Department of Finance

City Council Joint Committee on Housing and Buildings and Finance Hearing

New York City Department of Finance

Testimony of Timothy Sheares

Deputy Commissioner, Property Division

November 22, 2016

Good morning, Chairman Williams and Chairwoman Ferreras-Copeland and members of the Committee on Housing and Buildings and Finance. I am Timothy Sheares, Deputy Commissioner for Property at the NYC Department of Finance (DOF). I am joined by Theodore Oberman, Director of Commercial Exemptions. Thank you for the opportunity to testify about the 421-a tax exemption program.

The Department of Finance administers the benefits for the 421-a program. The rules of the program state that properties must receive two distinct Certificates of Eligibility to be eligible for tax benefits. The first one, the Preliminary Certificate of Eligibility (PCE), provides construction-period benefits for a maximum of three years from the start of construction date indicated on the PCE. Upon completion of construction, properties must obtain a Final Certificate of Eligibility (FCE) from the City of New York Department of Housing Preservation and Development (HPD). The FCE must be submitted to HPD, who then submits it to the Department of Finance for the property to be eligible for post-construction period benefits.

Under an informal Bloomberg Administration agreement between HPD and DOF, beneficiaries with only a PCE received post-construction benefits prior to the actual issuance of the FCE. This was done to ensure continuation of benefits while the FCE was being finalized. According to an analysis by DOF and HPD there are approximately 3,000 rental buildings receiving post-construction benefits for which no FCE was issued.

To help with enforcement and to ensure that beneficiaries are held accountable for program requirements, DOF and HPD are finalizing a Memorandum of Understanding (MOU) that allows HPD the time to review and make a determination on FCEs before they are sent to DOF.

Once the MOU is in place, DOF will be sending out letters next week to owners of rental buildings receiving the 421-a benefit for which we do not have FCEs in our files. The letter will also inform them what to do if they have not received a FCE, and direct them to work with HPD in order to obtain the FCE for the property to continue receiving the 421-a benefit. We will let these property owners know that they should anticipate that it will take HPD three months to process FCE

applications. DOF is giving these property owners until January 5, 2018 to submit the FCEs. Thereafter, DOF will suspend the benefits from properties that fail to submit their FCEs. In our view, this is a reasonable amount of time for HPD to review applications and make determinations. DOF's goal is to ensure compliance with the rules of the program, not to take away any exemptions from property owners who are complying with the program.

We are working with HPD to verify the list of property owners who will ultimately receive this letter and determine the suspension date for owners that do not comply. As I have outlined in my testimony, we take enforcement seriously and care deeply about the effectiveness of the 421-a program and are addressing issues related to property owners of rental buildings receiving the 421-a benefit but who have not complied with all documentation requirements.

Now, I'm happy to take any questions you may have. Thank you.

TESTIMONY OF THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT TO THE NEW YORK CITY COUNCIL COMMITTEE ON HOUSING AND BUILDINGS JOINTLY WITH THE COMMITTEE ON FINANCE ON INTRODUCTIONS NOS. 1009, 1359, 1366 TUESDAY, NOVEMBER 22, 2016 – 10AM

Good morning, Chair Williams and Chair Ferreras-Copeland and members of the Finance and Housing and Buildings Committees. My name is Louise Carroll, and I am the Associate Commissioner for Housing Incentives for the New York City Department of Housing Preservation & Development ("HPD"). Here with me today is Deputy Commissioner for Strategy, Research, and Communications David Quart, and AnnMarie Santiago, Assistant Deputy Commissioner for the Office of Enforcement and Neighborhood Services.

Thank you for the opportunity to testify today on Intros. 1359 and 1366, which would require HPD to audit buildings receiving the 421-a exemption for compliance with rent stabilization and affordability requirements, and Intro. 1009, which proposes that HPD create a centralized database of owners and specific information for the buildings they own such as violations and outstanding tax liens.

This administration has taken significant steps to go after landlords who are flaunting the program's requirements. Everyone receiving the benefit needs to abide by the rules; it's the law and it's the right thing to do. HPD is strongly committed to ensuring continued enforcement and we appreciate the Council's interest in making sure that our enforcement efforts are effective. We believe it is feasible to create an ongoing 421-a audit regime and are confident we can work with the Council on the details of such a program.

The 421-a real property tax exemption program began in the early 1970s to spur New York's weak real estate market, which at that time was suffering from disinvestment and declining property values. As the real estate market strengthened in the following decades, the program was amended to require owners benefitting from the exemption in central Manhattan neighborhoods to provide affordable housing. Despite subsequent reforms to expand the geography in which affordable housing was required, it became clear that stronger affordability requirements were needed.

In 2014 and early 2015, this Administration fought hard to reshape the program to:

- end wasteful giveaways to developers, including benefits to luxury condos;
- increase the amount of affordable housing required of every developer receiving the subsidy;

- require that homes be provided for people with lower incomes than ever before; and

- demand affordable housing everywhere in the City.

We achieved those reforms in the State legislature's reauthorization of the program in Chapter 20 of 2015. That law also included a provision that suspended the reauthorization unless the Real Estate Board of New York and the construction trade unions agreed on the wages that would be paid to construction workers hired to build projects receiving the tax exemption. While those parties are reported to have reached an agreement, their agreement would change the terms of the program and therefore requires that the State legislature consider amendments to the law. The program remains suspended until the legislature takes up those amendments and re-enacts the program, or until REBNY and the unions reach an agreement that does not require legislative action.

While seeking to secure substantial reforms to the 421-a program, the Administration also has been working to make building owners who receive benefits comply with the law. Before delving into the efforts we've undertaken, it is important to take a step back and explain how this very complex program is administered.

Under the 421-a program in effect prior to the 2015 reforms, benefits were split into two periods. This resulted in a two-stage application process. Because the only applications we are currently processing were begun under the old program, that process is still the one we use. The process allows a developer to apply for a Preliminary Certificate of Eligibility (PCE) after the developer commences the construction of a new multiple dwelling and before the building is completed. The PCE entitles a project to receive a tax exemption for up to three years of the construction period. Applicants have to deliver PCEs approved by HPD to the Department of Finance (DOF) in order to receive the exemption. Once construction is complete, applicants must apply for a Final Certificate of Eligibility (FCE) from HPD and file such FCE with DOF to be entitled to post-completion real property tax exemption benefits.

During review of an FCE application for a rental building, HPD confirms that the units are registered as rent stabilized with the New York State Housing and Community Renewal (HCR). HPD also confirms that the initial total aggregate rent roll registered for the building with HCR, does not exceed the maximum gross statutory rent, and that the rent initially charged for each 421-a affordable unit does not exceed 30% of the income limits imposed upon the affordable units. Once the FCE is approved and the units are subject to rent stabilization, HPD continues to administer the 421-a program and HCR monitors compliance with the rent stabilization laws. Therefore, HPD and HCR work together on compliance issues concerning rent stabilization in buildings receiving 421-a benefits.

Early in 2014, this Administration recognized that this two-stage application process created difficulties in transitioning from the construction period exemption to the post-completion exemption while at the same time ensuring that the owner had registered units with HCR. Owners often failed to complete the applications for FCEs, but terminating the benefits, only to then have to reinstate them once the FCE was filed, was terribly inefficient. To address the

problem, which had existed for many years, the de Blasio Administration included in its reform proposals a provision to require a single application for 421-a tax exemption benefits that would be filed no later than one year after the completion of construction. Buildings determined to be eligible for benefits would then get up to three years of retroactive construction period benefits along with their post-completion benefits. This would eliminate the problem of getting owners to file and finish their FCE applications and also would ensure that compliance with rent registration would be established before any benefits were enjoyed by an eligible property. The de Blasio Administration's reforms were codified in Chapter 20, which has unfortunately been suspended, as mentioned earlier.

In addition, this Administration is taking significant steps to ensure that properties now applying for or already receiving benefits under the old 421-a program file their FCEs and are found to be in compliance with the rent registration requirement in order to continue receiving 421-a benefits. There are a number of buildings that are not in compliance, which as I've described is an unfortunate legacy of the two-stage application system that was required under the old program. We are working to bring them all into compliance. Our goal is two-fold to (1) preserve rent stabilization protections for 421-a units as required by the program, and (2) crackdown on abuse of public subsidy. Different types of buildings require different approaches, so let me explain what we are doing for each type of building.

First, since 2014, HPD has been working with the Office of the State Attorney General (AG) and HCR's Tenant Protection Unit (TPU) to address the problem of projects that had originally applied for 421-a benefits as cooperatives and condominiums but later decided to operate as rentals without amending their 421-a applications. Coops and condos are exempt from the rent stabilization requirements that apply to 421-a rental units. Compiling the target list of buildings that applied as coops or condos but are instead operating as rentals required the AG's investigation of condo documents, along with extensive analysis of records from HPD, DOF, the Department of Buildings (DOB), and HCR's Office of Rent Administration.

In August 2015, letters went to the targets (285 buildings) requiring them to submit compliance affidavits indicating that they would meet all of the requirements for rental buildings receiving 421-a benefits, including HPD's approval of an initial aggregate rent roll and registration of the rent stabilized units with HCR. Of the 285 targets, 178 submitted such compliance affidavits.

