

“Building Knowledge with The Building and Realty Institute (BRI)” Celebrates the Four-Year Anniversary of its Inaugural Broadcast

NEW ROCHELLE

Four years on the air! That was the milestone “Building Knowledge with The Building and Realty Institute (BRI)” – the BRI’s radio show on WVOX 1460 AM and wvox.com – recently reached.

The program on Jun. 2 marked the fourth anniversary of its first broadcast. The show covers topics of interest to the building, realty and construction industries, as well as to the general business sector. The show is hosted by Jeff Hanley, associate executive director of the BRI. It airs live, every Friday, from 11:30 a.m. to 12 noon.

“I vividly recall the excitement all of us at the BRI felt on Jun. 2, 2017, when our first show went on the air, and I feel the same excitement four years later,” Hanley said. “We are very, very happy to be on WVOX 1460 AM and wvox.com and to be covering issues of importance to the building, realty and construction sectors. We are very grateful to Mr. O’Shaughnessy (William O’Shaughnessy, president and chief executive officer of Whitney Global Media, the parent company of WVOX 1460 AM) and all of our colleagues at the station for this opportunity. The BRI is so very happy to be on such a great station like WVOX 1460 AM.”

Added Tim Foley, chief executive officer of the BRI: “We feel the program has done a solid job of addressing important issues to the building, realty and construction industries. We are also happy to cover topics of importance to our region’s general business community. Jeff Hanley has done a great job of hosting the show. It continues to be well-received by our members and by listeners in our region.”

“Jeff Hanley is the ultimate professional – his shows are not only for members of the building, realty and construction industries, but very often for members of the general public,” said Dennis Nardone, the co-host of “Good Morning Westchester” on WVOX 1460 AM and wvox.com. “His show is definitely one of the best programs that we have on WVOX. I have a lot of respect for the BRI, and for Jeff.”

The BRI is a building, realty and construction industry membership organization. The association, based in Armonk, has more than 1,800 members in 14 counties of New York state. Those members are involved in virtually every area of the building, realty and construction sectors. The BRI is marking the 75th anniversary of its formation throughout 2021, association officials said.



Jeff Hanley, BRI

“Congrats on the continued excellence with regard to your slate of guest interviews, Jeff. By no means, an easy task!”

— MICHAEL MURPHY,
BUSINESS DEVELOPMENT MANAGER,
MURPHY BROTHERS CONTRACTING,
MAY 13, 2021

“I am a fan of the show, Jeff. I listen all the time. It is a super interesting program and it provides good radio.”

— TOM RALPH, PRINCIPAL, T.J. RALPH
REAL ESTATE, MAY 10, 2021

“Jeff, this was undoubtedly one of your very best shows. Bravo to you. You just keep getting bigger and bigger in the broadcast world.”

— DIANA VIRRILL, VICE CHAIR, COOPERATIVE AND CONDOMINIUM ADVISORY COUNCIL (CCAC) OF THE BUILDING AND REALTY INSTITUTE (BRI), AFTER THE APRIL 16, 2021 SEGMENT OF “BUILDING KNOWLEDGE.”

“Jeff, we absolutely love your show! You are a true radio professional, and your program content is perfect for our listeners.”

— JUDY FREMONT, PRESIDENT,
STATIONS DIVISIONS, WVOX AND WVIP,
MAY 25, 2021.

REPORT:

Signs of Economic Recovery Are Boosting the Outlook for Westchester County’s Commercial Market

RYE BROOK

Prospects for an economic recovery spurred by the availability of COVID-19 vaccinations is giving the Westchester County commercial real estate market some hopeful signs of improvement, led by a strong demand for industrial space, the continued resiliency of the multi-family sector and signs of a stabilization in retail vacancy rates.

Those were the assessments that were contained in the Houlihan Lawrence First-Quarter Commercial Market Report for Westchester County released on Apr. 20.

Meanwhile, the report said, an imbalance of supply and demand for Westchester offices has resulted in higher vacancy rates, and investors are still sitting on the sidelines.

Here are the highlights from the report:

Supply-Demand Imbalance Continues to Affect Westchester Offices

The imbalance of supply and demand for Westchester offices has resulted in higher vacancy rates. Vacancy has increased 3 percent since the start of the pandemic. Pricing weakened modestly during the recent quarter. Sublet activity also weakened from the prior quarter.

However, on a positive note, direct leasing activity rebounded modestly from the prior two quarters, indicating that tenants are beginning to establish longer term space positions now that there is some visibility as to controlling the pandemic.

In the short term, office market fundamentals in New York City and the surrounding suburbs will be heavily influenced by a full reopening of public schools – allowing parents to return to a more normal routine. The policies that major financial services employers establish incorporating varying degrees of remote work flexibility will also weigh heavily in the post-pandemic work landscape. As an example, JP Morgan has suggested that with the combination of new office layouts and remote capabilities, they may only need 60 desks for every 100 employees.

The Remarkable Stability of the Westchester Multifamily Sector Continues

Westchester multifamily assets continue to demonstrate resilience. Asking rent per-square-foot has been stable at cyclical highs, and effective rent rate per unit increased modestly during the quarter. New deliveries amounted to approximately 0.5 percent of inventory and fundamentals are relatively steady.

