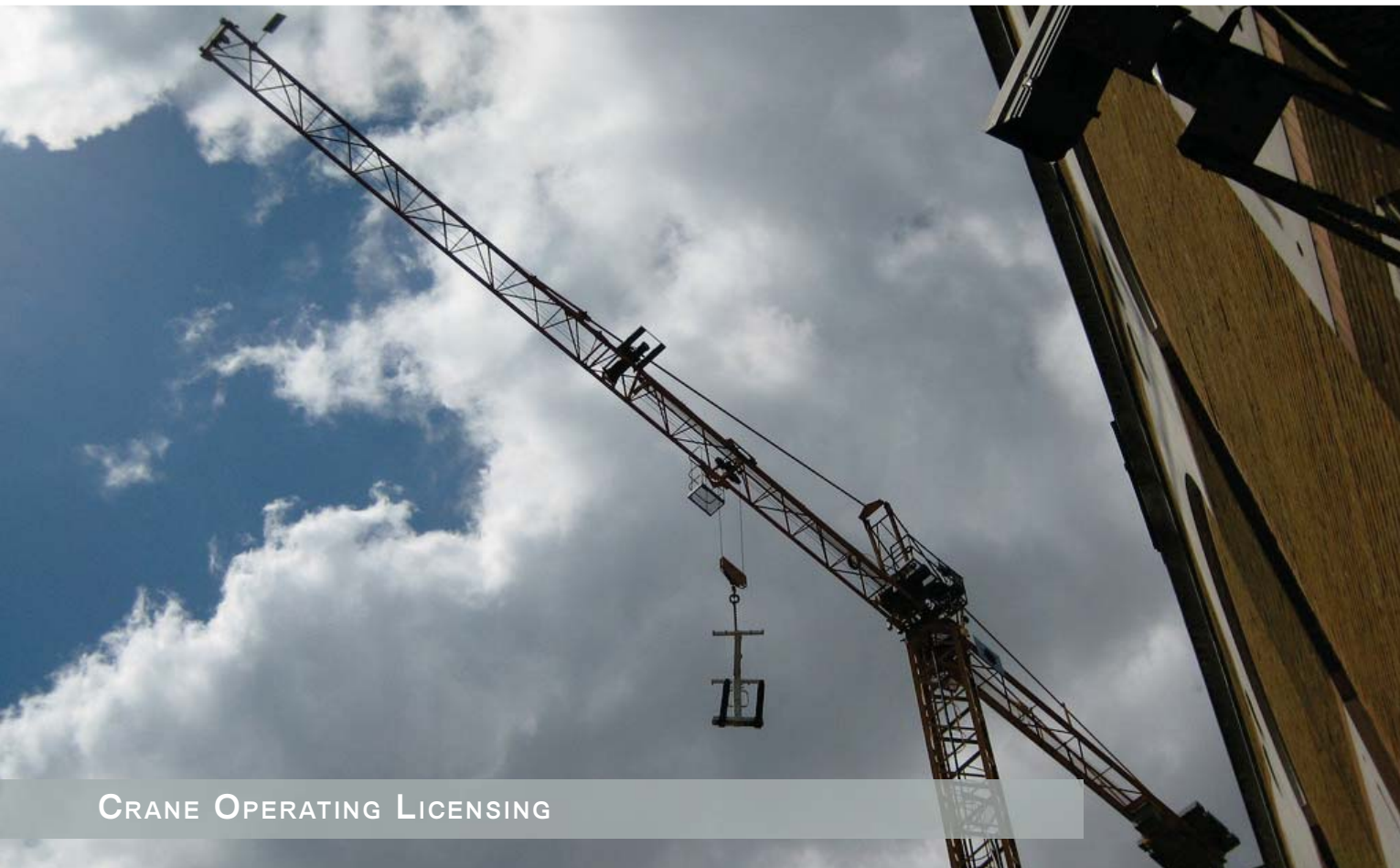
A: Yes. Pursuant to the New York City Housing Maintenance Code (the "Code"), the Landlord of a "multiple dwelling" must repaint or recover the walls and ceilings of the apartments within the building with wallpaper or other acceptable wall coverings every three years (and more often when required by contract or other provisions of law). For purposes of the Code, "multiple dwelling" is defined as a dwelling (any building or structure or portion thereof which is occupied, in whole or in part, as the home, residence or sleeping place of one or more human beings) which is rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other. However, if the walls and ceilings become unsanitary at any time within the three year time period, then the tenant may be required to repaint the interior walls and ceilings of their apartment.

Please note that if a wall or ceiling of an apartment has been decorated with paper, wood paneling or other materials over which paint is not normally applied, then the Landlord will be relieved of his/her obligations to repaint or recover the walls, provided that the same remains in a sanitary condition.

If you have any questions regarding this Memo or any other matter, please contact the REBNY Legal Line at (212) 201-1178 from the hours of 10:00 AM to 11:00 AM. Please be ready to cite your REBNY member number.



Neil B. Garfinkel,
REBNY Residential Counsel
Partner-in-charge of real estate and banking practices at
[Abrams Garfinkel Margolis Bergson, LLP](#)



CRANE OPERATING LICENSING

As expected, 2012 was a very busy year on the city, state and federal levels of government with respect to issues affecting the real estate community.

DEPARTMENT OF BUILDINGS REFORM



On the City level, New York City's recent transition to a national certification process for crane operating licensing signals the start of a modernization that will lead to safer working conditions. REBNY was a strong advocate for this change. Previously, crane operating licensing required the "direct and continuing supervision by a City licensed hoist machine operator." In the absence of NCCCO certification, allowing operators certified in other parts of the country to work in NYC, the International Union of Operating Engineers (IUOE) was responsible for training all crane operators. This closed system perpetuated many outdated and inefficient work rules that posed a serious obstacle to

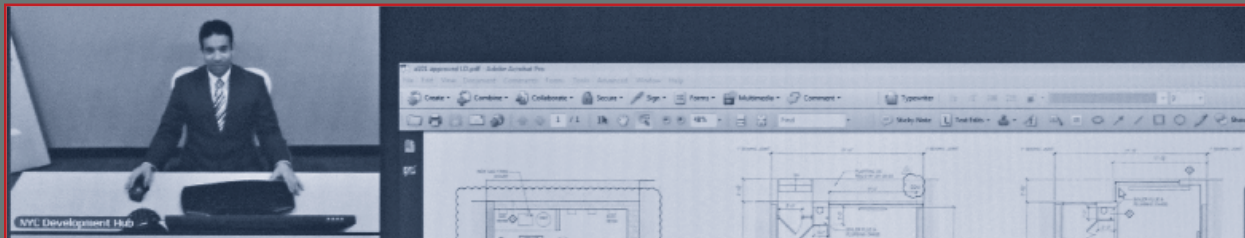
meaningful reform within the construction industry.

The adoption of national crane certifications for all classes of cranes will lead to more up-to-date training on the most current equipment, as well as more frequent retesting every few years. The result should be a safer work environment for construction workers and the public at large.

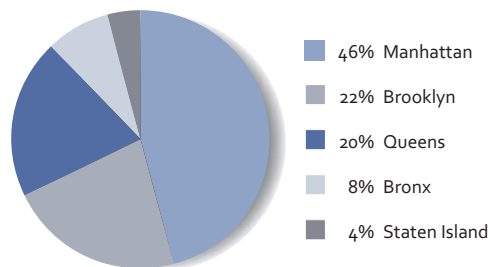
A welcome addition for our industry was the Department of Building's (DOB) **NYC Development Hub**, a state-of-the-art plan-review center. The Hub has been proven to accelerate the approval process for construction projects. At the Development Hub in Lower Manhattan, licensed professionals can electronically submit digital plans for new buildings and major construction projects. They are able to efficiently resolve issues by working virtually with City officials.

