From the Editor's Desk

Hanley's Highlights

by Jeff Hanley

Associate Executive Director, Building and Realty Institute (BRI), *Impact* Editor

Citing A Very Special Milestone for The Building and Realty Institute (BRI) of Westchester and the Mid-Hudson Region

ARMONK

The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and the Mid-Hudson Region recently reached a magnificent milestone – the 75th anniversary of its formation.

On Feb. 11, 1946, the association that is now known as the BI/BRI was created as a building and construction industry membership organization called The Home Builders Association of Westchester (HBAW). After 13 years of growth from that date, the HBAW decided to change its name on Mar. 11, 1959. The change resulted in the birth of The Builders Institute of Westchester and Putnam Counties, Inc. It also set in motion the evolution of what is currently the BI/BRI.

Based in Armonk, the BI/BRI has 1,800 members in 14 counties of New York State. Members of the association are involved in virtually every area of the building, realty and construction industries. Members of the BI/BRI include Builders, Developers, Contractors, Sub-Contractors, Remodelers, Owners and Managers of Commercial Properties, Co-op and Condo Boards, Owners of Rental Apartment Buildings and Complexes and Property Managers. Service Firms and Suppliers of materials to the building, realty and construction industries are also members of the BI/BRI.

Officials from the BI/BRI recently announced that the organization will be marking the 75th anniversary of its formation throughout 2021. Details on the commemoration will be sent to members of the association in the weeks ahead, officials added.

A report on the impressive history of the BI/BRI is featured in this issue. Other stories in this edition include:

- A page one report on how the Apartment Owners Advisory Council (AOAC) of the BRI is preparing for the upcoming Public Hearings of The Westchester County Rent Guidelines Board. The guidelines board is the entity that annually decides on guidelines for lease renewals affected by the Emergency Tenant Protection Act (ETPA). Those guidelines are decided upon after the board conducts its Public Hearings and Deliberations. The article stresses the urgent need for members of the building, realty and construction industries to participate in the Public Hearings as speakers and representatives of the building and realty sectors.
- A page one story on how housing cooperatives are now eligible for participation in the Paycheck Protection Program (PPP). The report was written by representatives of Finger and Finger, A Professional Corporation. The firm is Chief Counsel to the BRI and its seven component associations.
- A building and construction industry analysis on page one examining how record-high lumber prices across the U.S. are hurting housing affordability. The report is from The National Association of Home Builders (NAHB).
- An analysis on page two in Insurance Insights on how the eventual re-openings in buildings and complexes are raising two questions - is there liability if someone contracts COVID-19 and, if there is liability, is there insurance coverage? The report was written by Ken Fuirst and Jason Schiciano, co-presidents of Levitt-Fuirst Insurance. Levitt-Fuirst is the Insurance Manager for the BRI and its seven component associations.
- A story summarizing how the unprecedented turmoil of the pandemic has accelerated existing trends in Westchester County's commercial real estate market, with the multifamily and industrial/flex sectors faring well while office and retail vacancies continue to rise as investment sales have hit a brief lull. Those were the assessments contained in the Houlihan Lawrence 2020 Commercial Market report.
- A summary in Tech Talk that reviews empathy and entertainment in marketing, written by Andrea Wagner, president of Wagner Web Designs.
- A report from The National Association of Home Builders (NAHB) that summarizes how housing production across the U.S. weakened in February as higher material costs and interest rates continue to affect the housing sector.

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Insurance Insights

by Ken Fuirst and Jason Schiciano

Levitt-Fuirst Insurance

Liability for COVID Infections and Insurance – A Look At the Considerations for the Re-Openings of Facilities

TARRYTOWN

With the pandemic entering its second year, vaccinations ramping-up, and spring approaching, Building and Realty Institute (BRI) members are all optimistic for a return to "normal."

Condos, co-ops, Home Owners Associations (HOA's) and apartment building landlords are considering opening their pools, fitness centers, playgrounds, and social rooms. Contractors, suppliers, managing agents, and service providers that have allowed work-from-home are thinking about how and when to bring employees back to work.