For those targets that failed to respond to the August 2015 letter, the interagency initiative engaged in further investigation to ensure we were revoking benefits for the right properties. On January 26, 2016, HPD issued notices of impending revocation of their 421-a benefits to 54 buildings. Owners and others affected by revocation are entitled to due process before benefits are revoked, which required us to send notices to the taxpayer, the fee owner, the mortgagee and the agent of each building and provide an opportunity for a response. This required checks of three different databases. After receiving a notice of impending revocation, the tax exemption beneficiaries are given an opportunity to propose a cure. The agencies then had to evaluate responses to these notices, which required continuous conversations with the current owners, many of whom were not the original owners. Because some of the buildings had changed hands, the current owners were sometimes unaware that the original owner had not met the 421-a

requirements, and sometimes were not in possession of the relevant documentation needed to implement a cure.

On September 14, 2016, after completing this process, HPD instructed DOF to retroactively revoke benefits for 35 of the 54 buildings that had received the January 2016 notice. The other 19 were dropped from the target list after further investigation showed that they either were in compliance or had cured their violations. We also have now sent notices of impending revocation to 178 targets that submitted compliance affidavits, but failed to meet the deadlines for bringing their properties into compliance.

As part of the same enforcement action, the city and state recouped $5 in settlement money from buildings that applied as condos but were renting units without complying with the rent stabilization requirements of 421-a. This money will be used to provide affordable housing for seniors, homeless, and other low income New Yorkers.

Second, we are now working to bring all rental buildings into compliance with their obligations under the program. We have completed the extensive and time-consuming analysis that was needed to identify which properties have complied or failed to comply with each element of our requirements. Using that analysis, we are focusing first on all rental projects that have been receiving 421-a benefits for at least 5 years, but have not yet filed an FCE with DOF. HPD and DOF, working with the Law Department, are giving those owners notice that their 421-a benefits will be suspended unless they submit the FCE to DOF by a prescribed deadline. We will then follow a procedure similar to what I just described for the properties that applied as coops or condos but operated as rentals – after providing the requisite due process for owners that fail to meet the deadlines, we will, where appropriate, revoke benefits.

Of course, in approving FCEs we will ensure that all units are properly registered with HCR. Our research shows that, of all rental projects currently receiving 421-a benefits (except 3 family homes, because those are not the owners that are the highest priority for enforcement), 77 percent of those units have been in full compliance every year with rent registration requirements, and only 3 percent have never registered their rents with HCR. Of the remainder, 13 percent have missed the rent registration requirements for one year only, and the other 7 percent have some years of compliance and some years of non-compliance.

Under this Administration, investigations to ensure that buildings are in compliance, and revocation of benefits for any that fail to comply after appropriate due process will be an ongoing part of the program, because any owner receiving benefits should be forced to live up to all the obligations of the 421-a program. HPD has to increase the size of its staff in order to ensure a robust compliance program. We have already received approval for a director of the enforcement unit and are currently searching for the best person to fill that role.

As we've discussed in previous hearings, HPD is investing unprecedented resources to build state of the art technology to track all projects receiving any benefits from the City. We also have increased our strategic planning and research staffs in order to analyze that data to identify any lapses in compliance.

In addition to increasing our own staff capacity, we are working more closely than ever with HCR to coordinate our enforcement efforts. Our 421-a staff is in touch regularly with HCR concerning rent overcharge claims on market rate units.

The two bills before us today regarding HPD's role in the 421-a application process, Intros. 1359 and 1366, would mandate that HPD conduct an annual audit of 20% of buildings receiving 421-a benefits to verify compliance with rent registration and affordability requirements. Both bills include a requirement that HPD provide a report to the Council and DOF on building owners in violation and that DOF thereafter provide a timeline and a plan for revoking benefits.

HPD and DOF share the Council's concern about 421-a non-compliance and welcome the opportunity to work with the Council on ways to ensure that buildings receiving 421-a benefits register their rental units, at the right rent levels, as mandated by the statute. As described previously, HPD is already working with our local and state partner agencies to identify noncompliant buildings and take action against them.

HPD believes it is feasible to implement an ongoing audit to determine if properties are in compliance with 421-a affordability requirements, as required in Intro 1359. We can also create an audit program that verifies compliance with the annual rent registration filing requirements in 421-a, which we believe is the Council's intent in Intro 1366.

In addition, we will provide the Council with information, annually, on the number of revocations we've issued – we welcome this as an opportunity to highlight our recent enforcement efforts. Both Intro. 1366 and Intro. 1359 should be revised to reflect that: (1) HPD, not DOF, has the statutory authority to revoke 421-a benefits, and (2) HPD must follow due process requirements for revoking a tax exemption, which must include notice and an opportunity for response. Permitting owners to cure deficiencies in rent registration helps to protect tenants in the units that should have been registered, because rent stabilization provides them with the right to a renewal lease and eviction protection.

Finally, we would like to discuss Intro. 1009, which would require HPD to maintain an online database of owners of dwellings and information regarding the properties they own, such as violation information, outstanding tax liens, and complaints filed against the owner for tenant harassment.

HPD was one of the first agencies to provide its data on the Open Data Portal back in 2012. Since then, we have continually tried to ensure that our enforcement data is accessible and useful to the public. Much of the information required under Intro. 1009 is already publicly available from HPD, DOB and DOF in the City's Open Data Portal resources. In addition, the City's Open Data portal includes a feature to request additional raw data that is not already published. New York City's Open Data regime is based on widely accepted industry principles, such as ensuring that data is published as collected, as granular as possible, and not in aggregate or modified forms. We believe that the potential of Open Data is fully realized through partnerships with local nonprofits, think tanks and research institutions that can aggregate, match and compile data to meet specific community needs. For example, as part of their work to preserve affordable housing, the University Neighborhood Housing Program (UNHP) developed the Building

Indicator Project (BIP), a database that leverages publicly available data to gauge physical and/or financial distress of multifamily properties in New York City. They track thousands of buildings across the city using multiple sources, including much of the data discussed in the proposed legislation and available on Open Data, to create a scoring system to indicate distress. It's a powerful and useful tool for communities and advocates, as well as the City, to identify distressed buildings with the goal of improving them. We believe that working with these third parties is a better use of resources than aggregating specific data combinations of data ourselves, and we look forward to discussing with the Public Advocate and with the Council how we can be most helpful to consumers of the data.

As you know, the Housing Maintenance Code requires owners of buildings of 3 units or more, and of non-owner occupied 1-2 unit buildings, to register with HPD on an annual basis. The registration includes information related to the property owner, the managing agent and shareholders who hold more than a 25% interest in the property. This registration process supports the agency's enforcement of the Housing Maintenance Code by providing the necessary contact information of owners and building managers if a violation needs to be issued. Registration information is available on HPD's website. We agree with the Council that more information about property owners, given the complex ownership structures in New York City's real estate market, would be very helpful. To this end, we recommend that the Council work with the State legislature to require owners to make additional disclosures whenever they incorporate as a limited liability corporation and register at the Department of State.

We would like to continue to work with the Council to refine Intros. 1359 and 1366 in light of all that we are already doing, and look forward to further conversations about these bills.

We are happy to answer your questions.

THE LEGAL AID SOCIETY

199 Water Street
New York, NY 10038
T (212) 577-3300
www.legal-aid.org
Direct Fax: (646) 616-4339

Blaine (Fin) V. Fogg
President

Seymour W. James, Jr.
Attorney-in-Chief

Adriene L. Holder
Attorney-in-Charge
Civil Practice

TESTIMONY BEFORE THE JOINT NEW YORK CITY COUNCIL COMMITTEES ON HOUSING AND BUILDING AND ON FINANCE

November 22, 2016

Thank you Chairperson Williams, and members of the Committee on Housing and Buildings, and Chairperson Ferreras-Copeland and the members of the Committee on Finance for the opportunity to provide testimony today.

This testimony is submitted on behalf of The Legal Aid Society. The Society is the oldest and largest program in the nation providing direct legal services to low-income families and individuals. The mission of the Society's Civil Practice is to improve the lives of low-income New Yorkers by providing legal representation to vulnerable families and individuals to assist them in obtaining and maintaining the basic necessities of life — housing, health care, food and subsistence-level income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving a full range of legal problems in the areas of housing and public benefits, foreclosure prevention, immigration, domestic violence and family law, employment, elder law, tax law, community economic development, health law and consumer law.

Introduction

New York City is the midst of an ever deepening affordable housing crisis. Even when New Yorkers manage to find an affordable or regulated apartment, it is usually up to the tenant to enforce their rights and the law. This is made more difficult by the fact that

the information necessary to enforce tenants' rights, especially when affordable New York City and State programs are involved, is impossible to discover for most tenants. The 421-a tax abatement program is the most obvious example of this problem. Units built through this tax abatement must be registered as rent regulated and, in some buildings, a percentage of units must be affordable to low income New Yorkers. And yet, no City or State agency enforces this law. Thus, The Legal Aid Society strongly supports Introductions 1366 and 1359 sponsored by Housing Chair Williams and Council member Levin respectively. In addition, we support 1009-2015 sponsored by Public Advocate James.

Introductions 1366 and 1359

Introduction 1366 would require HPD to audit buildings receiving 421-a benefits to determine whether such buildings are complying with the applicable rent registration requirements. Introduction 1359 would require HPD to audit buildings receiving 421-a benefits to ensure that such buildings are complying with applicable affordability requirements. Both bills would require HPD to audit no fewer than 20 percent of all buildings receiving 421-a tax abatements. If a building was found in non-compliance, HPD would be required to report the violation to the Speaker of the City Council and the Department of Finance which would lead to revocation of benefits granted under the tax abatement program for the period of time that the buildings were out of compliance.