The DOB recently expanded the Hub with a program called Hub Self-Service. This program allows New York State-licensed architects and engineers to obtain online permits for small construction projects without visiting

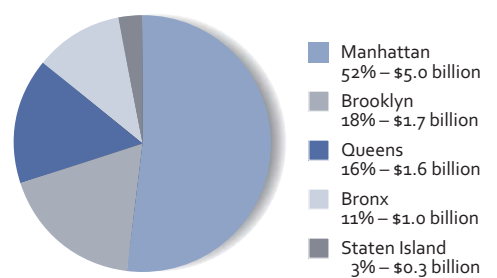
NYC DEVELOPMENT HUB: YEAR ONE



2011 Work Permits Issued
Citywide Total: 143,999



Potential Construction Dollars Generated
Citywide Total: \$9.6 billion



- Program includes more than 330 projects, including some of the City's largest and most complex
- Projects approved up to three times faster than those submitted at the borough offices
- Program is expected to generate more than \$1.3 billion in economic activity

Image credit New York City Department of Buildings, 2012 Annual Report

the DOB offices. Permits for electrical work, minor plumbing work, and renewals of After Hours Variances are also available online. By working virtually with City officials, they are able to efficiently resolve issues.

SUSTAINABILITY

Green building remains an important issue to our industry. Recent findings from New York City's Benchmarking Report, as well as studies performed by preservationists, assert that existing and older buildings perform better and are inherently "greener" than new construction. However, these studies tend to focus on consumption rather than

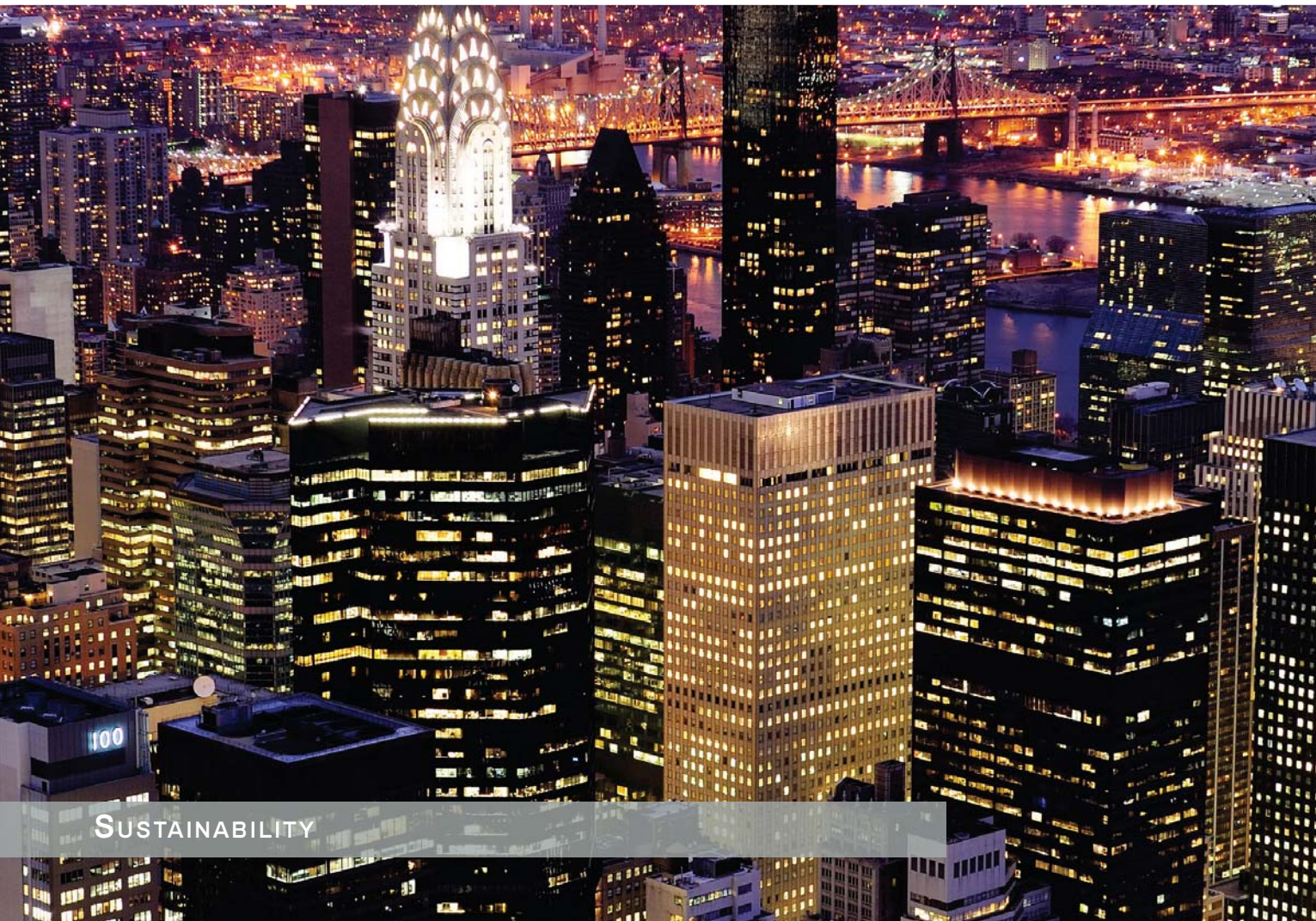


efficiency. They fail to account for the increased densities and the more advanced energy-intensive uses within new buildings.

As a result, REBNY is participating in the **Green Building Study**. It examines sustainability metrics across building types in New York City, including existing buildings, improved existing buildings, and a new high-performance building. The study will demonstrate that high-performance buildings constructed in the place of an aging building stock will achieve a higher level of sustainability than existing buildings.

In 2012, DOB finalized its rule for compliance with Local Law 87, part of the Greener, Greater Buildings legislation passed in 2009 requiring **energy audits and retro commissioning** of central systems for all buildings over 50,000 square feet. Buildings will be required to start

NEW YORK CITY ISSUES



SUSTAINABILITY

complying with this law in 2013, depending on the last digit of their tax block number.

REBNY and its members were active in pushing for modifications to the rule, such as including minimum thresholds for retro commissioning requirements, eliminating retro commissioning actions that would not have a significant impact on energy usage, and ensuring that the requirements of the law were as clear as possible for the buildings that will be doing retro commissioning for the first time.

In January 2012, the Public Service Commission (PSC) proposed new rules which would have eliminated **electric sub-metering** in new or substantially renovated multi-unit residential premises, except under certain limited circumstances. REBNY believes that residential electric sub-metering provides many positive results,

and therefore is concerned with the potential negative impacts of eliminating this important measure of energy consumption.

In response to comments from REBNY and other industry partners, the PSC revised its rules allowing sub-metering in new construction; permitting conversions from master meter to sub-meter for rentals and condos and coops, pursuant to certain rules; and creating new dispute resolution and sub-meter technology requirements. While the rule has not yet been finalized, REBNY is hopeful for a resolution that will continue to allow sub-metering in buildings and increase the availability of consumption information for all energy users.

REBNY members consulted on the Department of City Planning's "**Zone Green**" initiative which set out to remove zoning impediments to the construction and

retrofitting of green buildings. The zoning amendment, passed by the City Council in April, increased the flexibility for building owners to install green elements such as windmills, solar panels, green roofs and sun control devices.

Also this year, members of REBNY's Environment Committee provided valuable comments on the City's proposed rules regarding the removal of an **e-designation** from a property. The focus of their comments was on clarifying language and ensuring consistency with other City agencies. The Committee also pointed out where the rules were impractical in real life development situations. When an area is rezoned and a privately-owned site cannot be tested, an e-designation is placed on a property. Based on preliminary evaluations, this could be a brownfield or noise or air quality issue. In addition, e-designations can now be placed on applicant-controlled sites in special permit applications instead of placing a restrictive declaration on the property. Prior to the redevelopment of the site, an owner must perform the testing and clean-up, if necessary, before the site can be developed.