Consideration of all of these back-to-normal re-opening activities raises two common questions: 1) is there liability if someone contracts COVID? and 2) if there is liability, is there insurance coverage?

Before we explore these questions, consider this: whether you are an employer, or responsible for running a property, facility, or office, liability for COVID infections can be reduced by:

- Following all federal, state, and local safety protocol guidelines (e.g. requiring masks, distancing, limiting capacity, etc.);
- Taking "extra steps," such as hiring monitors to enforce safety protocols, requiring reservations/appointments/sign-in, prohibiting guests at pools, etc.
- Where applicable, utilizing carefully drafted COVID liability waivers.

> *"In short, the possibility of your facility or business being liable for someone contracting COVID may be low, but it is not "zero." And, insurance coverage for a COVID liability claim is possible, but not probable. If you choose to re-open your pool, fitness center, community room, office, or store, the more liability-reducing steps that you take, the less likely someone will have a viable legal claim against your organization or company."*

All of these efforts may further reduce the potential for COVID-related legal liability, but they will not completely eliminate it.

There are many possible liability cases relating to someone contracting COVID. An employee could allege infection during work. A condo unit owner, co-op shareholder, or apartment tenant (or a guest) could allege infection while using a pool or a fitness center. A customer could allege infection from visiting a bank branch or material supply store.

These liability scenarios are more easily considered by dividing them into two groups: 1) employee COVID infections scenarios, and 2) COVID infections of "others" (who are not employees). "Others" could include a (non-employee) user of a pool or a fitness center, or a visitor to an office or a retail place of business.

Employees

An employer is usually liable if it can be proven that an employee contracted a sickness (such as a COVID infection) while at work.

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New Home Sales Were Higher in January, But Supply Side Concerns Remain, Building and Realty Industry Report Says

WASHINGTON, D.C.

Strong demand stemming from low interest rates, favorable demographics and a suburban shift for home building to smaller, more affordable housing markets helped to lift new home sales in January across the U.S., but rising lumber and material costs threaten to blunt the momentum.

Those assessments were contained in a Feb. 24 report of The National Association of Home Builders (NAHB). The report can be found on nahb.org.

Sales of newly built, single-family homes in January rose 4.3 percent to a 923,000 seasonally adjusted annual rate, from an upwardly revised December reading, according to newly released data by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Census Bureau.

"Historically low mortgage rates and solid demand spurred an increase in new home sales in January, with the sales pace more than 19 percent higher than a year ago," said Chuck Fowke, chairman of NAHB and a custom home builder from Tampa. "However, rising affordability issues are looming this year, particularly increasing building material costs, including lumber, which is adding $24,000 to the price of a typical newly-built home. Builders also cite rising regulatory issues as a potential concern."

"With existing home inventory at all-time lows, the demand for new construction remains strong," said NAHB Chief Economist Robert Dietz. "Though, rising building and development costs, combined with recent increases in mortgage interest rates, threaten to exacerbate existing affordability conditions. Builders are exercising discipline to ensure home prices do not outpace buyer budgets."

A new home sale occurs when a sales contract is signed or a deposit is accepted. The home can be in any stage of construction: not yet started, under construction or completed. In addition to adjusting for seasonal effects, the January reading of 923,000 units is the number of homes that would sell if this pace continued for the next 12 months, the report said.

Inventory remains low at just a four-months' supply, with 307,000 new single-family homes for sale, 6.3 percent lower than January of 2020, the report added.

The report said that the median sales price was $346,400, up 5.3 percent over the $328,900 median sales price posted a year earlier.

Regionally, new home sales declined 13.9 percent in the Northeast and rose in the other three regions: up 12.6 percent in the Midwest, 3 percent in the South and 6.8 percent in the West, the report added.

BUILDING AND REALTY INDUSTRY INDEX:

Higher Material Costs and Interest Rates Are Lowering Builder Confidence Throughout the Nation

WASHINGTON, D.C.

Despite high buyer traffic and strong demand, builder sentiment across the U.S. fell in March as rising lumber and other material prices pushed builder confidence lower.

The latest National Association of Home Builders (NAHB)/Wells Fargo Housing Market Index (HMI) released on Mar. 16 showed that builder confidence in the market for newly built single-family homes fell two points to 82 in March.