The lack of such oversight and the harm it causes was described in a series of articles published by Pro Publica, This series, titled "The Rent Racket: How Landlords Sidestep Tenant Protections in New York City,"[1] demonstrated that landlords who receive tax breaks and other programs that require provision of affordable housing, flout the law. One article described how an investigation found that 40 percent of the apartments receiving tax breaks that required apartments to be registered as rent stabilized failed to be registered even though their owners received over 100 million dollars.[2] The 421-a benefits provide ample tax breaks to developers through HPD. HPD takes the position that it is not HPD's responsibility to make sure that landlords comply with the rent laws. Rent

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[1] Pro Publica "The Rent Racket: How Landlords Sidestep Tenant Protections in New York City" https://www.propublica.org/series/the-rent-racket. Last accessed February 19, 2016.

[2] Pro Publica, Marcelo Rochabrun & Cezary Podkul, *Landlords Fail to List 50,000 N.Y.C. Apartments for Rent Limits*. November 5, 2015. https://www.propublica.org/article/landlords-fail-to-list-fifty-thousand-nyc-apartments-for-rent-limits Last Accessed February 19, 2016

stabilized apartments must be registered through the New York State Homes and Community Renewal (HCR) and landlords may not charge more than the legal rent. However, as another article made clear, neither the City nor the State enforces the law, allowing landlords to take advantage of lax enforcement and accept tax credits without providing any of the tenant protections required by those credits.[3] Requiring HPD to audit buildings to determine whether they are complying with the law, will send a message to all developers that if New York City is going to forgo significant tax revenues, New York City will ensure that in exchange for this forbearance, developers actually comply with the law

Conclusion

Thank you for the opportunity to testify before this committee on these important bills We strongly support these bills and look forward to working on them with you and your committees.

Respectfully submitted,

Ellen Davidson, Esq.
The Legal Aid Society
Law Reform Unit
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3339

[3] Pro Publica Cezary Podkul & Marcelo Rochabrun, *Tenants Take the Hit as New York Fails to Police Huge Housing Tax Break.*, December 4, 2015. https://www.propublica.org/article/tenants-take-hit-as-ny-fails-to-police-huge-housing-tax-break Last Accessed February 19, 2016

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FOR THE RECORD

TESTIMONY OF ADRIEN A. WEIBGEN BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON HOUSING AND BUILDINGS AND THE COMMITTEE ON FINANCE REGARDING THE 421-A TAX EXEMPTION PROGRAM

Int. No. 1009, In Relation to an Online Database for Registered Dwellings, and Related Proposals Regarding Auditing for Compliance with the Affordability and Rent Registration Requirements of 421-A

Tuesday, November 22, 2016

Thank you for the opportunity to testify today. My name is Adrien Weibgen, and I am a Staff Attorney at the Community Development Project of the Urban Justice Center, or "CDP." CDP provides legal, participatory research and policy support to strengthen the work of grassroots and community-based groups in New York City to dismantle racial, economic and social oppression. As part of its work around neighborhood change, CDP worked extensively with affordable housing advocates on a campaign to mend or end the 421-a program, which served as a windfall to developers and gave away billions of dollars in much-needed tax revenues while generating little affordable housing around the City.

As a starting point, CDP remains firm in its belief that 421-a is a wasteful and inefficient program that does more to line the pockets of developers than to create affordable housing for those most in need. Although the Real Estate Board of New York has claimed that the program is necessary to enable developers to get shovels in the ground to create much-needed housing, this is not supported by the evidence. Although the number of new building permits filed immediately after the expiration of 421-a dropped significantly, they have since rebounded and recovered to 2014 levels by the third quarter of 2016.[1] This suggests that the market has adjusted to a reality without 421-a, and we hope it stays that way. We are committed to continuing to fight against any future versions of 421-a that give billions to developers for almost no public benefit.

With that said, New York City is stuck with what the 421-a program has given us: many buildings across the City that *should* contain apartments with below-market rents, but in far too many cases, do not. Given the enormous windfall the developers who took advantage of 421-a have received and will

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[1] "NYC New Building Permits Recovered to 2014 Levels in Third Quarter, Despite 421-a Suspension," NYU FURMAN CTR. (Oct. 31, 2016), http://furmancenter.org/thestoop/entry/nyc-new-building-permits-recovered-to-2014-levels-in-third-quarter-despite.

continue to receive for decades to come, the very least they can do is provide the below-market housing they are obligated to create as a condition of their receipt of this tax break. To that end, UJC strongly supports Int. No. 1009 and the related proposals that would create audits to ensure compliance with the affordability and rent registration requirements of 421-a. New York City's present housing crisis is too severe, and the future of affordable housing under the Trump administration too uncertain, to allow even one unit of affordable housing currently within our grasp to slip through our fingers. But today, hundreds, if not thousands of landlords fail to maintain affordable rents in 421-a buildings and/or fail to register apartments for rent stabilization, as the law requires. With no public database of buildings that have received 421-a, it is nearly impossible for everyday New Yorkers, and even trained attorneys at places like CDP, to know which apartments are supposed to be rent-stabilized and who is being over-charged.

The proposed package of bills would help create a safety net around affordable apartments created under 421-a, preventing landlords from shirking their responsibilities and keeping below-market apartments from slipping through our fingers. This scale of the problem is huge; last year's ProPublica investigation into this issue found that about 50,000 421-a apartments citywide had not been appropriately registered as being rent-stabilized.[2] The City must do everything in its power to take back these units and ensure that the public reaps the full benefit of any revised 421-a program that may yet be passed in future.

Thank you for the opportunity to testify. If you have any questions about my testimony, I can be reached at aweibgen@urbanjustice.org or 646-459-3027.

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[2] "Landlords Fail to List 50,000 NYC Apartments for Rent Limits," *ProPublica* (Nov. 5, 2015), https://www.propublica.org/article/landlords-fail-to-list-fifty-thousand-nyc-apartments-for-rent-limits.

TENANTS & NEIGHBORS
THE STATEWIDE CENTER OF POWER FOR TENANTS

FOR THE RECORD

Katie Goldstein, Executive Director

New York State Tenants & Neighbors

Testimony as Prepared

November 22, 2016

New York City Council Committee on Housing and Buildings

Re: Introductions 1366 and 1359

Good morning. Thank you to Chair Williams and to the Housing and Buildings Committee members for the opportunity to testify today.

My name is Katie Goldstein and I am the Executive Director for New York State Tenants & Neighbors Information Service and New York State Tenants & Neighbors Coalition, two affiliate organizations that share a common mission: to build a powerful and unified statewide organization that empowers and educates tenants; preserves affordable housing, livable neighborhoods, and diverse communities; and strengthen tenant protections. The Information Service organizes tenants in at-risk rent regulated and subsidized buildings, helping them preserve their homes as affordable housing, and organizes administrative reform campaigns. The Coalition is a 501c4 membership organization that does legislative organizing to address the underlying causes of loss of affordability. Our membership organization has over 3,000 dues-paying members.

Tenants & Neighbors organizes in rent-regulated, Mitchell-Lama, and project-based Section 8 developments citywide. In the buildings where we organize, the story is the same. Low and moderate income tenants in New York City are regularly experiencing the pressures of displacement. Rents are climbing and tenants are concerned that they will not be able to afford to stay in their homes and communities.

Tenants & Neighbors is testifying today in support of Intro 1366, a bill to require HPD to audit buildings receiving 421a benefits to determine whether or not the buildings are in compliance with rent registration requirements, and Intro 1359, a bill to ensure that buildings are in compliance with 421-a's affordability requirements. The 421a tax abatement program does require units to be registered with the New York State Department of Homes and Community renewal also requires some units to comply with affordability restrictions. However, there is significant lack of oversight over the 421a tax abatement program.

Thanks to the excellent reporting at ProPublica, it clear that landlords are taking advantage of this lack of oversight and enforcement. New York City is in an affordable housing crisis and cannot afford to lose any more units. This is a program that is funded by New York City's tax payers. It is unfortunate that landlords receiving billions of dollars of tax payers money are been allowed to get away with ignoring the tenant protections contained in the law. We believe that the 421a tax abatement is enormous waste of

taxpayer money, and coupled with the lack of oversight, makes a strong case for it to remain expired. For buildings who already receive a 421a tax abatement, and in the case that the program is renewed, it is essential that there is increased oversight to ensure the subsidy is matching the need and tenants are protected.

We look forward to working continuing our work with the Council to find real solutions to the affordable housing crisis and to restrict those actors who are contributing to the crisis with increased oversight and stronger enforcement tools.

Thank you very much for the opportunity to testify today.

ASSOCIATION FOR NEIGHBORHOOD & HOUSING DEVELOPMENT, INC.
50 Broad Street, Suite 1402
New York, NY 10004
Tel: 212-747-1117
Fax: 212-747-1114
www.anhd.org

TESTIMONY OF BENJAMIN DULCHIN, BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON HOUSING AND BUILDINGS REGARDING 421-a AUDIT LEGISLATION PROPOSED INTROS 1359 AND 1366

November 16, 2016

Good Morning. Thank you Chair Williams and to the members of the Committee on Housing and Buildings for the opportunity to testify.

My name is Benjamin Dulchin and I am the Executive Director for the Association for Neighborhood and Housing Development (ANHD). ANHD is a membership organization of NYC- neighborhood based housing and economic development groups- CDCs, affordable housing developers, supportive housing providers, community organizers, and economic development service providers. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers. We have over 100 members throughout the five boroughs who have developed over 100,000 units of affordable housing in the past 25 years alone and directly operate over 30,000 units.