PLANNING & LAND USE

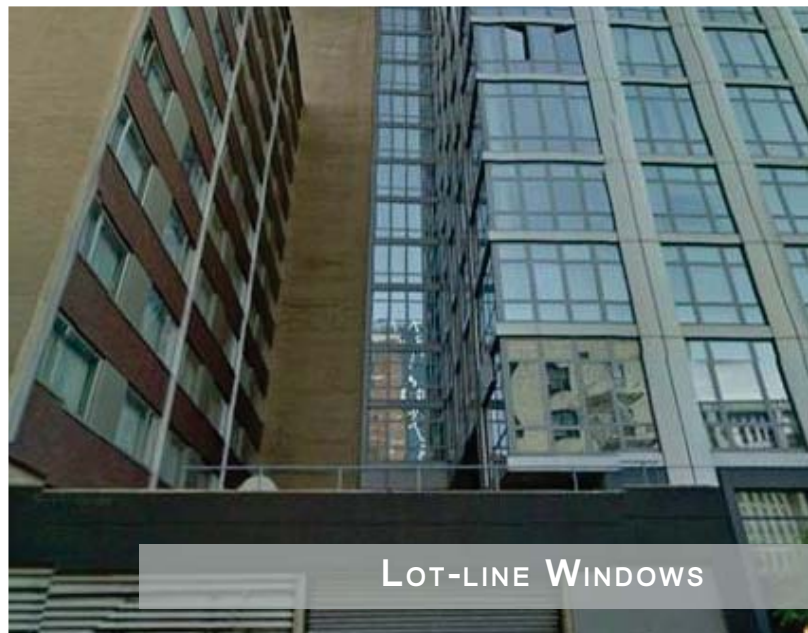
The Department of Buildings (DOB) has issued a draft bulletin on the method for calculating **mechanical deductions** for floor area calculations (mechanical space for the building is not counted toward the amount of zoning floor area you can build). We have identified numerous instances in which the draft bulletin would count as zoning floor area space that is unquestionably mechanical and could not be used for anything else. Based on these examples, we have urged revisions to the draft bulletin. In addition, a number of our members—primarily architects and development consultants—have analyzed many recently built residential projects to determine the percentage of space in a building that is mechanical. The goal of this exercise is to establish a range in which the amount of mechanical space is unquestioned and accepted. Projects above this range would require closer scrutiny to determine that this higher percentage is devoted solely to permitted mechanical deductions. If this approach and methodology is adopted by the DOB, we will embark on a similar exercise for office and mixed-use buildings.

Another important issue is **lot-line windows**. It is a

very common occurrence in New York that a new building includes development rights from an adjacent property. In such instances, the owner of the new building enters into an agreement with the owner of the existing building to convey the development rights and to create a light and air easement over the existing building in order to provide legal windows on the side of the new building adjacent to the existing building, or on the lot-line which separates the new and existing buildings.

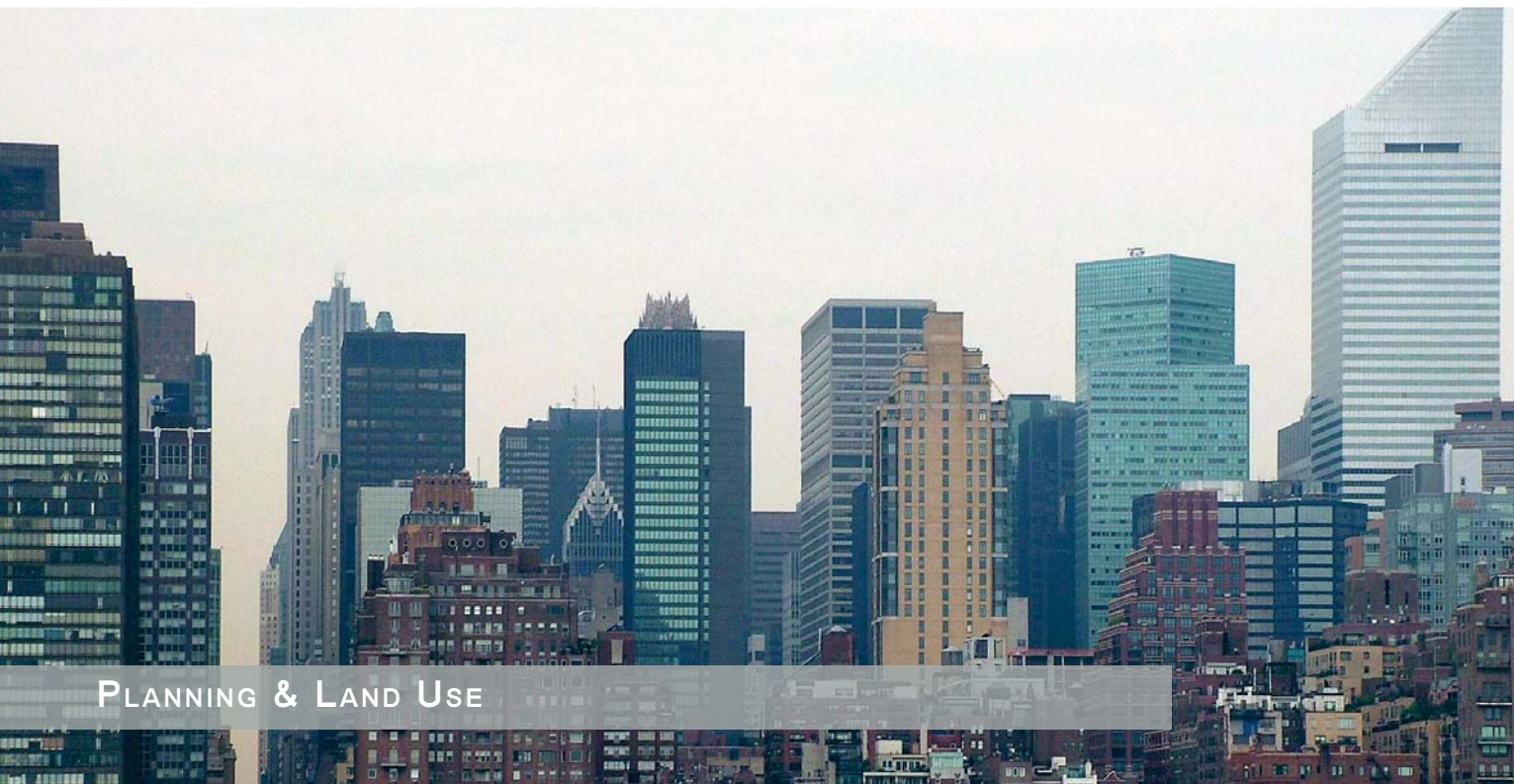
DOB has determined that under the new building code the number of windows below 60 feet be significantly reduced in number and size for fire safety reasons. The impact of this new interpretation is that the amount of habitable space in the new building facing the lot line below 60 feet would be significantly reduced and would lead to fewer apartments.

REBNY has been providing DOB with illustrations that highlight the adverse impact this decision would have compared to the existing practice. Also, we have noted that there have been no situations we are aware of where windows on the lot-line as presently permitted created a hazardous condition. In fact, since the 1968 code was adopted permitting lot line windows, fire safety standards have increased and improved dramatically. The most noteworthy addition has been the requirement for sprinklers. We are continuing to work with DOB on this issue to find a solution that strikes a balance between market requirements and DOB's interpretation of the new building code.



LOT-LINE WINDOWS

NEW YORK CITY ISSUES



PLANNING & LAND USE

Members also advised on the creation of a more efficient DCP application and pre-certification process which was officially launched in June 2012. The **BluePRint** project is a new City administrative initiative to speed up bottlenecks in the pre-certification process. It is anticipated that when fully implemented, BluePRint will make the pre-certification process shorter, more predictable and less costly.