"Though builders continue to see strong buyer traffic, recent increases for material costs and delivery times, particularly for softwood lumber, have depressed builder sentiment this month (in March)," said NAHB Chairman Chuck Fowke, a custom home builder from Tampa. "Supply shortages and high demand have caused lumber prices to jump about 200 percent since last April. Policymakers must address building material supply chain issues to help the economy sustain solid growth in 2021."

"Builder confidence peaked at a level of 90 last November and has trended lower as supply-side and demand-side factors have trimmed housing affordability," said NAHB Chief Economist Robert Dietz. "While single-family home building should grow this year, the elevated price of lumber is adding approx-

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Report:

Pandemic Impact Accelerates Existing Trends in the Westchester Commercial Market

Multifamily and Industrial Sectors Fared Well, While Office and Retail Vacancies Rose and Investment Sales Hit Brief Lull

RYE BROOK

The unprecedented turmoil of the COVID-19 pandemic has accelerated existing trends in Westchester County's commercial real estate market with multifamily and industrial/flex sectors faring well, while office and retail vacancies continued to rise and investment sales hit a brief lull.

Those were the assessments contained in the Houlihan Lawrence 2020 Commercial Market Report. The study was released on Jan. 21.

"The pandemic has had a profound effect on corporate cultures and individual priorities. Companies have realized that business objectives can be accomplished in a more flexible operating environment if a culture of productivity and shared goals is preserved. Individuals have discovered the benefits and weaknesses of working from home as compared to a traditional work setting," said Tom LaPerch, director of Houlihan Lawrence Commercial.

"Corporations and individuals are resetting their priorities with regards to location of work, length of commute, and financial obligations vs. benefits that are attached to different decisions. The result of these important assessments, and their impact on commercial real estate, will begin to crystalize during 2021. There is already tangible evidence that Westchester is likely to benefit from companies and individuals re-evaluating their commitment to New York City's urban core," he added.

The highlights from the report said:

Westchester Multifamily Buildings Maintaining 96 Percent Occupancy, Year-Over-Year Pricing Holds On For Now

Westchester multifamily has fared better than many urban core multifamily assets. Westchester's privileged location in proximity to both local and national parks offers recreation and open-air enjoyment opportunities to households and residents of all ages. Replete with services and conveniences, in addition to being only a short drive to Manhattan (if preferred to public transportation), the benefits that Westchester offers are innumerable, the study stressed.

Reported occupancy levels for multifamily assets in Westchester remain high (at 96 percent). Vacancy did increase approximately 1 percent to 1.5 percent during 2020, but demand continues to be strong. The report said that it does not foresee major difficulties ahead.

Rental price momentum was robust when entering the "distancing months," but some of this momentum was lost to the negative impacts of the pandemic. As a result, lease prices were mostly stable during 2020. As of the fourth quarter, there was only a modest reduction in effective lease prices as compared to the same quarter of 2019.

The existing pipeline of new multifamily projects is robust (6 percent of stock). It remains to be seen if some of these projects will be reconfigured to include a different mix of apartment sizes. The popular studio or one bedroom, catering to the millennials working in New York City, may lose some attractiveness in favor of slightly larger units. Millennials may find that the smaller units in New York City are now more affordable and larger households appear to be inclined to choose the suburbs, the study cited.

Regional and Westchester Office Vacancies Increase While Office Use Controversy Intensifies

Supply of office space exceeded demand during the fourth quarter of 2020 resulting in an additional 1 percent of office stock becoming vacant. This number reflects positive sublet leasing activity which mitigated occupancy losses. In general, leasing was weak as few tenants felt confident enough in their office space needs to either expand or take new space. As a result, the number of deals fell to the lowest level of the last few years. Office lease pricing, as reported by Costar, has remained firm. This suggests that landlords have not shown price flexibility and deals are taking place mainly in full-service buildings which are higher priced, the study added.

Going forward, the report cited, the market is beginning to see some landlords increasing term flexibility in order to attract tenants. The report said that it expects office space turnover and repositioning to increase meaningfully once the tenant market becomes more active and post-COVID tenant needs begin to crystalize.