I am testifying today in support of the proposed Intros 1359 and 1366. The 421a program is notoriously inefficient in its requirement that any public benefit of affordability be provided in return for the enormous tax break that it provides developers. But, even those relatively few affordable units that are created are subject to little regulatory oversight.

As the recent investigation by ProPublica found, nearly two-thirds of the rental properties paying reduced property taxes do not have an approved application on file with the City Finance Department. The audit requirements that would be established by Intros 1359 and 1366 are a minimal, obvious next step to ensure that the program is legally compliant.

While the 421a program has been temporarily suspended since January, 2016, those units that are already covered by the program should have their public affordability benefit ensured.

The 421a program is already creates only a dubious public benefit. A 2015 analysis of the exemption by ANHD shows that in fiscal year 2013-14, the 421a program covered a total of 152,402 residential units, and granted $1.1 billion in tax abatements. But, only 12,748 of those units had affordability restrictions. That translates very roughly to about $86,000 a year that taxpayers are transferring to private developers to subsidize each affordable unit, making 421a tax break by far the most inefficient affordable housing program on the books.

However, even that small percent of affordable 421a units aren't tracked by any city or state agency. There is no enforcement to ensure that tenants in affordable 421a units are being given the leases and rents to which they're entitled. There is also no enforcement to ensure that landlords are renewing leases to income qualifying tenants, adhering to fair marketing guidelines, and limiting rents to the

ASSOCIATION FOR NEIGHBORHOOD & HOUSING DEVELOPMENT, INC.
99 Broad Street, Suite 1402
New York, NY 10004
Tel: 212-747-1117
Fax: 212-747-1114
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capped affordability restrictions. Initial reviews of developments currently receiving a 421a tax exemption have found cases where tenants were provided incorrect leases that did not accurate reflect the units' affordability regulations.

The 421a property tax exemption is available to real-estate developers of new multi -family residential housing. 421a was originally put in place in 1971, when policymakers were concerned that an extremely weak housing market would not provide enough of an incentive t for private market developers to build new housing in the city. Policymaker's concerns were fueled, in part, by the city's economic problems and the declining population as many residents moved to the suburbs. 421a operates on the basic premise of incentivizing new market-rate residential construction in order to stimulate the production of housing.

While 421a Developer's Tax Break has been slightly revised over the years, the program is a holdover from an earlier era when the private sector, arguably, needed a boost to finance the building of new residential apartments. In the 1980's the City and the State passed revisions to the 421a Developer's Tax Break. City and State officials adjusted 421a recognizing that the housing market was rebounding in Manhattan and that gran ng a 100% tax break for 20 years for luxury development was a giveaway. City state and officials designated a "Geographic Exclusion Area" (GEA) in Manhattan, roughly between 14th and 96th Streets inside of which, developers were required to build affordable housing in order to qualify for the 421a tax break.

The creation of the GEA was built upon and expanded two more times between the 1980s and today. The program was also revised to eliminate the off -site certificate program which allowed market-rate developers to purchase certificates from 100% a affordable housing buildings in order to get their tax break. However, the certificate program concentrated affordable housing in low- income outer borough neighborhoods and failed to create the mixed-income neighborhoods that communities want and need. While 421a has been slightly revised over the years, it still operates on that same basic premise of incentivizing new market-rate housing production.

Today, nearly all new residential construction is eligible for the 421a Developer's Tax Break. Projects with 5 or more housing units can qualify for the 421 Developer's Tax Break "As of Right," meaning at the options and discretion of the real estate developer. Those developers that meet the 421a programs qualifications and rules, as denied by the City and State, cannot be denied receiving 421a. Currently the 421a Developer's Tax Break has two different sets of requirements.

For those buildings that fall inside the Geographic Exclusion Area, developers that use 421a must make 20% of the units affordable to 60% of Area Median Income (AMI), or approximately $1,260 in monthly rent for a 2-bedroom apartment. That's below market-rate in some areas, but it's s all unaffordable for most New Yorkers. While 60% AMI at $1,260 in monthly rent may sound affordable, it is at or above market-rate rents in some areas and rents of $1,260 rents are unaffordable to nearly half of the City's households.

Outside of the "Geographic Exclusion Area," developers are eligible to use 421a without se ng aside any affordable units at all. In these outer borough neighborhoods, there are tremendous numbers of

new multi -family market-rate residential housing that pay no property taxes for 20 years with no affordable housing requirements.

In both cases, inside and outside the "Geographic Exclusion Area," the tax break applies to the entire building (the market-rate and affordable units), and lasts 25 years.

The 421a Developer's Tax Break is also often used in conjunction with other subsidy programs, particularly the Inclusionary Housing Program and the Low Income Housing Tax Credits (LIHTC). However this allows developers get to 'double dip' by counting the same affordable units under both programs, rather than layering on additional affordable apartments for each new subsidy they take. In some cases the affordable units are made less affordable, at 120% AMI instead of 60% AMI when 421a is combined with substantial government assistance.

The number of residential units receiving 421a varies widely across boroughs, with Manhattan containing 40 percent of all 421a residential units and State Island having only 1 percent of 421a units. However, the DOF 421a dataset fails to indicate is a residential unit is an affordable housing unit or even whether the property receiving was required to create affordable housing in order to qualify for the tax exemption. There is no public database which tracks buildings or units the receive 421a. Neither the City nor the State have a citywide 421a base database that includes the location of all 421a properties, if they required affordable housing, the number of affordable units created, and when the affordability terms expire. Housing advocates and city officials request for data on 421a affordable units in their community or district have generally received and estimated or assumed number of 421a affordable units from city agencies.

	Number of 421a Units	Percent of City-Wide 421a Unit Total
Bronx	16,901	11.0%
Brooklyn	44,953	29.4%
Manhattan	60,107	39.3%
Queens	29,435	19.2%
Staten Island	1,006	0.7%
TOTAL	152,402	100.0%

However, this analysis leaves Housing advocates, City officials and local communities with inadequate and limited information about the role of the 421a Developer's Tax Break in their neighborhoods. In

order to understand more about the 421a Tax Break ANHD completed a unique in depth analysis of all 421a tax exempt properties as of Final Roll Fiscal Year 2013/2014. ANHD then merged this dataset to the New York Department of City Planning (DCP) Primary Land Use Tax Lot Output (PLUTO) database which provides extensive land-use, geographic, and tax information on every tax lot in the City.

We then spa ally mapped shape les of the three 421a Geographic Exclusion Areas (GEAs) – the original one, developed shortly after the program's inception, the one in use before the 2008 421-a legislation reforming the GEA, and the one in use from after the legislation (which also the current GEA). Each one of these GEA maps allowed us to determine where affordable housing was required at a given point in me in the lifecycle of the 421a program. Each 421 tax lot was then spa ally analyzed and determined to either be inside the one or multiple of the GEA boundaries or outside the GEA. If a tax was located outside of the GEA it was determined to have no affordable housing units. If a tax lot fell inside the GEA we then utilized the Year Built data to determine if the given property was built prior to any affordability requirements based on its geographic location.[1]

Tax lots falling inside the GEA and built after the GEA affordability requirements went into effect were assumed to have set aside 20 percent of their total units as affordable housing. Condos that appear in the data as individual separate tax lots were aggregated by address into a data record of a single building with multiple units. The result is ANHD's analysis of the location of all Fiscal Year 2013 421a Developers Tax Break proper estimated taxes, and our estimation of the number and location of the affordable housing units created under 421a.

ANHD estimates that only 12,748 of those 153,000 421a tax break units are affordable housing units. In the vast majority of the city, developers collecting and communities are paying for 421a Tax Breaks to developers without providing any public bene t in return. The 421a Developer's Tax Break forfeits billions of dollars in public money for minimal public bene t in return.

It is important to also note that evidence is mounting that the 421a Tax Break may not even accomplish the most minimum public purpose.

Last week, a data update released by the NYU Furman Center titled, "NYC New Building Permits Recovered to 2014 Levels in the Third Quarter [of 2016], Despite 421a Suspension," notes that not only have the number of new construction permits returned to normal levels, but the number of units per building has also returned to normal levels – growing from an average of 26 units per building in the Bronx in the 1st quarter of 2016 to 39 units per building in the 3rd quarter. This suggests that the surge in new rental developments without 421a is not limited to small-scale, one-off development sites.

As ANHD's previous blog examining 421a noted, "There is one thing the real estate lobby has asserted unequivocally [in order to justify the existence of the tax exemption]: 'It was not feasible to build rental housing in New York City without the 421a subsidies.'... However, new trends suggest this may not be correct. In the past few months, there has been increasing evidence of new market-rate rental private construction in exactly the types of low-cost housing markets where the real estate lobby insisted would never happen."

ASSOCIATION FOR NEIGHBORHOOD & HOUSING DEVELOPMENT, INC.
99 Broad Street, Suite 1400
New York, NY 10004
Tel: 212-747-1117
Fax: 212-747-1114
www.anhd.org

Furthermore, since the surprising suspension of 421a in Janauary, 2016, new data indicates that new construction has adjusted to a housing market without 421a Tax Break and is quickly recovering, and that the existence of 421a itself may have been hindering development in key markets.

The general consensus of housing researchers and experts has been that the broad availability of the 421a Trump Tax Break has the effect of artificially inflating land prices, thereby increasing the cost of new housing development. One possible outcome of the suspension of 421a is that land prices in relatively weak real estate markets – where new privately-built housing will be more naturally affordable – would soften without the artificial stimulant of the tax exemption, with the effect of making new housing development in those neighborhoods more affordable.