In 2012, REBNY formed a task force to work on proposed zoning changes to regulate **off-street parking in Manhattan**. After a study of parking in the Manhattan Core (defined as Community Districts 1-8), the City is exploring new policies that would address: formalizing the current system of public parking; expanding the issues to be considered when renewing a special permit request; improving parking special permits for further consideration of the appropriateness of proposed facilities; developing specific criteria for special generators and large sites; removing obsolete regulations that could hinder the provision of affordable housing; revising regulations to promote pedestrian-friendly streetscapes; establishing layout standards for new parking facilities that promote pedestrian safety and well-functioning streets; and providing for automated parking facilities. REBNY's task force has been providing important feedback on the technical and operational issues of parking garages/lots,

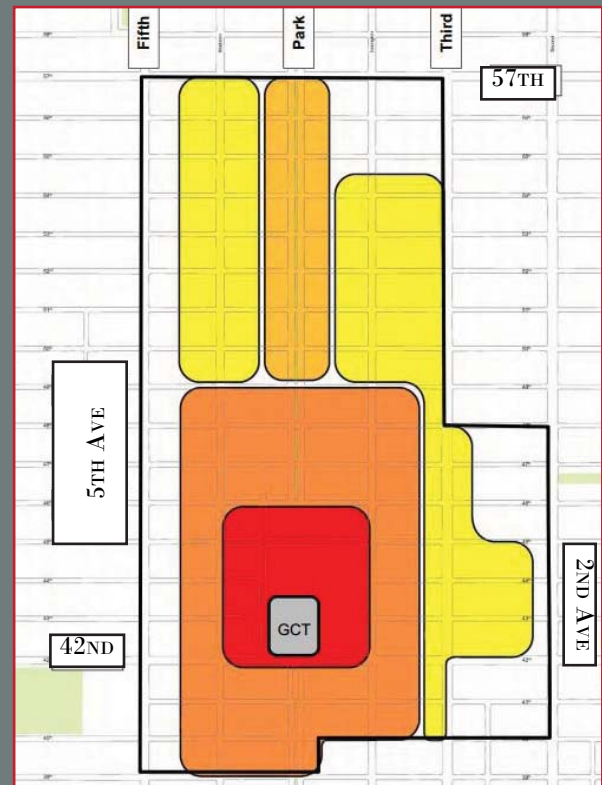
as well as on the public policy issues around parking.

In 2012, the Department of City Planning (DCP) proposed **new retail rules** that would establish store frontage limitations (40 feet), bank frontage limitations (25 feet), residential lobby limitations and street wall transparency requirements along the three main avenues—Amsterdam, Broadway and Columbus—on the Upper West Side. A goal of the proposal was to preserve small stores and the active retail character where it exists and to respond to community concerns about the increase in the number of large stores and banks.

REBNY noted that the Upper West Side has a vibrant retail market with few vacancies and should not be more restrictively regulated. These storefront restrictions will make it more difficult to find tenants and hamper the growth of local businesses that are successful. Storefront restrictions were used in the 1970's on East 86th Street to protect local merchants. Those restrictions failed to protect the businesses and after 15 years the restrictions were repealed. As a result of objections raised by REBNY and a coalition of business organizations, DCP amended the proposal so that existing large storefronts could remain permanently; existing businesses would have a predictable and clear mechanism to expand to a maximum of sixty feet; and new lease agreements that met certain

EAST MIDTOWN REZONING

The East Midtown rezoning would increase Floor Area Ratios (FARs) on certain sites. These increases would be available as-of-right through a contribution to a District Improvement Fund, which will be used to improve the pedestrian and transportation network.



EAST MIDTOWN REZONING MAP

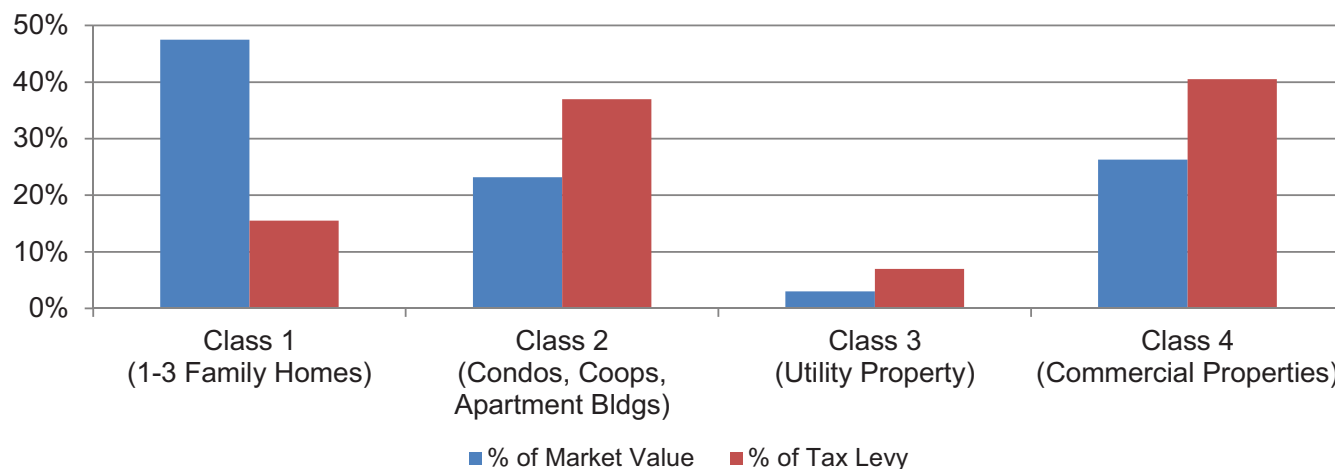
conditions, including deadlines for completion, would not need to conform to the new requirements.

In addition, the Department of City Planning is proceeding with its proposal to **rezone East Midtown**, which is bounded roughly by 57th Street to the north, 40th Street to the south, east of Fifth Avenue on the west, and Third Avenue on the east. Our suggestion to permit new buildings on overbuilt sites to be built up to their current floor area initiated a broader examination of the East Midtown area by DCP. This review led to the East Midtown plan. This area presently has a base FAR of 15 on the avenues and a 12 FAR on the mid-blocks. In the area around Grand Central (the Grand Central Sub-district), the FAR can be increased to 21.6 through a special permit.

The new proposal from City Planning would enlarge the Grand Central Sub-district slightly and permit a base FAR of 24 as-of-right. Along Park Avenue, the base FAR would be 21.6; Madison, Lexington and Third would go to an 18 FAR. The mid-blocks would go up to 14.4 as-of-right.

These as-of-right floor area increases must be “earned” through a contribution to a District Improvement Fund. This fund will pay for improvements in the pedestrian and transportation network. In the Grand Central Sub-district, for floor area increases above 18 FAR, an owner can acquire the additional floor area through the purchase of development rights from Grand Central. In addition, in order to achieve these higher as-of-right FARs, sites must have full avenue frontage, a minimum size of 25,000 square feet and its use is restricted to commercial. There is a mechanism proposed for the Grand Central Sub-district and along Park Avenue which would permit an FAR of 30 and 24, respectively, through a special permit containing additional requirements. Lastly, these changes, though scheduled to complete the public review process in 2013, would not become effective until 2017. This delay in implementation is being called a sunrise provision and is intended to mitigate any potential impact on the far West Side and Lower Manhattan. In 2013, REBNY and other interested parties will identify and articulate ways in which they believe the Midtown East rezoning can be further improved.

Total Market Value and Tax Levy by Tax Class



Source: NYC Property Tax Report FY 2012

REBNY also continued to work toward eliminating the **artist certification requirement in SoHo/NoHo**. The SoHo/NoHo Action Committee has raised funds from businesses and residents in the area that support the elimination of the artist certification requirements and a modest expansion to the cap in the size of ground floor retail stores restrictions, which is currently 3,500 square feet. The SoHo/NoHo Action Committee has enlisted a consultant to verify the number of certified artists who still live in SoHo/NoHo and to survey the size of existing ground floor retail in the district. Verifying the number of certified artists in SoHo/NoHo, an aspect of the study that will require receiving a list of certified artists from the Department of Cultural Affairs, will be essential in developing a workable approach to lifting this zoning requirement.

