

An aerial photograph of the Chrysler Building in New York City, showing its iconic Art Deco architecture and spire. The building is illuminated, and the surrounding city skyline is visible in the background under a clear blue sky.

# REBNY

REAL ESTATE BOARD OF NEW YORK

## The Real Estate Board of New York Annual Report 2011

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## Introduction

The Real Estate Board of New York was successful in achieving many of the goals established in its 2011 agenda, in spite of increasing government dysfunction on the federal level and continued fiscal challenges for the State and City. Meanwhile, we continued to provide a high level of member educational opportunities and events.

This year was marked by increased tension in Washington, with the opposing forces of the conservative Tea Party and the liberal Occupy Wall Street protestors exerting their influence on our elected officials, and compromises seemed more difficult to reach than ever. In July, we witnessed a standoff over raising the federal debt ceiling. In November, the Congressional Super Committee announced its failure to reach a

deal in putting the American budgetary system on steady footing. However, on the state level, Governor Cuomo successfully worked with our Albany lawmakers to pass an on-time budget without an increase in spending from last year and without any gimmicks. The City continues to face fiscal challenges, and recently conducted its 12th round of budget cuts.

In NYC, we continue to work with the city to facilitate construction activity through our involvement with the Department of Building's HUB program that expedites permit approvals and with the Department of City Planning's BluePrint initiative that will reduce the time required to complete the pre-ULURP process.

In Albany, we promoted capital investment with the renewal of the 421a tax exemption program and the Industrial and Commercial Abatement Program (ICAP) and the extension of the transfer tax reduction for the conveyance of property to a Real Estate Investment Trust (REIT). We encouraged housing preservation by retaining the luxury and vacancy decontrol provisions in the rent regulation renewal.

We maintained our strong presence in Washington with the passage in the House of the Foreign Investment in Real Property Tax

Act (FIRPTA) and with the lack of action on Carried Interest legislation.

With the announced cancellation of the Access to the Region's Core (ARC) project which was intended to be a second tunnel for commuter rail into Penn Station from New Jersey, REBNY has advocated a proposal to extend the 7 line from 34th Street to New Jersey as a replacement. This alternative project costs significantly less than ARC and would include the second subway station at 41st and 10th, which REBNY has advocated as essential for Hudson Yards.

In achieving our goals, we have faced adversity and unexpected challenges. However, as the following detailed list of our activities in 2011 demonstrates, we had a busy and successful year. ■



**Mary Ann Tighe**  
REBNY Chairman



**Steven Spinola**  
REBNY President

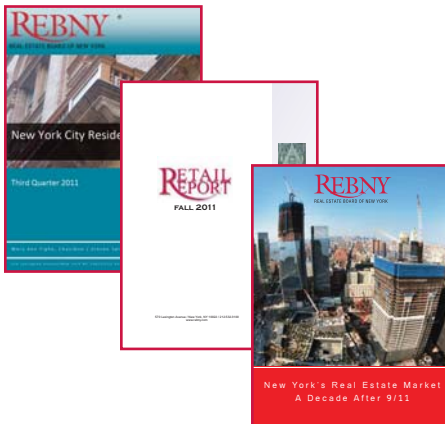
# Activities and Members Services

## Communications



Our web presence continues to improve qualitatively and quantitatively.

- Our **Twitter** feed ([twitter.com/REBNY](https://twitter.com/REBNY)) boasts more than 9,180 followers, more than double from a year ago.
- On **Facebook** ([facebook.com/REBNYonFB](https://facebook.com/REBNYonFB)), our number of fans has more than tripled from last year to nearly 1,914.
- The **REBNY.com** **education** section is the most visited section of the site.



## Communications

### Reports

We continue to provide valuable reports for our members and the media. We produce the only city-wide **NYC 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.

This year, we put together a report comparing the **real estate market of September 11, 2011 to the market that existed 10 years earlier**. We found that in spite of the challenges the city faces following those terrible events, the City has come back even stronger, more prosperous, and more dynamic than before.

### Owners and Managers

Our Owner and Management Divisions are continuing to grow and respond to an increasingly regulated environment. Our Residential Management Committee has modernized and standardized the **coop and condo purchase application forms** to streamline the buying process and make it easier for all the parties in the transaction. They have also developed valuable guides for residential

managers, including for Backflow Prevention Devices and Smoking in Residential Buildings. These best practices reduce the need for individual research as well as maintain a high standard of how to comply with the varied regulations and challenges of running a building in New York City.

REBNY has entered into a strategic partnership with TitleVest, one of New York's leading title insurance agencies and home to the largest digital library of condominium and cooperative offering plans and amendments.

We continue to educate our members on relevant issues, including hosting seminars on Benchmarking, Green Zoning, Combined Heat and Power, Sprinklerization, Site Safety Plans, and Department of Buildings. We also continue to host relevant speakers from the government and related fields to discuss timely trends and requirements for building management. ■



# Activities and Members Services

## Brokerage Division

Our educational offerings have been numerous and varied and continue to be in great demand. We managed and hosted:

- 15 commercial special events with more than 2,800 attendees
- 31 residential special events with more than 3,000 attendees
- 50 Continuing Education and Qualifying Courses benefiting over 2,150 industry professionals
- Awarded 210 stellar brokers the designation of New York Residential Specialists
- More than 400 new members attended the Mandatory Ethics Course offered 7 times this year, which emphasizes the importance of ethical conduct and following the REBNY standards in their business
- Facilitated 135 members in acquiring the Certified Negotiation Expert (CNE) designation

## Brokerage Division

### Technology

The Residential Brokerage Division will implement a new transmission engine for its residential listing system. This new engine is compliant with the nationally-recognized **Real Estate Transaction Standards (RETS)** for exchange of real estate listings data. It will provide those participating in the RLS a powerful tool to improve day-to-day business operations. The RLS

will then be compatible with other applications for smart phones, tablets, open house trackers and more.

As part of REBNY's ongoing work to improve its **Property Database**, we are implementing a suggestion from the residential brokerage community which will provide more information about listings including building characteristics and management information, reducing the need to contact

residential managers about common questions.



To create **NYI Residential** we **partnered with NYI** to improve visibility for our members' listings and gain access to 54 Time Warner channels and NYI's high-volume website traffic.