Westchester Retail Vacancies in the Eye of the COVID-19 Storm and in the Eyes of the Public

Reported retail vacancies have risen 1.1 percent for 2020 but only modestly during the fourth quarter. The report said that it believes that information captured across databases is lagging what is observed on the ground. Retail space classifications include most restaurants and other food-related establishments, fitness centers, and personal service businesses, many of which are currently fighting for survival. Despite the Government and landlord support that many of these businesses have received, the duration of the COVID-related restrictions is putting significant pressure on all property stakeholders, the study stressed.

Going forward, new businesses occupying retail space will likely explore different avenues to keep cost and risk under control. Perhaps landlords will identify the "ideal" white box able to fulfill a broad range of basic retail needs and a plug and play format ideal for new businesses and start-ups that is ready to be leased on flexible terms. Clearly, landlords will require a lease pricing that is consistent with taking a larger share of the risk related to the space, the study added.

Westchester Industrial Segment Continues to Propel Forward, Riding the Wave of Transitions

The pandemic significantly accelerated e-commerce evolution, compressing multiple years of expected growth into 2020. Consumers expect quick deliveries and companies have been retooling their logistic infrastructure to compress delivery windows, the report noted.

As a result, industrial and flex space demand continues to escalate, and lease prices are on the upswing. With warehouse space in short supply in Westchester, large format retail owners, developers, and municipalities are increasingly faced with demands to create or repurpose existing space in proximity to consumption centers to become warehousing space. For the time being, industrial asset occupancy remains high although some tenant turnover is taking place due to COVID-related user dislocation. Lease pricing appears to have spiked during the fourth quarter, according to Costar data. Some of this increase is likely to reflect new contracts on expired leases that were well below market, the study added.

Brief Lull in Investment Sales Considered Temporary

Commercial Real Estate investment sales were depressed, hitting a multi-year low. Similarly, the number of transactions was low, and transactions involved smaller-sized assets, the study added.

The report said that these are not surprising statistics as the pandemic has upended property cash flows, and with that, valuation visibility. Investors that were active in this environment took advantage of poor market liquidity and bought at a discount to replacement value, locking-in attractive future returns.

The study said that it expects that the investment market will recover during 2021 as the heath crisis subsides and investors contemplate a period of low interest rates, economic recovery, and political continuity. The report added that it is inevitable that some percentage of the current stock of retail and office space in Westchester will have to be re-positioned through investment to regain viability. That reality will encourage investment transactions as current owners may not be willing or able to undertake the much needed, and sometimes costly, repositioning required by their real estate assets.

Houlihan Lawrence is the leading real estate brokerage serving New York City's northern suburbs. Founded in Bronxville in 1888, the firm has 30 offices and 1,300-plus agents serving Westchester, Putnam, Dutchess, Columbia, Ulster and Orange counties in New York and Fairfield County in Connecticut, company officials said.

Spano Joins with Project Developer for the Groundbreaking of Regency on the Hudson

Building to Feature 126 Rental Units with 13 Affordable

YONKERS

Yonkers Mayor Mike Spano and other city officials joined with executives of Regency Apartment Ventures LLC on Feb. 25 to celebrate the groundbreaking of Regency on the Hudson, a seven-story residential building featuring 126 rental units, project officials recently announced.

A total of 13 of the units will be designated as affordable under the city's Affordable Housing Program, project officials added.

Located at 56 Prospect Street, the $32.6 million project, project officials said, received financial incentives from the Yonkers Industrial Development Agency (IDA). It is estimated the project will create 250 construction jobs and six permanent full-time jobs.

"We are delighted to celebrate today's groundbreaking for Regency on the Hudson, an exciting residential project that will transform several vacant properties into 126 new rental apartments, including 13 affordable units. This is another great addition to our city's growing residential community," Spano said. "We applaud Regency Apartment Ventures for their significant investment in Yonkers."

"My partners, Ben Heitner and Craig Kirsch, and I are committed to the growth of the City of Yonkers. We are grateful for the support received from the Yonkers IDA and Yonkers city officials for the Regency on the Hudson" said Project Developer Peter Dalaker of Regency Apartment Ventures LLC. "We are dedicated to the well-being of Yonkers residents and feel honored to be part of community growth and development. It is important to us that we not only provide housing, but also important that we are a resource for job creation, especially during the difficult economic circumstances being experienced at this time."