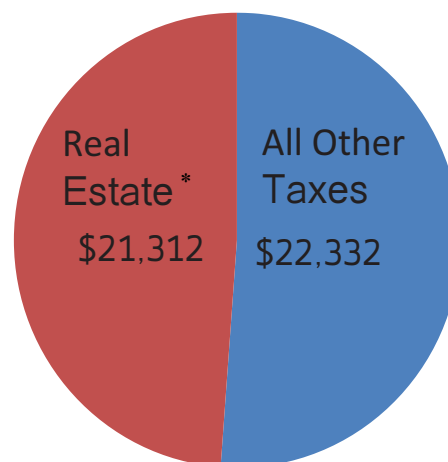
Also in 2012, REBNY supported the rezoning of Hudson Square from manufacturing to commercial. This rezoning will transform this area in the vicinity of the Holland Tunnel to a mixed-use district and build on the strong commercial presence that is already in the area.

PROPERTY TAXES

Over the last year, REBNY has continued to express concerns about the growing **real property tax burden** on income producing properties. A significant portion of the burden is the result of the structural inequities in the tax system that favors Class 1 property (single family homes). Class 1 properties represent nearly 50 percent of the value of all real estate and pay only 15 percent of the

tax levy. In comparison, Class 4 (office buildings, hotels) accounts for 22 percent of the value of all real estate and pays 40 percent of the tax levy. Further, this inequity is exacerbated by assessment practices toward income producing property (residential rental apartments and office buildings primarily) that arbitrarily and unilaterally lower a property's reported expenses and raise a property's reported income. As a result, the tax classes for income producing properties have a higher market value and pay a higher tax than they should.

NYC Revenue FY2013 (Millions)

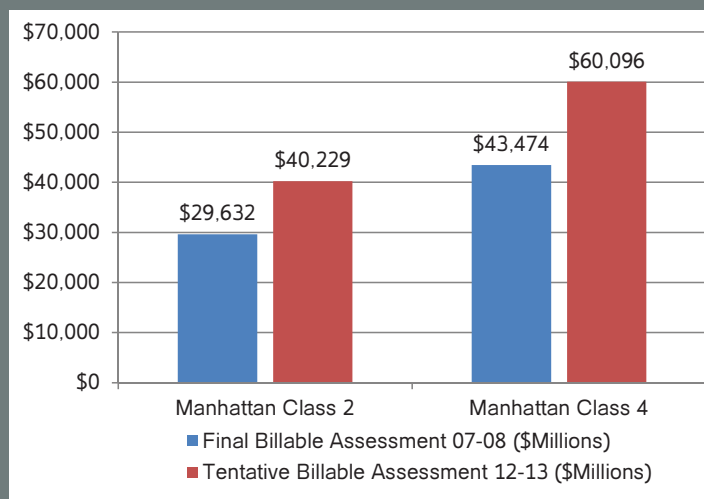


* Real Estate Taxes are comprised of Real Property Tax, Real Property Transfer Tax, Mortgage Recording Tax, Commercial Rent Tax and Hotel Tax

Source: 2013 NYC Adopted Budget

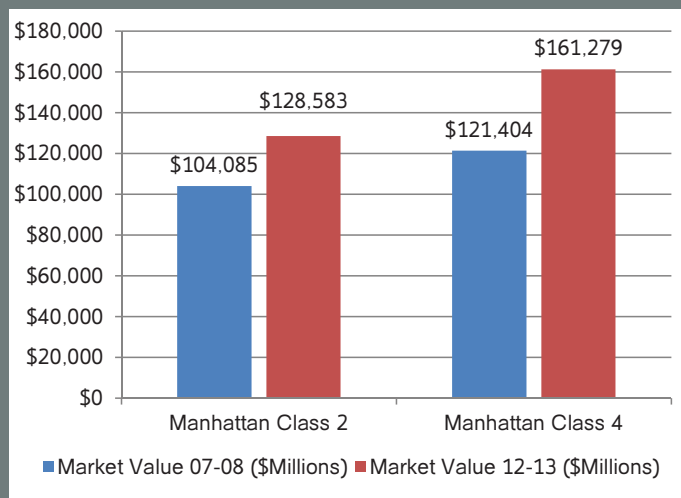
FY2013 TENTATIVE ASSESSMENT ROLL

In the January 2012 release of the FY2013 tentative assessment roll, the Department of Finance (DOF) reported a 3.8 percent increase in market value compared to last year. This modest increase in market value obscures the staggering growth in Manhattan since the peak of the market.



Source: NYC Property Tax Report FY 2012

In the case of both Manhattan Class 2 and 4, the billable assessed values grew even more.



As a result of these increases, the real property tax levy will increase 40 percent since the peak of the market in 2008. We have questioned some of DOF's assessment practices that have led to increases that are inconsistent with the conditions in the market place.

We proposed to City officials modest **reforms to the assessment process that would entail** the Department of Finance (DOF):

- Recognizing the costs incurred by properties that make base building capital improvements;
- Utilizing higher cap rates for properties that have an affordable component; and
- Using the income and expense information for stabilized buildings and adjust only according to strict and transparent guidelines.

Our recommendations, which are consistent with case law and standard assessment practice, have yet to be addressed.

Also in 2012, the City Council, at the request of the Mayoral Administration, introduced a **Real Property Income and Expense (RPIE)** bill that would: require

RPIE filings to be certified by an accountant; move up the filing date to June 1; and impose significant penalties for failing to file. RPIE filings are only a part of the tax valuation process, and the information received is often times substantially modified and at times disregarded by the DOF prior to the final determination of a property's market value. Additionally, the penalties are the same for properties that do not file an exclusion form with Finance as those that are required to submit RPIE information but fail to. REBNY believes that this RPIE bill would be extremely costly and an unnecessary burden to impose on property owners, and will continue to work on improving this bill.

LEGISLATION

Several pieces of legislation that would be harmful to job creation were considered by the City Council. For example, **living wage legislation** was hotly debated. The City Council eventually amended and passed legislation so that it applies to property owners and tenants who receive more

than \$1 million in direct discretionary benefits. We worked with the City Council to ensure that it would not impact recipients of as-of-right benefits (such as 421a or ICAP) or their tenants, and that it would not apply to economic development projects that have already been approved.

In addition, the City Council passed a **prevailing wage** bill. The prevailing wage bill applies to building service workers in certain buildings where the City leases space or in developments that receive discretionary financial assistance. We worked with the City Council to tailor the bill so that it targeted the requirement to buildings in which the City was the predominant tenant and would not apply to as-of-right benefit programs such as 421a and ICAP.

Subsequent to their passage in the City Council, Mayor Bloomberg vetoed the living wage and prevailing wage legislation. The City Council thereafter overrode the Mayor's vetoes. Following that action, the Bloomberg administration brought legal action challenging the validity of such legislation. The litigation is still pending.

REBNY continues to oppose a bill that would require **paid sick leave** for all employees—full-time or part-time. City Council leadership, despite continuing pressure from a variety of groups, has continued to oppose the bill arguing that our economic recovery is too fragile to impose such a cost on business.

In 2012, the Residential Management Council's Best Practices Subcommittee continued its leadership in researching the newest residential management issues and putting together recommendations for the rest of the industry.



It released its best practices on complying with the new **CO Detector Law** (Local Law 75 of 2011) in September 2012 and also created a guide that serves as a starting point to help managing agents best inform their buildings and boards if they are considering implementing a **no-smoking policy**.

Under existing City, State, and Federal law, owners of rental apartment buildings are free to adopt a non-smoking policy with regard to the individual residential units that are free market. Currently, there are no laws in New York prohibiting smoking within an apartment in residential buildings. Implementing a smoking ban could lower maintenance costs and insurance rates.