We continually run television commercials for the site, and there is a permanent ad and search box on

## BUILDING & SERVING NEW YORK



2011 Residential Deal of the Year Award Winners

Standing: Sarah Williams, Halstead Property; Madalyn Robbins, Halstead Property; Keren Coplan-Ringler, Warburg Realty; Lydia Sussek, Corcoran Group; Burt Savitsky, Brown Harris Stevens; Norman Horowitz, Halstead Property  
Seated: Ann Bialek, Halstead Property; Diane Abrams, Brown Harris Stevens; Sharon Baum, Corcoran Group; Dell Rubin, Corcoran Group



William Montana, Studley, Chair of the Commercial Brokerage Division with Andrew Ackerman, Vornado Realty Trust, 2010 Most Promising Rookie Salesperson of the Year

# Activities and Members Services



One Hundred-Fifteenth Annual Banquet Award Winners, 2011

The Young Real Estate Man of the Year Award - David A. Brause, Brause Realty Inc.; The Louis Smadbeck Broker Recognition Award - Andrew J. Singer, The Singer & Bassuk Organization; Steven Spinola, President of REBNY; The Bernard H. Mendik Lifetime Leadership in Real Estate Award - Leslie Wohlman Himmel, Himmel + Meringoff Properties; The Kenneth R. Gerretty Humanitarian Award - Leonard Boxer, Stroock & Stroock & Lavan; The George M. Brooker Management Executive of the Year Award - Frank A. Freda, Cushman & Wakefield; The Harry B. Helmsley Distinguished New Yorker Award - Jeffrey Gural, Newmark Knight Frank

the [NYI.com](http://NYI.com) homepage to promote [NYIResidential.com](http://NYIResidential.com) to the consumers. Our ad campaign also extends to various publications like the NY Post, New York Magazine and amNY.

## Awards

We present annually a wide range of awards for retail, residential and commercial deals that are the most highly regarded in the industry. In addition, at our annual banquet we give awards to our members for their philanthropic activity, their service to the industry and to the city. These awards are a highlight of our annual gala and represent the enduring contribution these members have made in these areas.



The Hundred-Fifteenth Annual REBNY Banquet



# Activities and Members Services



2010 Commercial Sales Brokers Awards (presented in 2011)

Edward S. Gordon Award - Darcy Stacom & William Shanahan - CB Richard Ellis; Robert T. Lawrence Award - Most Ingenious Award - Robert Eisenberg, Woody Heller, Salesbroker Committee Chair; Mark S. Weiss, Newmark Knight Frank - Barry Gosin not present - part of the team; Henry Hart Rice Award - Jennifer Schwartzman & David Noonan - Newmark Knight Frank & Robert Knakal - V.P. for Commercial Brokerage Division presented the awards

## Regulatory Activity

We submitted an amicus in an important New York Appellate Court case, *Futersak v. Perl*. The Appellate Court agreed with our analysis and reaffirmed the law prohibiting a party that does not have a real estate broker's license from bringing or maintaining an action in any court in the state to recover commissions for services rendered on real estate transactions. ■

## Fundraising

The REBNY Foundation raised funds for several worthy organizations, including the New York Police Foundation. Our Pro-Am Tennis Outing continues to raise funds for Big Apple Circus Clown



2011 Fall Rental Cocktail Party

Care and the Centurion Foundation. The Residential Deal of the Year Awards and Charity Gala raises money for the REBNY Member in Need Fund. In 2011 the Member in Need Fund provided 8 grants totalling \$75,000.

Finally, the proceeds from the new Comedy for Charity event goes to the Daniel's Music Foundation, which provides music instruction to individuals with disabilities, and Huntington's Disease Society of America. ■

# New York City Issues

## Achievements

We have urged the Department of City Planning to remove the **artist certification requirement** in order to live in a loft in SoHo/NoHo. This requirement has been difficult to enforce. More recently, the Building Department's decision not to renew temporary certificates of occupancy unless occupants provide an artist certification has created turmoil in the sales market and anxiety among the numerous occupants who do not have certification. We have been working with community members, including REBNY residential brokers who both live and work in this neighborhood, to formulate a planning proposal that would remove the certification requirement and reduce the onerous restrictions on retail use. We expect to finalize a proposal in the beginning of 2012.

We responded forcibly at the urging of a number of our members to the initial proposal for the **34th Street Transitway**. This Department of Transportation proposal, intended to facilitate the movement of traffic on 34th Street would have limited this major thoroughfare to an exclusive bus lane east and west and a pay before you board system (in use on First and Second Avenues), one lane of vehicular traffic and no curbside parking during the day. Major property owners raised serious concerns about the impact of this dramatic reconfiguration of

the street's traffic flow and use. As a result of these concerns, DOT modified the proposal and continued its extensive outreach to property owners as the new plans are being prepared. This apparently successful outcome demonstrates the effectiveness of our efforts when our members become actively engaged in an issue as well as when proposals or ideas are shared with us in the early stages of development before they are finalized and unchangeable.

The **city assessment roll** for fiscal year 2012 was staggering in the size of the increases for residential rental and office buildings and contrary to the view of nearly every property owner. Manhattan residential rental buildings increased 11.3 percent; Manhattan coop and condo market values increased 9.6 percent and 15.9 percent respectively. Manhattan Class A office

buildings increased 12.2 percent and Class B buildings increased 14.5 percent. We pointed out that with these increases the market value of these properties is above the peak of the market three years ago. No owner thinks that their property is worth more today than at the recent peak. We urged owners to challenge their assessments and conveyed our concerns to the Department of Finance.