> *"We are dedicated to the well-being of Yonkers residents and feel honored to be part of community growth and development."*
>
> – Peter Dalaker, Regency Apartment Ventures LLC.

"We are excited to be part of this project that is an intricate part of the revitalization of downtown Yonkers, offering the opportunity to live in suburban surroundings with the 'live, work, play' lifestyle that Westchester County provides," said J.D., Summa, chief executive officer and president of Kings Capital Construction Group, the general contractor of the project.

Founded in 2009, Kings Capital Construction Group is a full-service general contractor that self-performs civil construction and site development. The company was named one of the fastest growing companies in the country for four consecutive years, according to project officials.

Located on vacant properties on the corners of Prospect Street, Buena Vista Avenue and Hawthorne Avenue, the project will be comprised of 90 studios, 18 one-bedroom units and 18 two-bedroom units with a rooftop terrace overlooking the Hudson River. The units will have full-sized kitchens, large and fully accessible bathrooms and individual laundry facilities, project officials added.

Project officials said that there will be a private landscaped courtyard on the first-floor residential level of the building with benches and picnic tables. The building will have an underground parking garage for 130 cars. Security for the building will be provided by a decorative fence around the perimeter and security-controlled access gates. The building will utilize a "green roof" and other sustainable features.

Established in 1982, the Yonkers Industrial Development Agency is a public benefit corporation that provides business development incentives to enhance economic development and job growth in Yonkers, officials said.

Liability for COVID Infections and Insurance – A Look at the Considerations for the Re-Openings of Facilities, Continued from p. 2

aHowever, a) it's very difficult for most employees to prove that infection occurred while at work (think about it… unless working at a hospital, nursing home, etc., how does one prove the infection occurred at work, as opposed to at the grocery store the night before, or the barber shop three days ago?); and b) If work/infection causation can be proved, then the employer's liability is usually limited to insurance benefits available through workers compensation.

Others

A lawsuit could arise from COVID infection alleged to have occurred by a non-employee while: using a pool, a fitness center, or a community room; or visiting an office, or a retail place of business. Similar to with employees, it's difficult (but not impossible) to prove the infection was definitively caused by being present at the facility or business.

If there is legal liability (even if remote) to someone alleging COVID infection while visiting your facility or place of business, then will your facility or business liability insurance respond? Probably not. Your insurance broker can help interpret the language of your liability policy (or policies), and the insurance carrier has the final word on whether or not a claim is covered.

But, in many cases, the answer is simple: most General Liability policies include an exclusion for sickness due to "virus" and/or communicable disease (if your current liability policy does not have this exclusion, it may be added to your renewal policy).

Even if your General Liability policy does not have this exclusion, there are other exclusions which may apply. If your General Liability policy does not cover a claim, your umbrella policy will not respond, either.

Environmental Impairment/Pollution policies may offer the possibility for coverage (if there is no virus exclusion). But, these types of policies have varying coverage/exclusion language, and the question of whether a "virus" constitutes a "pollutant" is not definite.

> *In short, the possibility of your facility or business being liable for someone contracting COVID may be low, but it is not "zero."*

In short, the possibility of your facility or business being liable for someone contracting COVID may be low, but it is not "zero." And, insurance coverage for a COVID liability claim is possible, but not probable.

If you choose to re-open your pool, fitness center, community room, office, or store, the more liability-reducing steps (previously outlined) that you take, the less likely someone will have a viable legal claim against your organization or company.

If you have questions about your organization's or company's insurance, and COVID claims, contact your insurance broker, or Levitt-Fuirst Insurance at (914) 457-4200, or Jason Schiciano at jschiciano@levittfuirst.com.

***Editor's Note:** Levitt-Fuirst Insurance is the Insurance Manager for The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and the Mid-Hudson Region. Ken Fuirst and Jason Schiciano are Co-Presidents of Levitt-Fuirst Insurance. The firm is based in Tarrytown.*