A modest increase in vacancy can be attributed to new deliveries to the market. Additionally, the first quarter tends to be seasonally weaker for new apartment take-up. The exodus from Manhattan has continued and has been a contributor to the Westchester apartment markets’ fundamental strength. The second and third quarters of 2021 will be critical in confirming the persistence

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Counsels’ Corner

Good News for Building and Realty Industry Members As To the Housing Stability and Tenant Protection Act (HSTPA)

By Kenneth J. Finger, Esq., Dorothy M. Finger, Esq., Carl L. Finger, Esq., and Daniel S. Finger, Esq.

WHITE PLAINS

As you are aware, the Building and Realty Institute of Westchester and Putnam Counties, Inc. (BRI), the Apartment Owners Advisory Council (AOAC) and assorted landlord/owners of Emergency Tenant Protection Act (ETPA) rent-regulated multi-family real estate in Westchester County brought litigation challenging the constitutionality of the 2019 Housing Stability and Tenant Protection Act (HSTPA), effective in June, 2019.

Since that time two New York cases, Regina Metro. Co., LLC v. New York State Division of Housing and Community Renewal (DHCR), 35 NY3d 332 (2020) and Harris v. Israel, 191 AD3d 468 (2021) were issued which impacted directly on the constitutionality of the HSTPA as determined in Regina by New York’s highest court and a lower court (Harris) following the Regina decision.

Previously, an article discussed Regina, where the court held that Part F of the HSTPA, relating to rent overcharge claims, could not be applied retroactively to pre-HSTPA overcharges. The Court decided and struck down, as a violation of due process and therefore unconstitutional, a provision of the HSTPA as to rent overcharge claims that “extend[ed] the statute of limitations, alter[ed] the method for determining legal regulated rent for overcharge purposes and substantially expand[ed] the nature and scope of owner liability in rent overcharge cases.”

Previously, the Emergency Tenant Protection Act (ETPA), absent fraud, limited the rent overcharge period to four years prior to the filing of the complaint. In such cases, consideration of rental history predating the four-year lookback and statute of limitations period was prohibited. This was changed by the HSTPA which extended the lookback to six years and further, allowed consideration of the rental history even prior to the six years. The Court went on to state that “this retroactive effect becomes even more pronounced when considered in tandem with the HSTPA amendments to the record retention requirements” pursuant to which a landlord might have legitimately disposed of records after four years but would now suffer a penalty as to same since the Court or DHCR would be allowed to lookback more than six years.

The landlords, in Regina, successfully argued that “the effective date language does not evince a clear legislative intent to apply the new overcharge calculation provisions retroactively, particularly to cases no longer pending in DHCR or the trial court and further contend[ed], in any event, that retroactive application of the new overcharge calculation methodology to these appeals would violate due process protections in the State and Federal Constitutions.”

Significant Issues

The Court of Appeals stated that significant issues were as to whether, or not, the “presumption against retroactive application of statutes” and whether the statutory changes made with the HSTPA were consistent with constitutional due process. The same concept was set forth in Harris as to the ability of an owner to recover the use of an apartment for personal use, citing Regina.

In that case, while a lower Appellate court held that the landlord could not get back an apartment since the HSTPA limited an owner to the recovery of only one dwelling and only where it proved an “immediate and compelling necessity,” for the owner’s use, and also required the owner to provide equivalent housing for any tenant over the age of 62 and in occupancy for 15 years or more, the Appellate Division reversed and said that based on Regina, where this owner had spent several years reclaiming all other units at this building, there was no “indication here that the legislature considered this harsh and destabilizing effect on [the landlords’] settled expectations...” and upheld the eviction. These 2 cases both appear to be limited to the retroactive effective of the HSTPA, but it is an indication that the Courts will look at the law with strict scrutiny.

On the heels of these decisions, the United States Supreme Court for the first time since the passage of the HSTPA, in Cedar Point Nursery v. Hassid, 594 U.S. --- (2021) has weighed in on a matter that we submit is significant in regard to the HSTPA and its regulatory, due process and constitutional infirmities. The Opinion and Decision in Cedar Point is a major decision in a long line of cases discussing “physical takings,” “regulatory takings,” and the lack of due process.

Cedar Point involved a labor organization case where a California regulation allowed union organizers the right to visit private farms three hours per day, 120 days per year. There was no actual taking of the property; no inhibition on the use of the property; no permanent easement over the property, yet the Supreme Court held that the right granted to the organizing union and legal “visitation” amounted to an unconstitutional appropriation of private property.

To the point are the cases of Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978), holding that there is no ‘set formula’ which is used to trigger compensation for economic injury [such as imposed by the HSTPA] caused by public action, and which also discussed the economic impact and interference with investment backed expectations; as well as the various factors which set forth the criteria of a regulatory taking, and Loretto v. Teleprompter, 458 U.S. 419 (1982).

The Supreme Court, in Cedar Point sets forth the significance that it considers private property rights, even to the extent limited there and the import of a “physical taking” even without 24/7 physical occupation.

More Good News

Even better news just came to New York’s cooperatives, which were the unintended victims of the HSTPA in several regards (limitations on deposits; limitations on background checks, etc.) with the passage of a bill eliminating much of the HSTPA as refers to cooperatives (excluding those subject to the private housing finance law).

Among other provisions, those eliminated were the section as to a deposit or advance; notice as to lease renewal or lack thereof; payment for application to become a cooperator; payment of fees as to background and credit checks (up to cost thereof); having to do with suing for legal fees and “additional rent”; restriction on not allowing certified mail notice; prohibition against attorney’s fees in the event of a default, and elimination of late charge restriction up to allowing late fees up to 8 percent of monthly maintenance.

Hopefully, the good news will continue.

Editor’s Note: The authors are attorneys with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI) and its component associations



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