REBNY's sustained campaign highlighted the high cost of unproductive construction work rules and practices by crane operators on the World Trade Center site, costing an additional \$100 million. The campaign continued with our ongoing involvement with the contractor associations that negotiated contracts with Local 14 and Local 15 Operating Engineers, which, over the course of the new contract, will eliminate many



SoHo

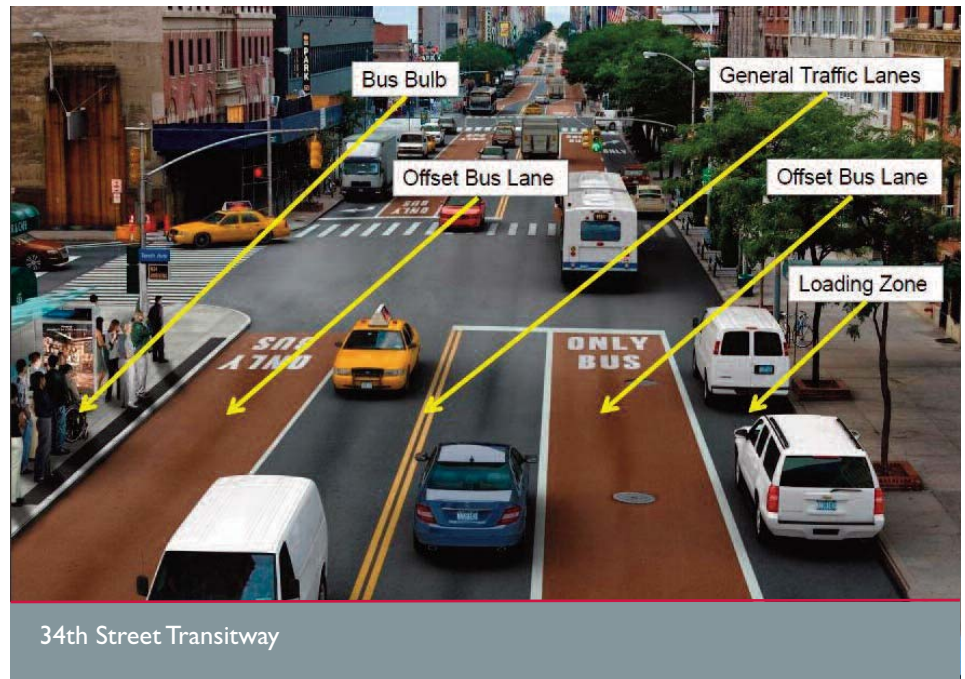


# New York City Issues

unproductive work rules and standby workers. These are unprecedented changes that will significantly lower the cost of labor, a critical component of a construction project.

Additionally, the city has agreed and begun the process to move the current licensing program for large cranes to the **national testing and licensing program** administered by the NCCCO. By moving to a national licensing program, the testing requirements will be modernized and will reflect the most current cranes used on site, and it will substantially increase the number of crane operators allowed to work in New York City.

Despite the gains made in the operating engineer's agreement, the remainder of the labor agreements reached this summer did not narrow the gap in a meaningful way between the cost of union and non-union construction. In fact, there may be reason to believe



that gap is widening. REBNY members are assessing how to address this situation moving forward so that union construction in New York City can be performed on a more cost competitive basis.

Throughout the year, we worked with the city's chambers of commerce, affordable housing organi-

zations and other business trade organizations to successfully oppose legislation that mandated **living wage** requirements and legislation that contained prevailing wage requirements. The living wage requirements would apply to any entity, or its tenants or subtenants that receive over \$1 million in financial assistance that is

## Market Value and Tax Levy by Tax Class





# New York City Issues

## Labor Contracts Negotiated in 2011

- Association of Master Painters and Decorators Union Contracting Deal (04/28/2011)
- Operating Engineers Local 14-14B (9/15/11)
- Operating Engineers Local 15-15A (9/15/11)
- International Union of Painters and Allied Trades and Metal Polishers (9/11)
- Carpenters Union (9/11)
- Cement League CBA (9/11)
- Steamfitters Local Union 638 (9/11)
- Local 32BJ: Contract expires midnight, 12/31/11

negotiated or awarded by the City, even if part of the funding comes from the state or federal government. It would apply to projects that are awarded or accrue a total of \$1 million over time. It would also apply to existing projects whenever their agreements are modified or renewed. It would require a significant amount of recordkeeping and enforcement by the recipient of the tax benefit and would subject them to a repay-



ment of the benefits if there is a failure to comply. Likewise, we have opposed the inclusion of a **prevailing wage** requirement in the 421a renewal. This provision would have had a destructive impact on affordable housing production and reduced the level of market rate housing production, especially outside of Manhattan where the spread between rents and costs already make projects risky.



REBNY members served on a working group to update zoning terminology: **“Key Terms” Zoning Text Amendment** passed by City Council in Feb. 2011. This collaborative effort, which helped to clarify the numerous meanings of the term “development” in the Zoning Resolution, is expected to be a model for other more substantive revisions to the zoning

resolution.

We contributed to NYC’s comprehensive waterfront plan, **Vision 2020**, released in March 2011 and continue to work on the advisory group that is providing a more detailed waterfront revitalization plan.

We submitted comments on the Landmarks Preservation Commission rules for approval of alterations to designated property resulting in clearer and more beneficial regulations (effective Sept. 2011). More importantly we have testified in opposition to the expansion of the **Upper West Side Historic Districts** which encompasses almost the entire West Side and the **Brooklyn Borough Hall Skyscraper District**. We will continue to express our concern about the diminishing standards for designation and its adverse impact on the growth of our city.

REBNY members advised on the creation of a more efficient City

# New York City Issues

Planning Department application and pre-certification process which began a pilot in November 2011. The **BluePRINT project** is an attempt to speed up, and to better identify bottlenecks in, the pre-certification process.

We testified in favor of important ongoing development projects such as Gateway II, the NYU expansion, Willets Point and Rudin West Village.

In view of the events in Zuccotti Park which has prevented the passive use of this **Privately-Owned Public Space (POPS)** by the public, REBNY has organized a committee of property owners and land use attorneys to bring clarity and consistency to the rules which govern these spaces. The Zoning Resolution contains four different categories of POPS which were enacted at different times and which contain different requirements. Our goal is to preserve the intended uses of these spaces and to model a consistent set of POPS regulations that are comparable to the rules that govern the public use of city parks.