LANDMARK DESIGNATION

REBNY opposed the **Borough Hall Skyscraper Historic District** in Downtown Brooklyn because of our concern about the land use implications of the designation and the quality of the property to be designated. For the first time in memory, the City Planning Commission report contained statements of dissent from three commissioners echoing our concerns. In addition, other commissioners, prior to their vote, questioned the quality of the property included in the District, the land use impact of designation and the limited role of the Planning Commission in this process. This action by the commissioners was unprecedented and reflected the concerns we have been articulating for some time with the proliferation of historic district designations. We voiced our concerns at the City Council hearing and reiterated the fundamental problems we have identified with the recent designations.

In response to the concerns raised by REBNY and members of the City Council about the impact of the Borough Hall Skyscraper Historic District on retail tenants, the Landmarks Preservation Commission (LPC) issued **storefront guidelines** intended to make the review process more open and more efficient. Unfortunately, the rules imposed severe burdens on property owners to research the historic conditions of storefronts and would require owners to renovate in a manner determined by the LPC based on the historic research. The rules omitted any guidance to owners who want to replace the existing storefront with similar materials. This omission actually appears to impose increased obligations on property owners regarding the renovation of storefronts.

In 2012, LPC also designated one phase of the **Upper West Side Historic District extension** (this action is officially the extension of two much smaller districts, the West End-Collegiate Historic District and the Riverside-West End Historic District). REBNY will continue to express our opposition to this action, which will make

RESPONSIBLE LANDMARKS COALITION PARTNERS



- Associated Builders and Owners of Greater New York
- Building and Construction Trades Council of Greater New York (BCTC)
- Building Trades Employers Association of New York City
- Community Housing Improvement Program (CHIP)
- Council of New York Cooperatives and Condominiums
- Manhattan Chamber of Commerce
- Mount Pisgah Baptist Church
- New York Building Congress
- Real Estate Board of New York (REBNY)
- Rent Stabilization Association (RSA)
- SEIU 32BJ

virtually the entire Upper West Side an historic district. We have hired the Environmental Simulation Center to do an analysis of these districts and identify how much development is potentially being prevented as a result of the designation. In addition to curtailing needed development, the designation would impose additional costs on owners who must renovate their property. For example, a window manufacturer reports that landmark designation can double, and sometimes triple, the cost to replace windows. This estimate does not include the cost to receive approval from the LPC for the window replacement.

Another landmark district we questioned was the proposed **Lower East Side Historic District**, that included some tenement buildings and religious and cultural institutions. The basis for this district largely rested on the neighborhood's history as an immigrant enclave, rather than the redeeming qualities of individual buildings. A tour of the neighborhood reveals very few aspects that would qualify this area as a distinct section of the city, which is the standard in the Landmarks Law.

In 2012, REBNY and other groups launched the **Responsible Landmarks Coalition (RLC)**. Comprised of housing, labor, business and other trade organizations, RLC was formed to address the problems in the landmark process and the adverse impacts that historic district designation can have on other City priorities,

such as affordable housing, economic development and job creation. Its mission includes providing an open and transparent process, applying consistently high standards when designating a property, considering other City priorities as part of the designation process, and implementing the law in a sensible manner.

ECONOMIC DEVELOPMENT

REBNY has consistently supported economic development projects that have revitalized neighborhoods, created new jobs, increased our tax base and enhanced the city's competitiveness around the world. 2012 was no exception.

As part of a broader, more inclusive approach to funding economic development projects around the state, Governor Cuomo established **regional councils** that would review and evaluate economic development proposals submitted by interested groups and project sponsors. Based on this process, the most beneficial projects would be selected and state funds allocated to advance these worthy initiatives. REBNY President Steven Spinola was appointed to serve on the New York City Regional Council.

In addition, REBNY continues to publicly support New York City projects that are beneficial to our city. One critical project is **New York University's planned expansion**. NYU has become a world renowned university that has been attracting bright students and

NEW YORK CITY ISSUES



ECONOMIC DEVELOPMENT

New York University's Planned Expansion, View taken from the corner of the former Greene St. & Bleecker St.

talented teachers. The expansion is critical in order to provide the services and programs that are expected for a university like NYU. The NYU expansion will be an important creator of jobs and economic activity for our city. Colleges and universities play a vital role in the life of our city and its economy. In addition to NYU, we have supported the Columbia and Fordham expansion projects and enthusiastically look forward to the development of the tech center on Roosevelt Island by Cornell and Technion-Israel Institute of Technology.

Springing out of last year's contract negotiation regarding commercial buildings, REBNY and 32BJ, under the leadership of former President Michael Fishman and current President Hector Figueroa, have started working together on issues of mutual importance. The priority has been to focus on initiatives to spur new developments that create good jobs. The collaboration has centered on such projects as the expansion of Chelsea Market, reform of the City's landmark process and passage of the NYS Dream Act/DREAM Fund.

The **Chelsea Market expansion** is another project REBNY supported. The opening of Chelsea Market was instrumental in the revitalization of this section of Chelsea, in the vicinity of the High Line and the Meatpacking District. As a lure for retailers of all types, the West Chelsea rezoning spurred new residential development and launched significant new capital investment in the area including the purchase of the Port Authority building by Google. The expansion of the Chelsea Market was a natural evolution in the growth and continuing transformation of West Chelsea.

REBNY has also been a long-time supporter of the **Atlantic Yards project** which we see as a catalyst for even greater economic activity in Downtown Brooklyn. The opening this year of the Barclays Center is a clear sign that this large and important project will become an engine for jobs as the remainder of the development is built.

Additionally, we have supported the new plans for **Willets Point**. Anchored by a major retail center to be followed



NO. 7 LINE SUBWAY EXTENSION

by new housing, this exciting project will link this long neglected area of Queens with the vibrant residential and commercial activity in adjacent Flushing.

Finally, REBNY has continued to strongly advocate for the restoration of the 41st Street and 10th Avenue station and connection to the **No. 7 line Subway extension**. As a result, the plans for the station were revised to permit a station to be built once the train to 34th Street and 11th Avenue is operating. With the cancellation of the ARC project, which would have increased rail capacity and improved commuter traffic from west of the Hudson, we have been exploring a proposal that would extend the No. 7 line to Secaucus Junction in New Jersey, providing the additional transit capacity needed to promote the growth of Manhattan's Central Business District. ■



NUMBER 7 LINE SUBWAY EXTENSION,
FUTURE 34TH STREET STATION

NEW YORK STATE ISSUES



NEW YORK STATE ISSUES

Photo credit: Flickruser jimbowen0306

REBNY continued to play a key role in the ongoing activities of the **Committee to Save New York (CSNY)**. CSNY has played a crucial role in the successful efforts by Governor Andrew Cuomo and State legislative leaders over the last two years to reduce spending and to produce a balanced and on-time budget each year. We will continue to advocate for reduced state spending and for lowering the cost of doing business in New York.



In 2012, Governor Cuomo, Assembly Speaker Sheldon Silver and Senate Majority Leader Dean Skelos announced the passage of a sweeping **pension reform** plan that will save state and local governments more than \$80 billion over the next 30 years. New York City taxpayer savings will account for \$21 billion of these savings. Our legislative leaders have shown extraordinary determination and deserve immense credit for addressing the critical fiscal challenges facing state and local government. The pension reform package is an important victory for all New York taxpayers and will continue to permit the state and the city to invest in our future. With this historic agreement, not a single current government worker or retiree will be affected and future city employees will receive pensions

that taxpayers can afford.

There was a flurry of activity pertaining to several pieces of legislation affecting the real estate industry. The New York State Legislature drafted a bill that would extend the **J-51** program with some significant changes requested by the city to target these benefits to affordable housing and away from market-rate rental property. For example, market-rate conversions (from non-residential to residential use) and rental, coop and condo buildings whose units have an assessed value in excess of \$30,000 at the start of the improvement would be unable to receive the J-51 benefit.