This position was made in a 2015 NYU Furman Center report hypothesizing that "the loss of the 421a exemption would reduce the amount that residential developers would be willing to pay for the land." The report continued, "In the medium and long term, as landowners adjust their expectations of the value of development parcels downward, or as market rents rise, the pace of development could resume."

Further evidence from a New York City Development Update through the 2nd quarter of 2016, released by the investment firm NGKF Capital Markets, shows that the trend of increasing price per square foot for development sites in some key areas has slowed dramatically since 421a was suspended:

- *In Manhattan above 96th Street, the average price per buildable square foot for development sites rose by 71% from 2014-2015, but only rose by 6% from 2015 through the first half of 2016.*
- *In the Bronx, the average price per buildable square foot for development sites rose by 24% from 2014-2015, but only rose by 2% from 2015 through the first half of 2016.*

Together, this new data suggests that the suspension of 421a has softened land prices, which makes new development more economical even without 421a. The fact that new development is now more robust in these neighborhoods suggests that, as the return of 421a is debated, policy makers should examine what policy goal 421a actually accomplishes and whether the cost to the taxpayer is worth it.

Thank you for this opportunity to testify.

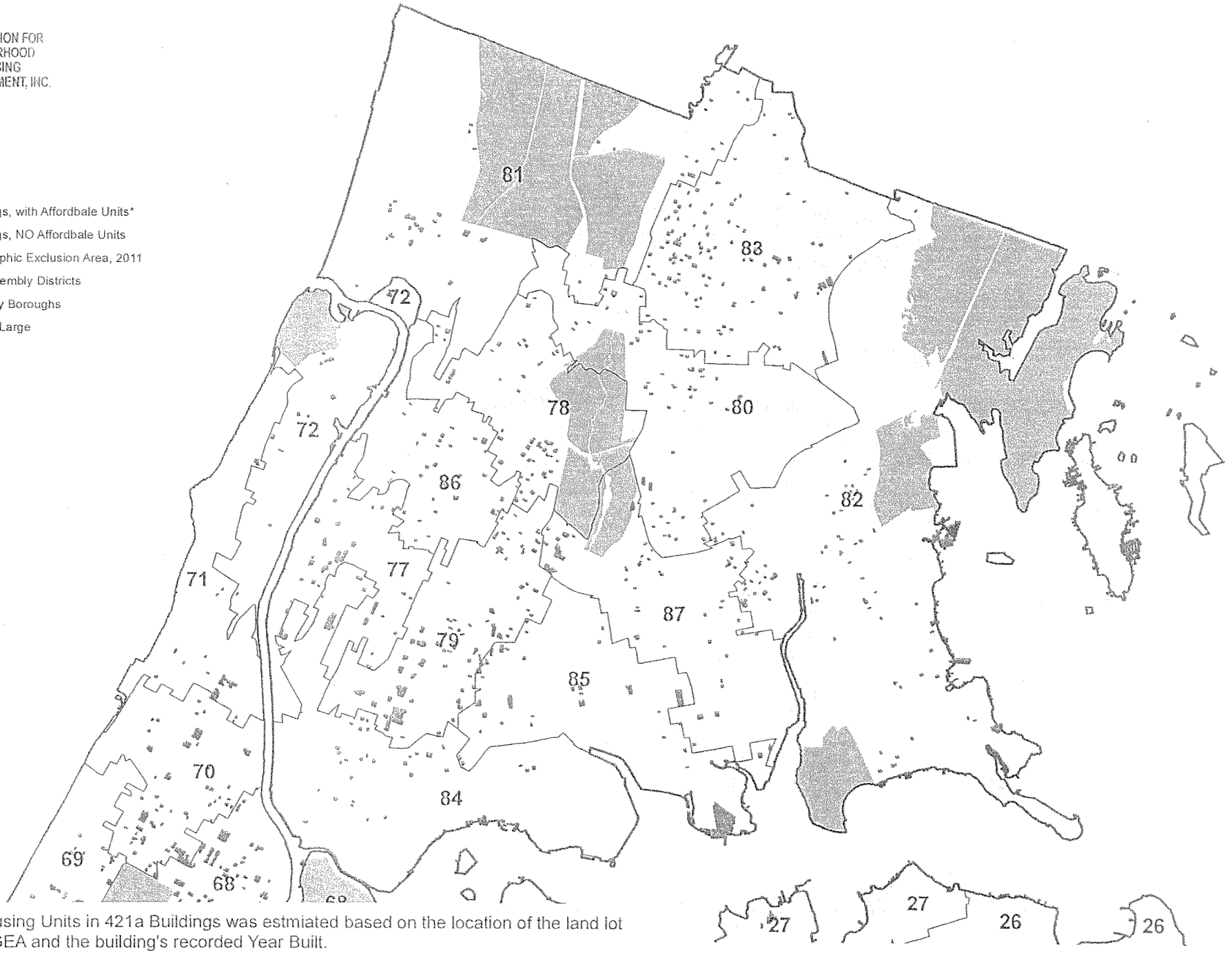
421a Developers Tax Break Buildings, FY2013

Assembly Districts

ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC.

Legend

- 421a Buildings, with Affordbale Units*
- 421a Buildings, NO Affordbale Units
- 421a Geographic Exclusion Area, 2011
- NY State Assembly Districts
- New York City Boroughs
- NYC Parks - Large

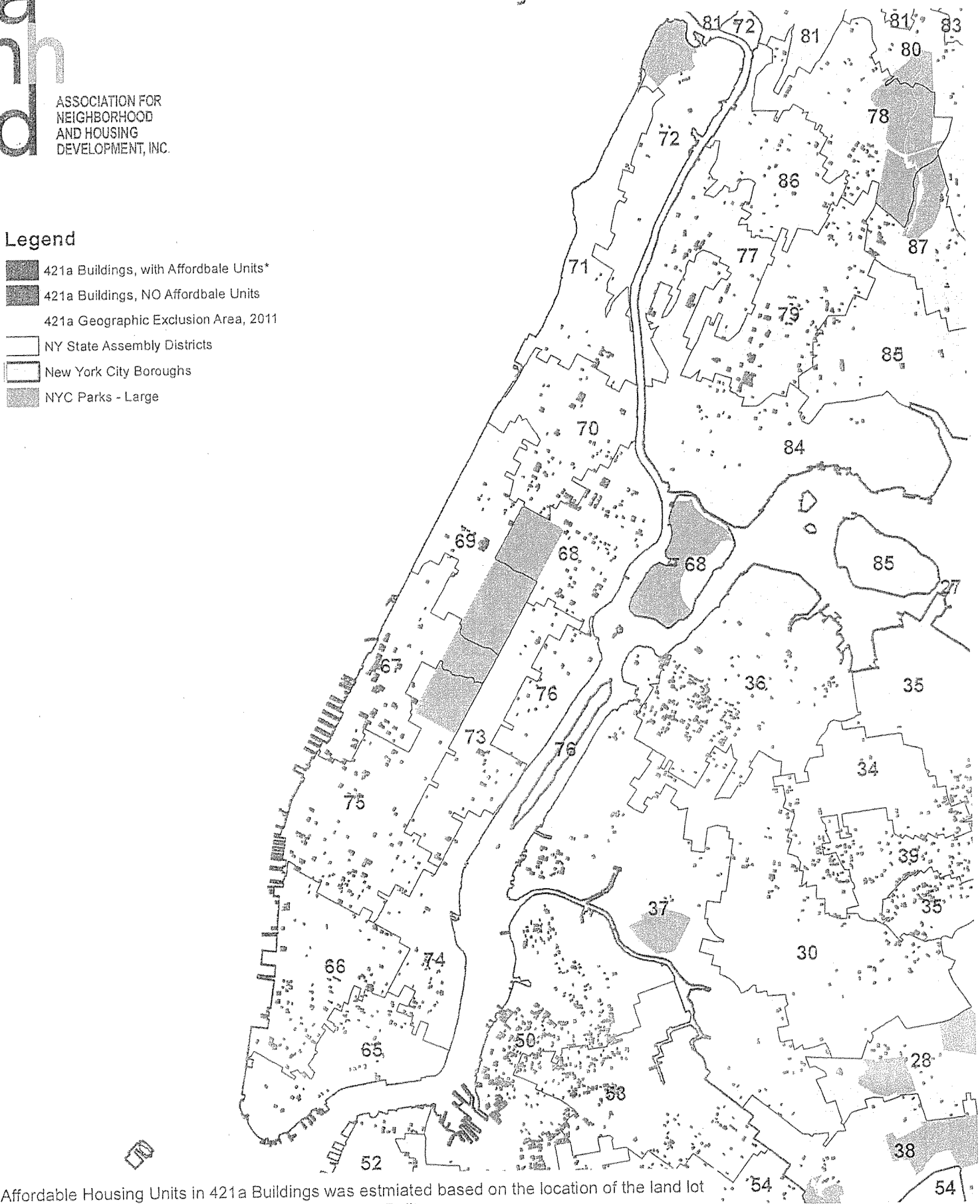


*Affordable Housing Units in 421a Buildings was estmiated based on the location of the land lot relative to the GEA and the building's recorded Year Built.

421a Developers Tax Break Buildings, FY2013

Assembly Districts

ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC.