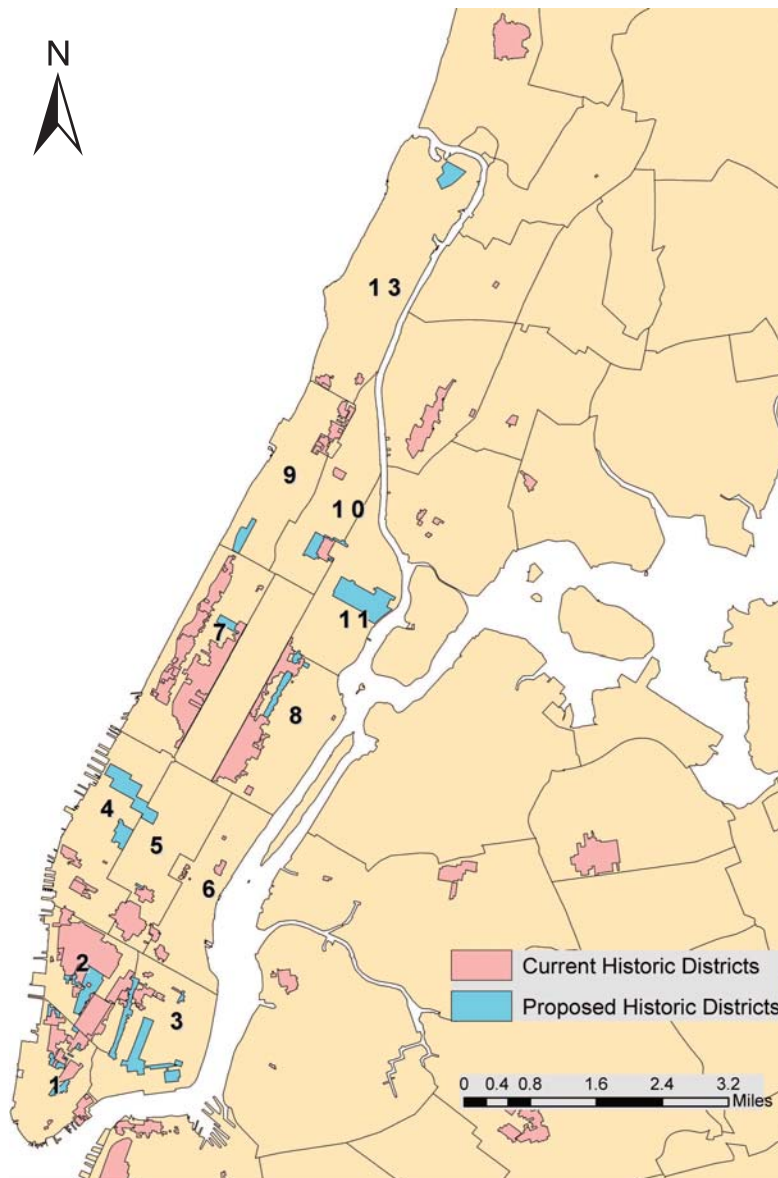
We have been involved in the update of PlaNYC which provided a framework for the sustainable growth of our city. One of the new goals in the updated plan-

cluding the requirement that all boilers stop burning #6 oil as early as 2012 and no later than 2015, depending on when their certificate of operation was issued.

REBNY has been working with the City and its partners to identify ways to lessen the financial burden of this switchover, including providing inexpensive financing, allowing extended timelines for economically distressed buildings, working to coordinate gas infrastructure build-out with Con Ed and the City, and creating incentives to promote switchovers prior to 2030. We will continue to support the goals of a clean environment and to develop creative ways to lessen the financial burden on all buildings.

The New York City Department of Buildings, with our encouragement and support, opened a one-stop-shop for developers called the **HUB** in May. This virtual plan review center expedites re-

views for drawings and applications, enabling developers to get to work faster. All plan reviews



Current and Proposed Historic Districts, Manhattan

**PlaNYC 2.0** is the removal of #6 heating oil. On April 21, 2011, Mayor Bloomberg announced the phase-out of heavy heating oil in-



# New York City Issues



Privately Owned Public Space (POPS)

and meetings take place via video conferences and conference calls. Using tablets, plan reviewers, architects, and engineers collaborate on issues in the review and resolve them on the spot. The HUB also works with the other NYC agencies for which DOB enforces. Since its initial pilot, the HUB has led to 1,400 approved projects and generated over \$1 billion in economic activity for the city.

REBNY members on both the brokerage and ownership sides worked with the city and major tenants to develop a fully-negotiated **green lease clause** that would eliminate the split incentive problem, where owners are less likely to pay for green investments in the building if the tenant would be the only entity to see a reduction in costs. The lease clause that emerged from this collaborative effort enables owners to recoup costs of the investment through

the energy payback to the tenant. The clause is now in effect for the law firm WilmerHale in Silverstein Properties' 7 World Trade Center.

As part of the overhaul of the Building Code in 2008, DOB is obligated to review and **update the Building Codes** every three years in order to ensure that they

are in conformance with the International Building Code. While this process is ongoing, REBNY was able to place representatives on each committee reviewing the code, and we are meeting monthly with the representatives to ensure that the changes that take place are realistic and workable for the real estate community, without imposing excessive costs on the development process.

The Green Codes Task Force concluded its work in 2010, but the city continues to implement its recommendations and put them into law. The REBNY Sustainability Committee reviews these proposals that pursue green development and ensures that they are feasible and practical. The following page has a list of the **Green Codes** laws enacted this year.

REBNY members worked closely with the Department of Environmental Protection (DEP) as they



NYC Department of Buildings HUB Announcement

# New York City Issues

## New York Green Codes City Laws Passed in 2011

- Enacted Int. 576-A: Regulates concrete washout water
- Enacted Int. 578-A: Requires use of recycled asphalt
- Enacted Int. 592-A: Increases requirements for air filtration
- Local Law 21/2011: Strengthens cool roof standards
- Local Law 20/2011: Allows large solar installations
- Local Law 22/2011: Removes certain zoning impediments to alternative energy
- Local Law 43/2011: Allows use of biofuels

proposed and passed a new **stormwater rule and design guidelines** that will require all new developments and substantial expansions to retain 90% of stormwater on-site. We successfully convinced the DEP to include green infrastructure and reuse as a strategy for reducing the flow of stormwater off-site as well as allowing buildings to take advantage of these investments and reduce their need for potable water for normal building activities, such as cooling towers, graywater uses, and landscaping.