In addition, only building-wide system improvements (heating, roofing, etc.) would be eligible for benefits. Individual apartment improvements such as kitchens and bathrooms would not. As part of this reform, they would simplify the administration of the program and increase the certified reasonable cost list. Based on the city analysis, eligible buildings would receive a deeper benefit, but at the price of eliminating many buildings. Projects that receive substantial governmental assistance (SGA) would not be subject to these prohibitions and restrictions. We expect the Legislature to pass this bill when it returns to session.

Two critical issues the legislation does not address are those projects that began renovation under the expired J-51 program, with the expectation that J-51 would be renewed since that has been the practice for more than 50 years. These projects were not completed in time to qualify for the benefit. The other issue not addressed by the J-51 legislation is the resolution of the Roberts case.

NEW YORK STATE HOUSING FINANCE LAW ARTICLE 5

New York State Housing Finance Law Article 5 establishes a process whereby a municipal legislative body may authorize real property tax abatements in order to meet the municipality's need for affordable housing. Most of the projects receiving these tax abatements are Section 8 projects which were built during the 70s and 80s, have a maximum tax abatement term of 40 years, and are nearing the end of their abatement period. REBNY supported legislation that was signed into law that allows municipalities the option to extend these benefits to preserve their affordable housing.

Additionally, the state legislature introduced legislation that would address some **421a** issues that were not addressed by the extension of the program last year. One is to extend exemption benefits for identified projects that are in FAR 15 zoning districts.

The other clean-up issue has to do with completion of construction dates added to the bill in 2011. Previously, the statute did not have any specific time to complete construction. With the changes in the benefit schedule a few years ago, the Department of Housing Preservation and Development (HPD) created a rule that established a flexible deadline which recognized the impact of the financial crisis on project completion. The specific deadlines in the statute stripped HPD of its flexibility and jeopardized benefits for many stalled projects that are changing owners.

These projects primarily have been sites in which the lender has taken over the project. Eliminating this language in the law would restore the more flexible language in the HPD rule to govern construction completion and permit vital new housing development to proceed.

At the end of the 2012 session, the state legislature drafted legislation that would extend the **coop/condo abatement** for three years, restrict the benefit to unit owners who are primary residents and phase out the benefit for non-primary residents. Similar to the current law, a unit owner who is a primary resident can receive the abatement for up to two additional units he or she owns provided they are in the building in which they maintain their primary residence. In addition, the threshold for the deeper benefit of 25 percent has been raised to an assessed value of \$50,000 with a step-down in benefits to 17.5 percent at an assessed value of \$60,000. This legislation is

expected to pass when the Legislature returns to session. In 2012, at REBNY's urging, the State Legislature extended the sunset for **tax credits of the Brownfield Cleanup Program** until December 31, 2015.

Another important issue to our industry was a bill passed by the state legislature that streamlines the process by which **real estate broker and salesperson licenses** are terminated and new records of association are established. Currently a principal broker is required to pay a fee to file a termination of association with the State when a real estate salesperson or associate broker disassociates with that principal broker. It was found that the payment of the disassociation fee was being used as a means to withhold a salesperson's or associate broker's termination of association thus preventing them from associating with a new principal broker. This new legislation eliminates that potentially contentious disassociation fee and requires the salesperson or their new sponsoring broker to pay a one-time fee for termination and establishing new record of association. This prevents brokers and salespeople from spending time on the sidelines when switching.

REBNY was successful this year in supporting the renewal of the provisions (commonly known as the **multi-year provision**) that permit the allocation of tax exempt bond financing for housing construction over a three year period. This provision has been a catalyst for 80/20 projects. State law required that a project awarded tax exempt bonds receive the entire allocation in the first year, even though the project would only require a fraction of the total in the first year. This limited the number of new projects that could start. Permitting the allocation to be spread over three years increases the number of new projects that can begin by enabling them to take advantage of favorable market conditions while providing



Lawsuit Reform Alliance of New York

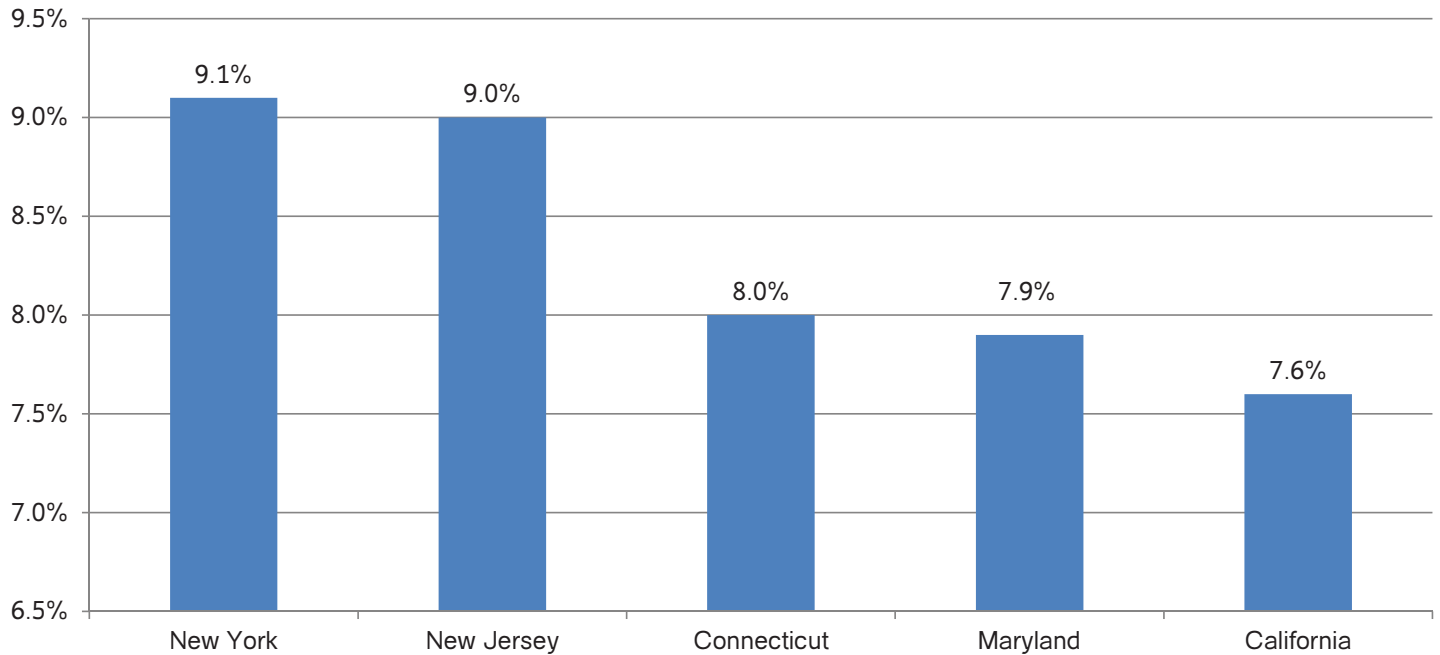
Justice. Fairness. Common Sense.

New York with higher tax revenue and jobs as a result of the increased economic activity.

REBNY has joined the Lawsuit Reform Alliance which seeks modifications to the **Scaffold Law**. This Law was enacted nearly 100 years ago to guarantee worker safety by imposing strict liability for workplace injuries on the owner, even if the worker was acting in a careless and reckless manner. With the proliferation of federal and state agencies establishing and enforcing worker safety rules, the intent of the scaffold law is now embodied in a wide range of products and procedures. New York is the only state in the country that continues to have a strict liability standard. The Alliance is seeking amendments that would allow an owner to introduce reckless and dangerous worker conduct to mitigate owner liability especially when the accident is not the fault of the owner.



States With Highest Federal Individual Income Tax Deductions as a Share of Adjusted Gross Income



Source: Internal Revenue Service

At a federal level, there was activity on a range of issues affecting the real estate community. The **Interstate Land Sales Act (ILSA)** was enacted almost a half century ago in the 1960s to regulate “fast-buck operators” who were bilking the elderly through blatantly fraudulent sales of raw land, often located in swamps and deserts. More recently, individuals who have signed contracts for condominiums in construction have increasingly invoked ILSA as a way to get out of the contract of sale. In response, REBNY and other allies have pushed back on several fronts.