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421a Developers Tax Break Buildings, FY2013

Assembly Districts

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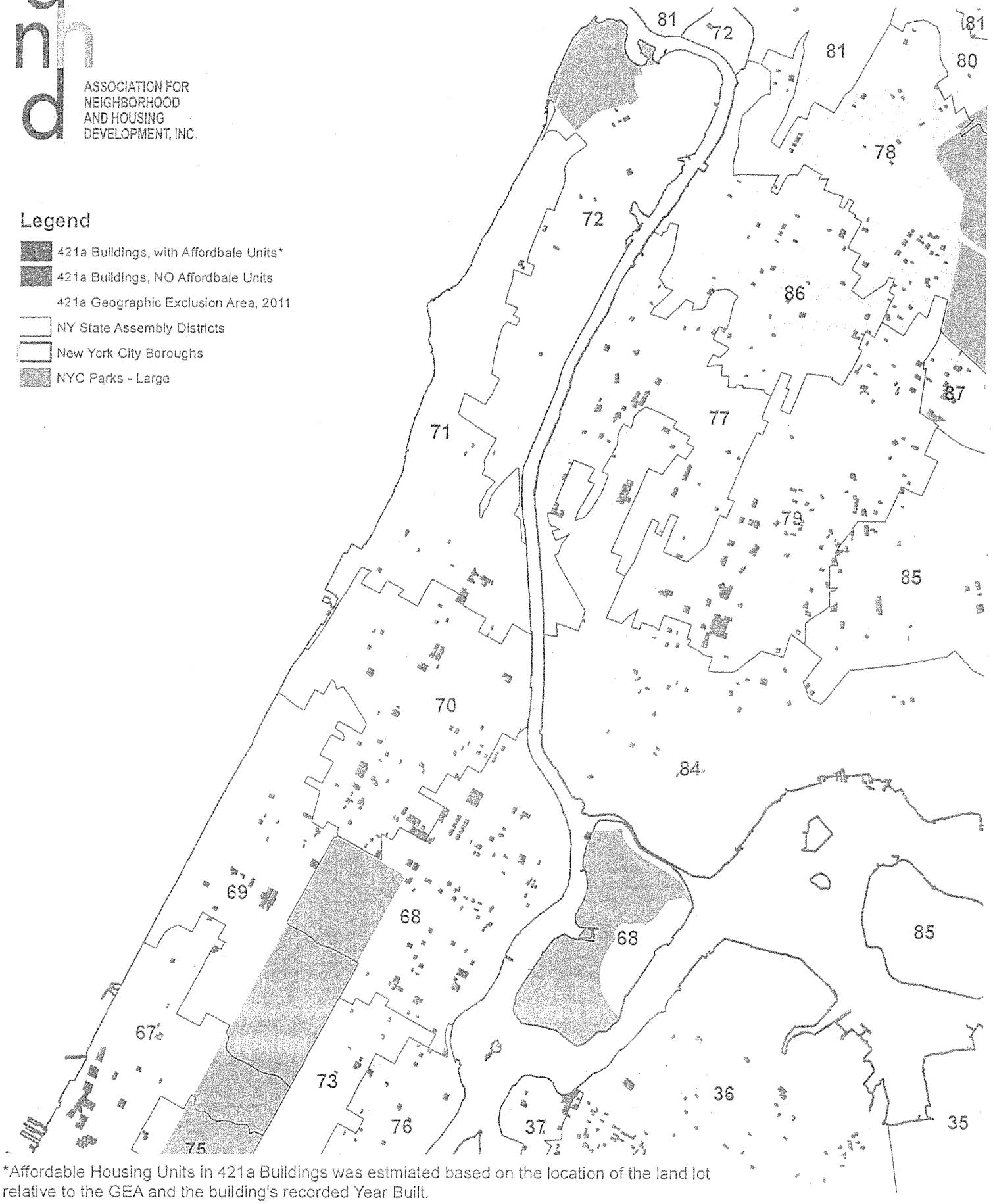

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421a Developers Tax Break Buildings, FY2013

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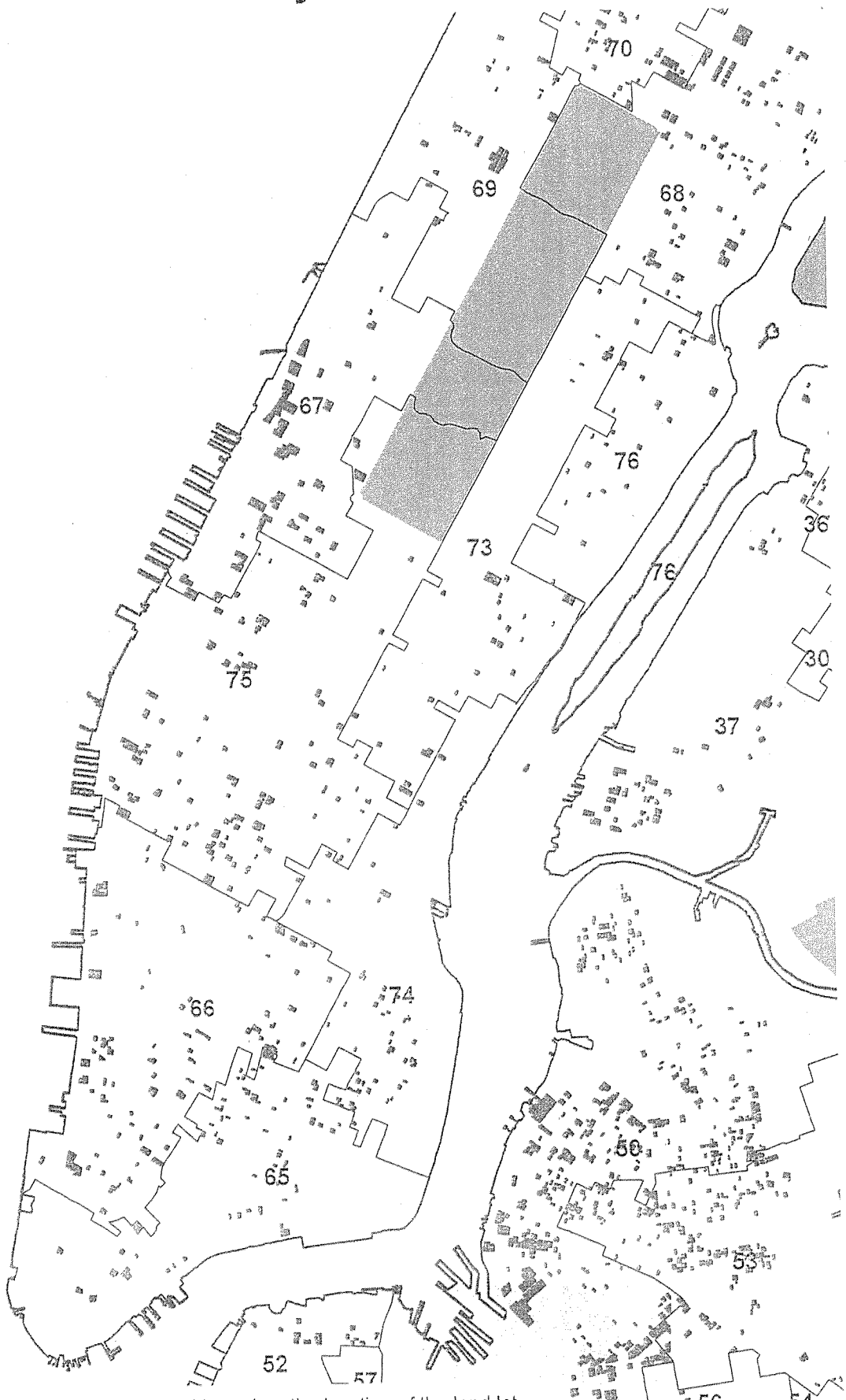

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421a Developers Tax Break Buildings, FY2013

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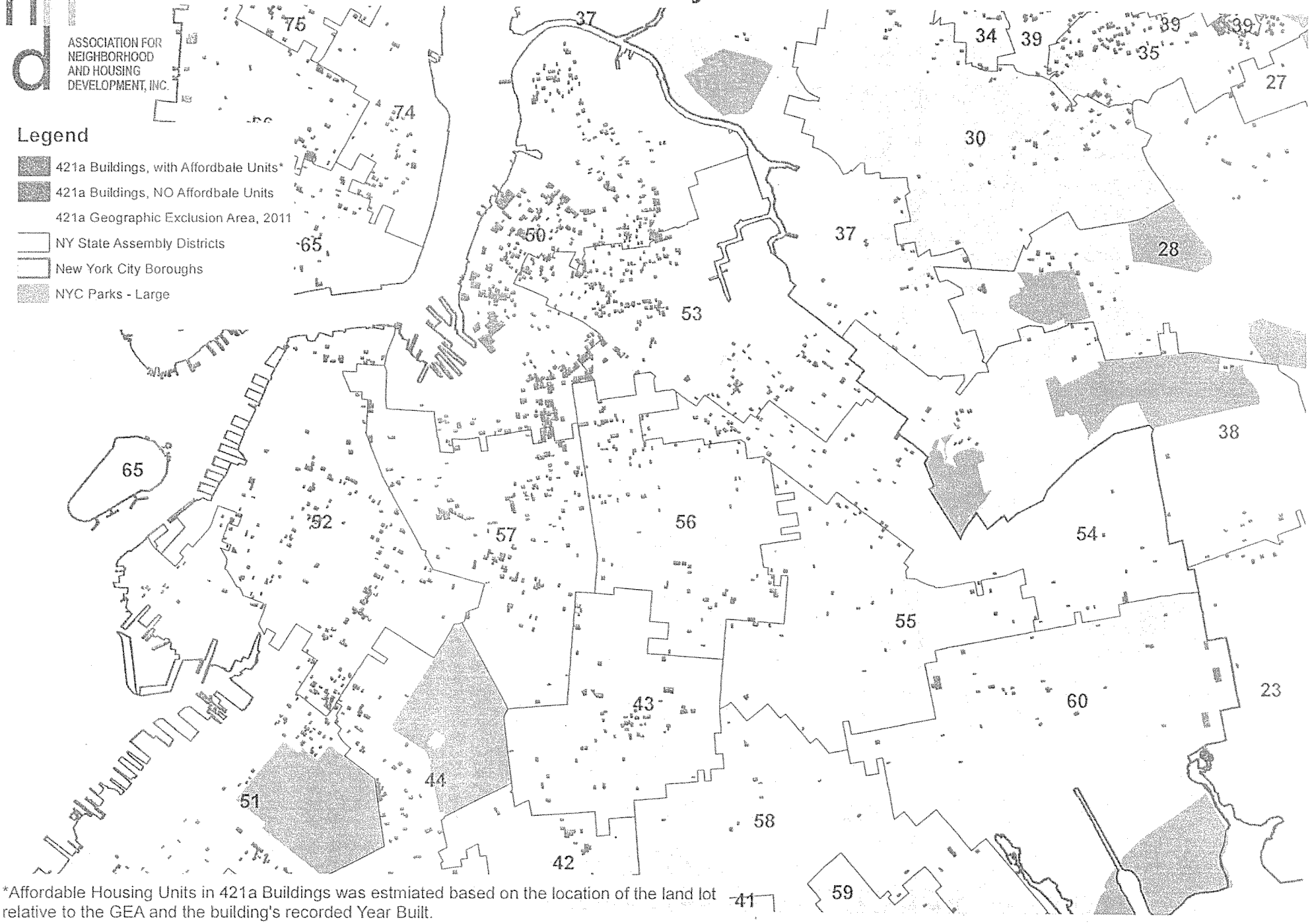