REBNY was pleased to participate in some of the City's projects to beautify construction sites. The **Urban Umbrella** program created an alternative to the typical sidewalk sheds that allows more light and sidewalk space while work is going on overhead. The

**Urban Canvas** program challenged artists to create new coverings for temporary protective structures, such as construction fences, sidewalk sheds, supported scaffolds and cocoon systems.

Through DOB's **Cool Roofs** initiative, thousands of volunteers painted over 2 million square feet of rooftops with a reflective coating, lowering the cooling costs for these buildings and reducing the Urban Heat Island effect. ■



Urban Umbrella Project



# New York City Upcoming Agenda

## New York City Upcoming Agenda

We continue to pursue an amendment to the **progress assessment** legislation that would allow buildings that were stalled as a result of the financial crisis up to 3 more years of exemption for construction. Initial estimates from the Department of Finance for the cost of the program appear to be high, but we will continue to work with OMB to create accurate estimates and push this proposal forward.

In 2009, DOB eliminated guidance that allowed developers to file for their excavation and foundation permits separately from the New Building application. This has caused serious delays of 3-6 months for some of our members, so we are working with DOB to create a process that would allow **earthwork permits** to be filed separately once again and enable construction to start more quickly.

DOB leadership has done a laudable job articulating a reasonable balance in the agency's two functions: safety and facilitating development. However, aggressive enforcement on site and inflexibility in interpreting the building code continue to inhibit new development and increase costs on existing buildings and tenants. The agency, expending significant resources, is promoting important initiatives aimed at assisting development projects through ap-



Mayor Michael Bloomberg, REBNY Chairman Mary Ann Tighe and New York City Council Speaker Christine Quinn at the 2011 REBNY Banquet

provals, such as the “Get It Done Together” initiative. Although public safety is paramount, reducing barriers to construction should continue to be explored.

Currently, DOB's revenues are approximately \$146.9M, while due to budget cuts and other austerity measures their expenses are at \$94.6M. The imbalance is over 55% of expense, and is set to increase even further as construction begins to resume. We will continue to advocate that DOB should not be subject to budget reductions and hiring freezes that are further shrinking their expense budget as the vast majority of their revenues are generated from building and construction permit fees, which should be reflective of DOB costs.

Additionally, DOB lost 276 positions over the last three years that are impacting **service levels** for building permits and C of O sign-offs. As an example, current wait times for boiler sign-offs, plumbing sign-offs and electrical sign-offs can range from 4-8 weeks. Many of these are revenue generated positions and should be exempt from budget reductions and/or the hiring freeze.

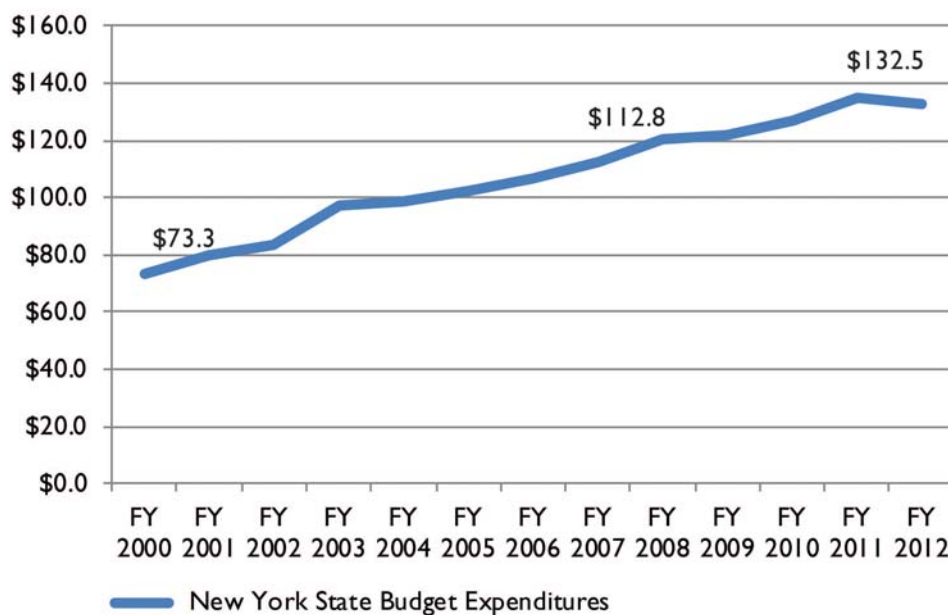
We will continue to work with the Fire Department and building owners to devise a legislative solution to the problem of owner liability in the event that building occupants are not responsive to the direction of building employees who are directing tenants in the event of an emergency. ■

# New York State Issues

## Achievements

For the first time in 15 years, New York State adopted a budget that reduced spending to levels below the year before. The \$132.5 billion budget was adopted on time and reduced overall spending by more than 2 percent. More importantly, it eliminated a \$10 billion deficit without raising taxes, without new borrowing and by addressing systemic problems that have plagued the budget for years. In addition, the adopted budget agreement puts us on a path toward fiscal responsibility by cutting next year's projected budget deficit from \$15 billion to \$2 billion. We commend Governor Andrew M. Cuomo, Senate Majority Leader Dean Skelos and Assembly Speaker Sheldon Silver for making difficult budget decisions that were necessary to improve our state's prospects for renewed growth and economic prosperity for all New Yorkers.

### New York State Budget Expenditures (Billions)



REBNY President Steven Spinola, Governor Andrew Cuomo and REBNY Chairman Mary Ann Tighe



REBNY played a key role in the Committee to Save New York, with REBNY President Steven Spinola and Chair Mary Ann Tighe serving as Board Members of the organization. The Committee played a crucial role in the successful efforts to reduce spending and to produce a balanced and on-time budget. REBNY has worked diligently with the Committee for a meaningful reduction in state spending this year and a continuation of fiscal prudence in the years ahead. The adopted

budget for 2011 achieved these important goals. We will continue to advocate for reduced state spending and for lowering the cost of doing business in New York.