In Congress, Senator Charles Schumer (D-NY), Rep. Carolyn Maloney (D-NY), and Senator Kirsten Gillibrand (D-NY), along with Reps. Patrick McHenry (R-NC), Rep. Jerrold Nadler (D-NY) and Rep. Michael Grimm (R-NY) have introduced the “Interstate Land Sales Disclosure Act Update of 2012” (S.3499/H.R.6337) to allow condominium developers and their lenders some certainty as the economy continues to recover and eliminates this abusive use of ILSA.

More recently, the Second Circuit Court of Appeals reversed a lower court ruling and rejected a condominium buyer’s attempt to void a purchase agreement for a unit by claiming the sponsor failed to satisfy the requirements of ILSA. The Court of Appeals found the sponsor

satisfied the disclosure requirements of ILSA as Congress had intended. REBNY filed an amicus on behalf of the Sponsor. REBNY’s amicus was prominently mentioned in the Court’s decision.

On another front, the **Federal Accounting Standards Board (FASB)** proposed changes to the way leases are reported on financial statements to bring US standards in line with international standards. These proposed changes contained significant issues for any company that leases equipment or real estate, and is particularly problematic to the real estate industry and financial services. REBNY made these points to FASB. FASB withdrew that draft in December 2011 and REBNY has been working with the Real Estate Roundtable and US Chamber of Commerce to have FASB reconsider this proposal. It is very important for REBNY members that lease terms are not significantly affected since this would also have a detrimental effect on accessing financing and long-term planning for buildings.

Following the election, the party dynamics of Congress remain unchanged. The Republicans continue to control the House and the Democrats the Senate without a supermajority. Many policies that would clarify business operations remain unaddressed in Washington, DC. For example, among the items being discussed pertaining to the **Tax Extender Package** that REBNY is advocating

for are: amending the Alternative Minimum Tax; preserving state and local tax deductions; and extending the Liberty Zone Tax Credits. Additionally, the estate tax provisions will expire in 2012 and the tax treatment of carried interest continues to be an ongoing concern for partnership structures in real estate.

Other federal issues that we have been concerned with in 2012 are:

Foreign Investment in Real Property Tax Act (FIRPTA) authorizes the United States to tax foreign persons on dispositions of U.S. real property interests. There is broad agreement among members of Congress and the real estate industry that FIRPTA should be reformed in order to encourage foreign investment, improve commercial real estate values, and stimulate hiring in industries connected to commercial real estate. The two reforms that the real estate industry is seeking are: reversal of the 2007 IRS ruling that treated liquidating distributions as subject to the FIRPTA tax and the increase from 5 to 10 percent limit on portfolio investors in publicly traded REITs. Congressman Crowley has led this effort in the House which passed the bill with 410 votes in favor. The legislation has stalled in the Senate.

Carried Interest has surfaced again as a possible revenue source for closing the federal budget deficit, though we successfully avoided its inclusion during the debate over raising the federal debt ceiling. We remain concerned about the following specific aspects over the proposal to tax carried interest:

- **Enterprise Value Tax** would tax the goodwill portion of a sale of a partnership interest, in whole or in part, as if it were to income rather than capital gain (as it is under current law); and
- **Family Limited Partnerships** would extend taxation to family members who make and manage family investments through the common family partnership structure.

The **EB-5 Regional Center Program** (EB-5 Program or Program) was established by Congress in 1990 to stimulate economic growth through foreign investment. The Program's mandate is to use foreign investment to spur job creation in areas of high unemployment while simultaneously providing eligible foreign investors the opportunity to become lawful permanent residents of the

United States. We have advocated for the continuation of this program. Under the EB-5 Program, a foreign investor seeking a green card must make an investment of \$500,000 in an area of high unemployment (or rural area) within an approved Regional Center. Such investment must be shown to have created 10 direct or indirect U.S. jobs. The EB-5 program is estimated to have attracted more than \$1.5 billion in investment since its inception, creating some 31,000 jobs. Direct investment through the Program doubled in FY2011 to over \$1.25 billion—generating more than 25,000 new jobs for U.S. workers—all at no cost to the U.S. taxpayer. FY2012 is expected to have seen close to \$2 billion in EB-5 investment. New York raised \$563 million of EB-5 funds and will raise an additional \$350 million of EB-5 funds over the next twelve months.

The EPA's **Commercial Building Energy Consumption Survey (CBECS)** is critical for EPA's EnergyStar system which is crucial for New York City real estate since NYC local law now requires that benchmarking scores for commercial buildings be made public. The previous survey conducted in 2007 had invalid data and was not able to be used; therefore the current data underlying the system is from 2003. The funding for the 2012 survey was cut over the summer. The cost to conduct the survey is \$15 million.


We have urged that this funding be restored so that building owners have a valid reference point for understanding their building's energy use and to make energy efficient investments.

The **179-D tax deduction** requires that a building owner must invest in energy-efficient improvements that reduce total annual energy and power costs with respect to the interior lighting, systems, heating, cooling, ventilation, and hot water systems by 50% as compared to the ASHRAE 90.1 baseline. Partial deductions are allowed. Energy simulation is required to justify the deduction, and inspection and testing must be completed by a qualified engineer or contractor registered in the jurisdiction.

We have recommended that this Energy Efficient Commercial Buildings deduction should be reformed in order to encourage more building owners to claim it, and in order to achieve deeper energy savings from building retrofits of existing buildings.

Our suggested reforms include:

- Measure energy savings compared to the existing building baseline.
- Link the amount of the incentive to energy savings achieved.
- Allow owners or tenants to claim some incentive for improving a substantial space within a building.
- Make the tax incentive useable for a broad range of building types and owners, including REITs and multifamily buildings.

A bill to reform the 179-D commercial building tax deduction, the Commercial Building Modernization Act (S.3591), was introduced this year by Senators Olympia Snowe (R-ME), Jeff Bingaman (D-NM), Dianne Feinstein (D-CA) and Benjamin Cardin (D-MD). 

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VP, Membership/Publications: Mary Ann Aviles
Director, Compliance: Shelly Harris
Membership: Shameza Johnson, Yvette Schmidt,
Erica Maldonado, Marta Posner
Director, Computer Svcs: Farida Fadhil
Asst Director; Computer Svcs: Michael Fringo

Government & Public Affairs 212-616-5237

- City, State & Federal Relationships
- REBNYActionCenter.com
- Campaigns
- REBNY PAC
- Arbitration and Ethics

SVP, Government Affairs: John Doyle
SVP, Public Affairs: Jim Whelan
Executive Assistant: Angela Caldwell

Owners & Management 212-616-5232

- Green Buildings & Sustainability
- Energy
- Coops & Condos
- Rent Stabilization
- Construction Issues
- Labor
- Residential & Commercial Management

SVP: Angela Sung Pinsky
Assistant VP: Ali Davis
Policy Analyst: Ryan Baxter
Executive Assistant: Cindy Ramotar

Brokerage Services & Education 212-616-5236

- Broker & Salesperson Licensing & Continuing Education
- REBNY Listing Service (RLS)
- NY1residential.com
- Membership Luncheons

SVP: Eileen Spinola
VP, Brokerage Services: Jeanne Oliver –Taylor
Director, RLS: Freddy Sarabia
Brokerage Services: Ossie Shemtov
Executive Assistant: Indi Jaipal
Administrative Assistants: Angela Donovan, Desiree Jones, Yesenia Perez

Research 212-616-5209

- Market Reports
- Zoning & Planning
- Real Estate Taxes
- Government Development Incentive Programs

SVP: Mike Slattery
VP, Urban Planning: Carol Van Guilder
VP, Economist: Brian Klimas
Research Analyst: Liliya Magid
Director, Durst Library: Carolyn Dunn
Executive Assistant: Pamela Choy