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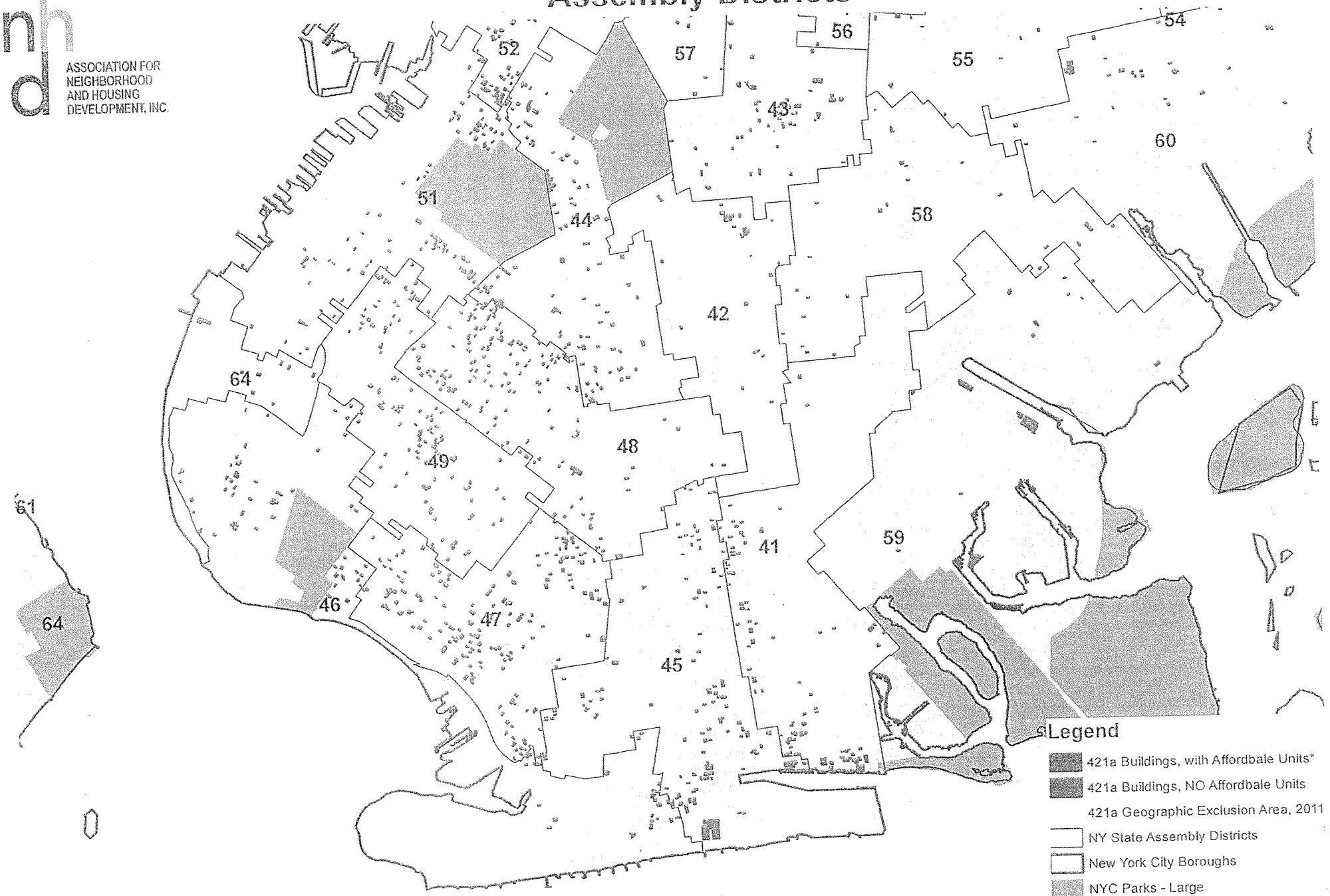

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421a Developers Tax Break Buildings, FY2013

Assembly Districts

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421a Developers Tax Break Buildings, FY2013

Assembly Districts

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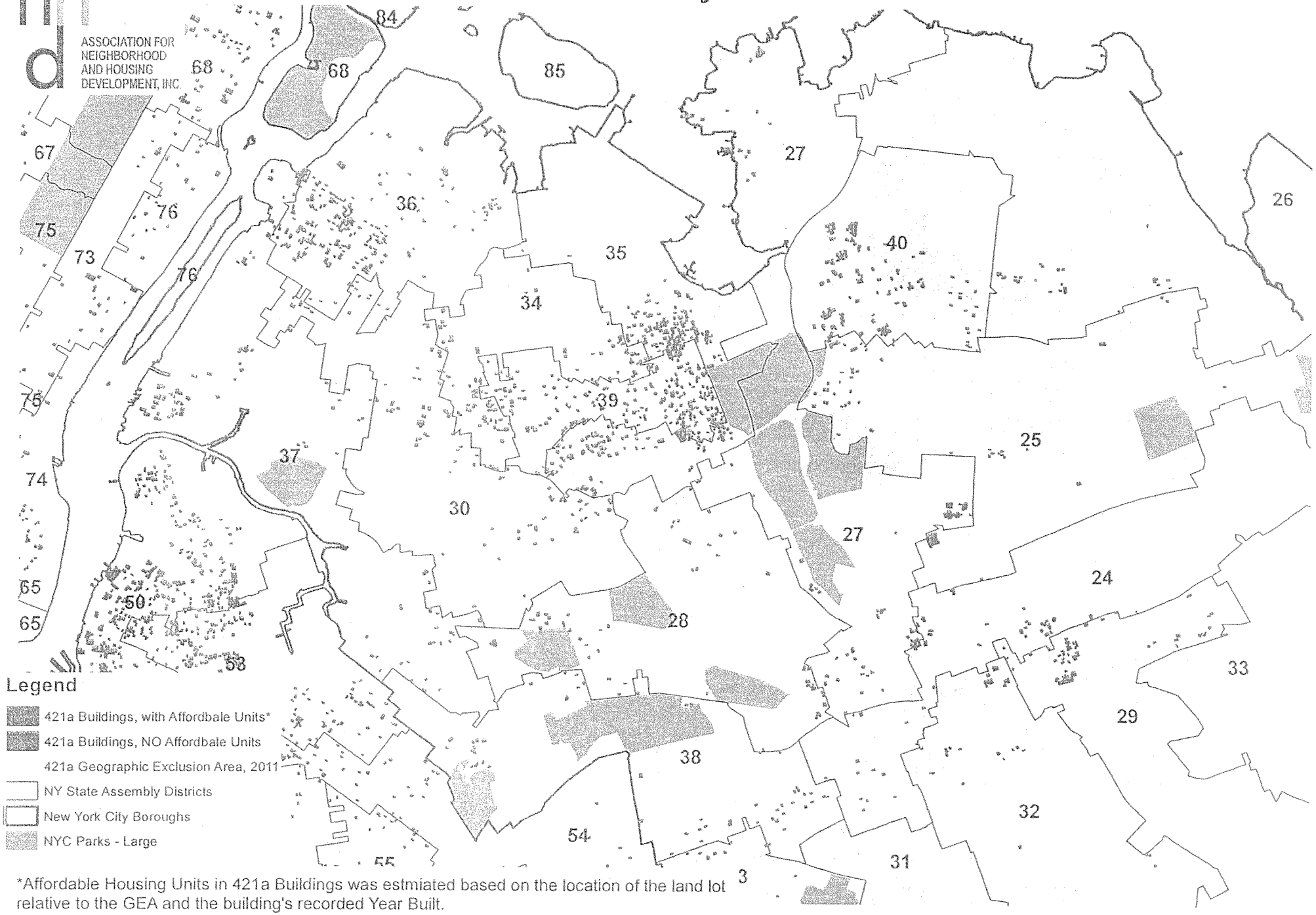