### Achievements:

- Raised \$10 million to support Governor Cuomo's reform and fiscal responsibility agenda
- Closed a \$10 billion budget deficit without new taxes and without borrowing
- Passed this year's budget on-time
- Enacted a 2% property tax cap for the state, excluding NYC



# New York State Issues

REBNY participated on Governor Cuomo's **Regional Economic Development Councils**, which redesigned the relationship between state government and business to stimulate economic development and create jobs with the slogan "New York: Open for Business." The NYC Regional Council developed a plan that would increase development in the city to drive economic activity statewide. In December, the state announced the \$785 million in economic development funding. NYC received \$66.2 million, including \$29.5 million for the Hunts Point Produce Market, \$10 million for CREATE at Harlem Green, which will create new industrial and manufacturing space, and \$550,000 for the NYC SeedStart program, which will fund innovative start-up companies. In total, 50 projects will be funded in the five boroughs. The Regional Councils will continue their work in 2012, reviewing projects that seek state funding.

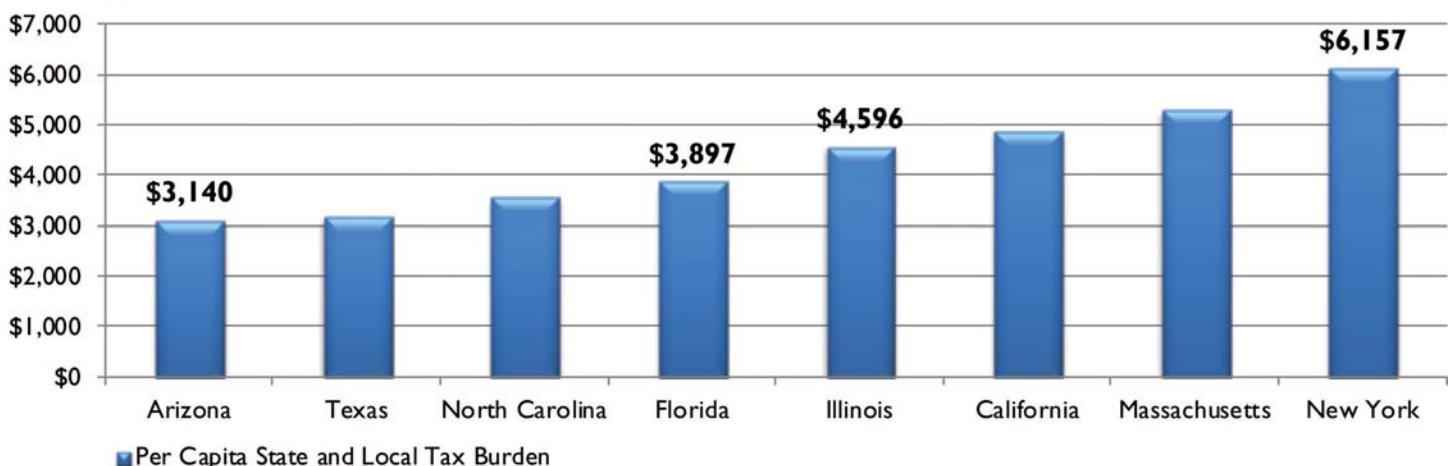
As part of the legislative activity prior to the adoption of the budget, we vigorously opposed the extension of the **personal income tax increase** (the so-called millionaire's tax). In December, Governor Cuomo announced a Fair Tax Code Reform, which will restructure the tax brackets so that all taxpayers will either see no increase or a small decrease in their income taxes in 2012, compared to 2011. REBNY was a strong steady voice for sensible tax reform and to bring spending under control.

We were successful in stopping two bills that would have impacted **Mitchell Lama** buildings. One would have required Mitchell Lama owners upon sale to dedicate all surplus and escrow funds to major capital improvements whether they were required or not. The other bill would have retroactively imposed rent regulations on buildings that have left the program. The first bill was an attempt to

discourage the owner's sale rather than improve the overall physical condition of the building. The other was an attempt to expand rent regulations on currently market-rate buildings. We have strongly maintained that the legislature not unilaterally alter the contractual agreement between Mitchell Lama owners and the State which allows owners to leave the program once the owner's contractual obligations have been fulfilled.

The State Department of Public Service was considering a proposal that would ban **submetering** in new and substantially renovated residential buildings. This proposal would increase building costs, lead to higher levels of energy and gas consumption, and be counterproductive to the environmental and sustainability goals of New York City by preventing efficient technologies such as combined heat and power and a smart grid for

## Per Capita State and Local Tax Burden



# New York State Issues

New York's infrastructure. In response, REBNY members engaged in discussions with DPS to express their concerns. DPS is currently reconsidering the proposal.

The State also enacted legislation that would have a beneficial impact on the real estate industry.

The legislature adopted a **two percent real property tax cap** to control the growth of government spending. This statewide cap does not apply to New York City.

Two major New York City economic development programs—**421a Partial Tax Exemption Program** and the **Industrial and Commercial Abatement Program (ICAP)**—were renewed without a prevailing wage requirement that we vigorously opposed. These programs are crucial as they offset the heavy tax burden our real property tax system places on new and renovated housing, commercial, and industrial development. In the last few years, there has been a persistent attempt to diminish the value of these necessary benefits by mandating that these projects pay prevailing wage for construction. This requirement would have made numerous projects, especially affordable housing and commercial and industrial development outside Manhattan, economically infeasible. The 421a program was extended to June 15, 2015, eighteen months longer than



421-A Development, The Edge, Williamsburg, Brooklyn

its typical renewal period. ICAP was extended to February 28, 2014 and does not require the approval of the City Council.

In addition, the **50 percent reduction in the transfer tax** for the conveyance of a property to a REIT was extended for another three years. This reduction, which REBNY advocated, facilitates the formation of REITs and created a surge in transfer taxes. The extension will continue to facilitate transactions and the growth of REITs in NYC.

The provisions that permit the allocation of **tax exempt bond financing for housing**

**construction over a three year period**, which has been a catalyst for 80/20 projects, was renewed. State law required that a project awarded tax exempt bonds would receive the total allocation in the first year, even though the project would only require a fraction of the total in the first year, limiting the number of new projects that can start. Permitting the allocation for three years (the multi-year provision) has increased the number of new projects that can begin and take advantage of favorable market conditions as well as increasing the amount of tax revenue and jobs that these tax exempt bonds can generate.



# New York State Issues

We introduced a bill that was signed into law that would permit **HFA and HDC to place tax-exempt bonds for 80/20 housing directly with a financial institution**, instead of having short-term variable rate bonds sold weekly in the bond market with a requirement to have credit enhancement from Fannie Mae or Freddie Mac. This direct placement will help to lower the cost of financing of these projects as well as provide an alternative to credit enhancement from Fannie Mae and Freddie Mac whose activity in this area been diminishing, whose services are becoming more costly, and whose future is uncertain.

We successfully supported Article X, **power plant siting legislation** which would allow for the development of new, more energy efficient power plants to meet the growing energy needs of our growing city. Another energy issue that emerged concerned the expiring license for the Indian Point nuclear power plant. Indian Point provides approximately 25 percent of the energy for New York City. It is clean and has helped to contain the high energy cost in New York. Unless there is a reliable and affordable alternative to replace the energy production at Indian Point, we need to continue the operation of this important energy source for our region.

The renewal of **Rent Stabiliza-**

**tion** preserved an owner's ability to deregulate apartments above a fixed threshold and avoided the proposals of the tenant advocates whose cumulative effect would have been a virtual elimination of the deregulation of rent stabilized apartments. Rent Stabilization was extended to June 15, 2015. The rent threshold for vacancy decontrol was increased to \$2,500 from \$2,000; the income threshold for deregulating a unit above the rent threshold was increased to \$200,000 from \$175,000; the allowable monthly rent increase for an individual apartment improvement was lowered from 1/40th to 1/60th of the cost of the improvement for buildings with more than 35 units; and owners are allowed only one vacancy increase per calendar year.

The tenant advocate provisions that we were able to keep out of the extension are noteworthy. There is no indexing of the rent or income threshold; there is no change to the vacancy allowance percentage; there was no limit imposed on the number of apartments an owner may reclaim for his personal or family use; there is no change to the MCI provisions; and there are no restrictions on the readjustment of the preferential rent at vacancy or lease renewal to the legal rent.

Though we avoided the most onerous proposals supported by the tenant advocates in the extension of rent stabilization, the ap-

## A8518 – The Affordable Housing Act

- The rent laws are extended for another four years;
- The income threshold for deregulation is raised from \$175,000 to \$200,000;
- The high rent deregulation threshold is raised from \$2,000 to \$2,500;
- The amount a landlord can increase rent after a capital improvement to an individual apartment is reduced from 1/40th to 1/60th of the cost of the improvement on buildings with 35 or more units;
- The Department of Housing and Community Renewal's authority to regulate the provisions of the act will be enhanced; and
- A limit of one vacancy increase is allowed per year.

proved increases in the rent (\$2,500) and income (\$200,000) thresholds are still too high and weakened the fundamental principle of the rent reforms in the mid-1990s, namely to provide a slow and orderly transition to a purely market-rate rental housing sector. The legislative changes in rent stabilization have effectively expanded regulatory protections to high

# New York State Issues

## Legislative Opposition

As part of our legislative activity we have expressed our opposition to bills that in our view would have increased costs or added more unnecessary administrative burdens on our industry.

- A7850/S5489 – would have allowed ECB violations that are unpaid for any reason to be converted into a tax lien.
- A706/S991 – would have mandated owners to create a separate and sizable escrow fund for repairs for neighboring buildings that could potentially get damaged from construction work.
- A3780A/S1878 – would have required owners to show prospective tenants the gas and electric charges incurred by the previous occupant of the apartment.
- A5204/S3181 – would have required owners or contractors to create separate escrow accounts for retainage that entitled the subcontractor to draw down these funds after 60 days, even if there is a dispute about the completion of the work.
- A1287/S3256 – would have forced sponsors to put unsold units on the market regardless of whether there was a market demand for these units or whether such a sale would result in a loss to the sponsor.

income households lucky enough to live in a rent regulated apartment and do nothing to address the shortage of affordable housing our city faces.

We also supported the Combined Sewer Overflow **Consent Order** issued by the State Department of Environmental Conservation. In line with the City's Green Infrastructure Plan, the Consent Order outlines both hard and green infrastructure across the City, proactively addressing mandates and eliminating millions of dollars in potential fines as well as avoiding \$2.5 billion in hard infrastructure costs for the city over the next 10 years.

## State Upcoming Agenda

Although this year was eventful, we have important issues that need to be raised in the upcoming year. With the budget environment still requiring serious austerity measures and with the constant need to balance priorities, we will be looking to raise issues that promote development and prevent the need for additional funds that would derail the sensible governing and budgeting the Governor has laid out for the long term.

We were disappointed that we could not convince our leaders in

Albany to adopt **J-51 legislation** to address the Court of Appeals decision in the Roberts case, which we strongly supported, that would return these units to rent stabilization, establish a mechanism for determining rent and overcharges and bring order and clarity to the owners and occupants of the 40,000 units affected by the Court of Appeals decision. This court decision two years ago maintained that apartments receiving J-51 benefits could not be deregulated. It overruled the directive from the State housing agency (HCR) that, consistently for more than a decade, advised building owners that these units



# State Upcoming Agenda

could be deregulated. The Court decision has created chaos in the operation of these properties by effectively mandating reduced rents and imposing regulation status to tenants who freely signed market leases and who had no expectation of this protection.

Without passage of this J-51 legislation, thousands of tenants and numerous building owners remain unsure how to set rents for these units, how to calculate a refund for current and prior tenants, and how to proceed now that the courts have said that these units should not have been deregulated. This issue prevented the city from introducing an extension to the J-51 program that provides important tax benefits for existing housing.

As part of our legislative effort to preserve affordable housing and to lower the unsustainable real property tax burden on residential rental buildings, we recommended a provision of the **421a renewal** that establishes a **cap on property taxes** for 80/20 owners that agreed to keep the low-income units in their building affordable for an additional 30 years. This proposal could have preserved as many as 5,000 affordable units in those areas of the City where it is most difficult to provide affordable housing and provided assurance to low-income families that they could stay in their apartments for decades to come. Unfortunately, the city objected to this proposal as too costly and the legislature would not override the city's ob-

jections. In addition, despite support from the city, both houses and the Governor, the 421a provisions in the Omnibus bill enacted at the end of the session did not contain the language we recommended that would have restored tax exemption benefits for high density districts (FAR 15 zoning districts).