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Assembly Districts

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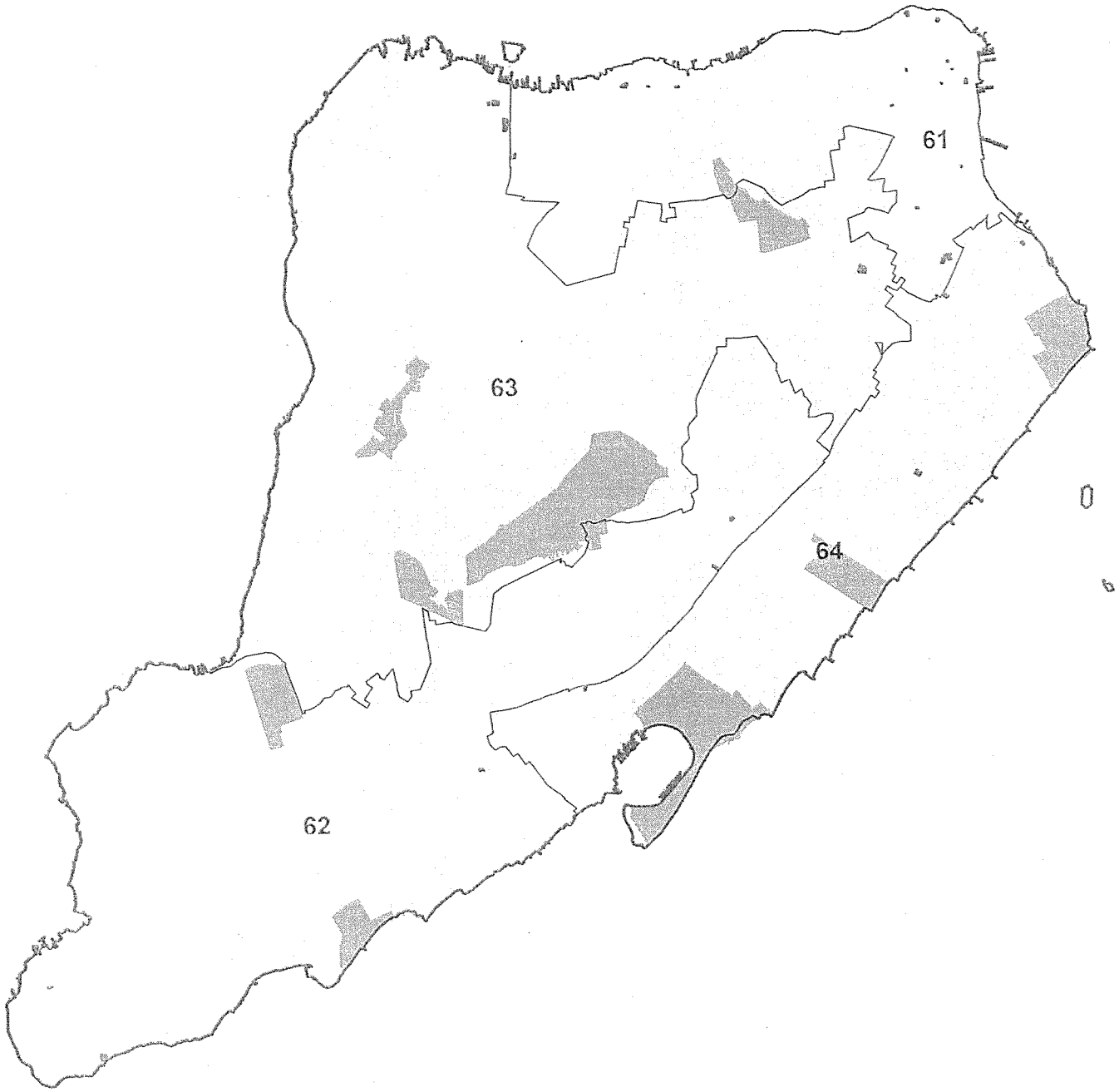

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REBNY®
REAL ESTATE BOARD OF NEW YORK

Legislative Memo
CONTACT: Carl Hum
Senior Vice President of Management Services & Gov. Affairs
(212) 616-5233
Chum@rebny.com
www.REBNY.com

MEMORANDUM OF ANALYSIS

BILL: 1339
SUBJECT: A Local Law to amend the administrative code of the city of New York, in relation to auditing buildings for compliance with the affordability requirements of the 421-a tax exemption program
SPONSORS: Stephen Levin and Jumaane Williams

BILL: 1366
SUBJECT: A Local Law to amend the administrative code of the city of New York, in relation to auditing buildings for compliance with the rent registration requirements of the 421-a tax exemption program
SPONSORS: Jumaane Williams and Stephen Levin

DATE: November 22, 2016

REBNY represents over 17,000 owners, developers, managers and brokers of real property in New York City and our membership supports the overall goals of these bills to ensure lawful compliance with the 421-a tax benefit program. Our members recognize that the 421-a program is essential in helping spur construction of affordable, rental housing throughout New York City and that all beneficiaries of the 421-a program, from developers to tenants, must comply with all its applicable rules and regulations, or be held accountable for any malfeasance.

The bills seek to ensure that the 421-a program's affordability and rent registration requirements are met through an audit of no less than 20 percent of all buildings receiving the 421-a tax benefit. However, if the bills' intention is to eventually review all 11,507 buildings receiving the benefit, the bills are silent as to how often the audit shall occur.[1] Nonetheless, an audit of 2,300 buildings - 20 percent of the current participants – is a considerable amount of work. There needs to be a careful consideration of whether the Department of Housing and Preservation Development ("HPD") is adequately resourced to carry out such an ambitious effort. Otherwise, this unfunded mandate might distract HPD from performing other vital services.

For those not in compliance with either the affordability or rent registration requirements or both, the bill demands that a report of such non-compliance be filed with the City Council Speaker and the Department of Finance ("DOF") for revocation of the 421-a tax benefits. Both bills require the DOF to report a "plan and a timeline for revocation of benefits." The bills seem to imply that upon determination of non-compliance, an immediate path toward revocation of benefits will be established.

[1] "Properties With a 421a Exemption." *Nyc.Gov.* New York City Department of Finance, 21 Nov. 2016.

REAL ESTATE BOARD OF NEW YORK

Legislative Memo
CONTACT: Carl Hum
Senior Vice President of Management Services & Gov. Affairs
(212) 616-5233
Chum@rebny.com
www.REBNY.com

REBNY believes that there should be some opportunity for the participant to provide comments on the determination of non-compliance and for HPD to determine whether the alleged non-compliance is curable, as provided for in Chapter 39 of Title 28 of the Rules of the City of New York ("Rules"). The Rules require that HPD deliver an initial notice to the participant; outlines how comments and evidence will be received; and allows for hearings where the issue of non-compliance can be fully explored.

In some cases, non-compliance could be the result of an error by the agency doing the review as well as errors in the records of regulatory agencies such HPD and the NYS Department of Housing and Community Revitalization who keeps records about rent registration. Likewise, non-compliance can be the result of simple administrative oversight by the building management company. In all cases, participants should be properly notified of the results of the audit and should be given a reasonable amount of time to cure if non-compliance is discovered. Revocation of benefits is an excessive penalty for these types of non-compliance and should be reserved for those instances where an owner has engaged in willful and illegal activity.

REBNY looks forward to working with the Council to insure that participants in the 421-a tax benefit program lawfully abide by all its attendant requirements and regulations.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: YOHANCE DEWOLSON

Address: 16 COURT STREET, BKLYN

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Sheelah Feinberg

Address: _____

I represent: City of New York, DOF

Address: One Centre St. 22nd Floor

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Terri Davis-Merchant

Address: 100 Gold Street, NY, NY 10038

I represent: HPD NYC

Address: 100 Gold Street, NY, NY 10038

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: 11/22

(PLEASE PRINT)

Name: Louise Carroll

Address: 100 Gold Street

I represent: HPD

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: 11/22

(PLEASE PRINT)

Name: Daniel Carroll

Address: 100 Gold Street

I represent: HPD

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 11/22

(PLEASE PRINT)

Name: Timothy Shearer

Address: 100 Gold Street

I represent: DOP

Address: _____

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Appearance Card

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☐ in favor ☐ in opposition

Date: 11/22

(PLEASE PRINT)

Name: Anne Marie Santiago

Address: 100 Gold Street

I represent: HPD

Address:

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THE CITY OF NEW YORK

Appearance Card

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☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: NANCY SHER

Address: 125 Court St

I represent: tenants

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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☐ in favor ☐ in opposition

Date: 11/22

(PLEASE PRINT)

Name: Ted O'Berman

Address: 100 Gold Street 6

I represent: DOF

Address:

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1366 Res. No. _____

☐ in favor ☒ in opposition

Date: _____

(PLEASE PRINT)

Name: Stephanie Eisenberg

Address: 40 Rector St 11th Flr

I represent: MHSH

Address: _____

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: 11/22/16

(PLEASE PRINT)

Name: Ellen Davidson

Address: _____

I represent: The Legal Aid Society

Address: 199 Water St NY NY 10038

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1359 / 1366 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: BENJAMIN NUCCHIA

Address: 447 WAVERLY AVE, BROOKLYN

I represent: ANHD

Address: 50 BROAD ST.

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1099 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: ADRIEN A. WEIBGEN

Address: 123 WILLIAM ST 16TH FL NY NY 10038

I represent: COMM. DEV. PROJECT AT THE URBAN JUSTICE CTR

Address: _____

Please complete this card and return to the Sergeant-at-Arms