We will continue to advocate for more reasonable costs for accessing the **natural gas and steam infrastructure** in New York City. The Bloomberg Administration is making significant efforts to improve air quality by banning heavy fuels and having buildings burn cleaner fuels or natural gas by 2015. Given the current rates for fuel and for natural gas, buildings are currently motivated to switch to cheaper fuels in order to comply with these new regulations. However, this is severely limited by the current natural gas and steam infrastructure and the PSC regulations of the utilities' expansion over the systems, causing some conversions or new access to cost millions of dollars. We are encouraging the City and State to work with the PSC to develop a more rational cost sharing mechanism to encourage cleaner fuels without over-burdening building budgets.

We will also advocate for changes



80/20 Project, Avalon Chrystie Place I

# State Upcoming Agenda



Rendering of the new World Trade Center

to New York's Labor Law which holds employers and property owners absolutely liable for any construction related injury, even if the worker was fully responsible - also known as the "**Scaffold**

**Law."** This allows a worker who may be violating safety standards and is injured while acting in an unsafe manner to sue their employer. Under this strict liability standard the employer is virtually

denied any defense – an inequality which does not exist anywhere else in civil or criminal law. We will encourage New York State to join every other state in the nation and repeal this damaging law. ■



# Federal Issues

## Achievements

We have had some success in Washington on issues important to the industry. We have halted for now the attempt to change the tax treatment of **Carried Interest**. We will continue to oppose any change to this important provision that has facilitated capital formation essential for real estate. Carried Interest has resurfaced frequently as a possible revenue source for the federal budget to close the deficit, though we successfully avoided its inclusion during the debate over raising the federal debt ceiling. We remain concerned about specific aspects of the proposal to tax carried interest as ordinary income, especially with regards to the **enterprise tax**, which would tax the goodwill portion of a sale of a partnership interest, and **family limited partnerships**, which would extend taxation to family members who make and manage family investments through the common family partnership structure.

Likewise, we had some success in our effort to pass the **Foreign Investment in Real Property Tax Act (FIRPTA)** which passed in the House. We will continue to press for this important legislation that could attract new capital to real estate.

In February 2011, the Federal Housing Finance Agency (FHFA) announced a modification to its

original recommendation which would have prohibited Fannie Mae and Freddie Mac from purchasing loans on properties with a “**flip tax**.” Using the REBNY Action Center, we generated more than 600 e-mails, more than 25 percent of the responses they received, urging FHFA to reconsider. This broad-based objection to the scope of this recommendation was aided by a letter from the New



Senator Charles Schumer of New York with REBNY President, Steven Spinola

York delegation that supported our position. As a result, the recommendation was amended and limited to those properties in which the proceeds of the flip tax were going to the sponsor or its designee. Fannie and Freddie could purchase loans for properties with a “flip tax” in which the proceeds went to benefit the property which is the case in New York.

REBNY has been coordinating the efforts of a number of our developer members that were notified that their buildings constructed in accordance with the city’s handicap access law were not in compliance with the federal **Fair Housing Act**. One of the property owners, Melar, entered into a consent decree with the US Attorney General’s office in the Spring of 2011 to resolve this complaint with their property. Since then, REBNY has been working on getting statutory recognition of the provisions of the NYC Building Code that are intended to comply with the Fair Housing Act to prevent future suits.

We will continue to push the federal government to amend the **Interstate Land Sales Disclosure Act (ILSA)**, which was enacted in 1968 to prevent deceptive practices in the sale of unimproved tracts of land by requiring disclosure of information by the seller, including topography of the land, reservation of oil, gas, and mineral rights, and road access. During the recent economic downturn, prospective buyers of condominiums have been seeking to exit their contractual obligations to purchase by challenging the building sponsors’ full compliance with ILSA requirements. REBNY has been meeting with Congressional members seeking legislation or HUD guidance to clarify that ILSA’s intent is to prevent fraud in the sale of undeveloped land and not a tool for buyers already well

# Federal Issues

protected by New York State disclosure laws and the Martin Act to get out of their agreements.

In November, Congress passed an extension of the **high-cost area loan limits** for loans backed by the Federal Housing Administration. FHA will now back loans up to \$729,750, up from its previous limit of \$625,500. FHA loans may be used for condominiums and single-family homes, but cooperatives are not eligible. Congress did not extend the high cost limits for Fannie Mae and Freddie Mac. We will continue to push Congress to consider raising the limits for these two vital housing agencies, although the political climate in Washington will make it difficult.

The **Federal Accounting Standards Board (FASB)** had proposed changes to the way leases are reported on financial statements to ensure that all liabilities are disclosed. FASB recently withdrew their Exposure Draft as a result of concerned comments, including from REBNY, the Real Estate Roundtable, the US Chamber of Commerce, and many equipment leasing organizations. That draft contained significant issues for any company that leases equipment or real estate long-term. The primary concern for the real estate industry is that the lease accounting replacing straight line rent expenses with straight line depreciation and imputed interest, which front-ends liabilities of leases to tenants and will likely re-



Senator Kirsten Gillibrand of New York with Steven Spinola, REBNY President

sult in tenants requesting substantially shorter lease terms. A new exposure draft is expected in early 2012.

DOL had proposed a regulation that would have expanded the **definition of fiduciary for ERISA plans**. The rule would have imposed the high standards, restrictions, and liabilities for ERISA fiduciaries on real estate firms that provide routine advice services to employee benefit plans, which will ultimately lead to an increase in costs and a diminishment of services for ERISA plans. Thanks in part to the members who contacted DOL through the REBNY Action Center, the DOL has withdrawn its guidance and is now redrafting the rule for release in early 2012.

## Federal Upcoming Agenda

- Request HUD's review of the NYC Building Code for compliance with the FHA
- Passage of legislation to solve problems with ILSA
- Carried interest protection for family partnerships and goodwill interests
- Reform Section 179-D, the Energy Efficient Commercial Buildings Deduction, to encourage more building owners to claim this deduction, to achieve deeper energy savings from building retrofits of existing buildings, and to create jobs in the energy efficiency sector.
- Ask Congress to restore the \$15 million to fund the Commercial Buildings Energy Consumption Survey for 2012
- #7 line extension funding ■



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