

QBBA BULLETIN

the newsletter of The Queens & Bronx Building Association



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End of Year
2015

QBBA Trade Show

Our Annual Trade Show at the La Guardia Marriott in East Elmhurst brought out the best of our Association in a fun-filled networking evening that kept our guests well-fed and refreshed. Our thanks to the exhibitors who



displayed their products and services to a wide cross section of QBBA members and many additional attendees who came to see what was new as well as to see old friends and coworkers at our annual event. This year's sponsors and exhibitors included: ALC Environmental, Inc.; Andersen Windows; Associated Builders and Contractors, Empire State Chapter; Cassone Trailer & Container Co.; Champion Elevators Corp.; Crystal Window & Door Systems, Ltd.; Dellon Sales; Elite Home Design; Formulated Solutions; Gamco Corp.; Garden Works; General Electric; Hammer Magazine; Home Crafts, Inc.; National Insurance Brokerage of New York, Inc.; New York Concrete Cutting Corp.; Oldcastle Precast; P.C. Richard & Son Builders Division; Poured Floors of NY & NJ; Porcelanosa; RBS Citizens Bank, N.A.; R. Acevedo Contracting, Inc.; Risk Management Planning Group; Sterling Floor Designs; Super-Tek Products, Inc, The Blue Book of Building & Construction Network; Weblin Designs, Inc.; and Wells Fargo Home Mortgage.

New York State Senate Bill S543 (Scaffold Law)

With all the turmoil in Albany, activity relating to New York's Scaffold Law (the only one of its kind in the United States), 2016 may finally be the year for change to this legislation. As per the NYC/LI Chapter of the National Association of the Remodeling Industry (NARI), a proposed bill (S543) in the New York Senate would amend the law allowing for contributory negligence in Labor Law § 240 cases. The bill states the following:

"In any action or proceeding to recover damages for personal injury... pursuant to [Labor Law § 240] where safety equipment or devices have

Continued on page 3

Bronx Borough President Ruben Diaz, Jr. on Wed., 1/20

If you want the latest information on what's happening in the Bronx, don't miss our dinner meeting on Wednesday, January 20th at Marina del Rey where our guest speaker will be Bronx Borough President Ruben Diaz Jr. Mr. Diaz last presented at QBBA in the Fall of 2013 when he was the incumbent Borough President and a candidate for re-election.

Ruben Diaz, Jr. first entered public office as a member of the New York State Assembly in 1997. He is currently serving his second full term, having been reelected in November 2013 with more than 89 percent of the vote.

As borough president, Ruben Diaz Jr. has led the implementation of a robust agenda—on economic development, housing, education, and public safety—in every corner of the borough. The Bronx has seen over \$7 billion in new development of all kinds since he took office in 2009. This includes more than \$600 million in housing, building nearly 13,000 new units.

More than 15,000 new jobs have been created in The Bronx since 2009, thanks in large part to the continued partnership between Borough President Diaz, the Bronx Overall Economic Development Corporation, and those seeking to do business in the borough. Major projects such as FreshDirect, the Kingsbridge National Ice Center, new retail developments in every corner of the borough, and the Cary Leeds Tennis Center in Crotona Park are among the major contributors to the borough's ongoing renaissance. Mr. Diaz championed a new "living wage" law in New York City which passed in May 2012 that requires developers who receive heavy taxpayer funding for their project to pay the employees of that development a "living wage." He has also put forward legislation to create a letter grading system for nail salons and other cosmetology businesses, a public registry of felony gun offenders, and to curb illegal dirt bikes and ATVs on our streets. He has also launched the "#Not62" Initiative, aimed at improving social and economic factors that will help promote more positive health behaviors within for Bronx residents.

A lifelong resident of the Bronx, Mr. Diaz lives in the Southeast Bronx with his wife Hilda Gerena Diaz and their two sons, Ruben Diaz III and Ryan Isaiah Diaz. He graduated from Lehman College, City University of New York, with a Bachelors degree in political theory. He is also the recipient of honorary doctoral degrees in civil law from Berkeley College and Mercy College, and a doctoral degree in humane letters from the Metropolitan College of New York.



Calendar Of Events...

- Jan. 20** General Membership Dinner Meeting
Wed., 6 pm
Marina del Rey, Throgs Neck
Speaker: Ruben Diaz, Jr., Bronx Borough President
- Feb. 24** General Membership Dinner Meeting
Wed., 6 pm
Douglaston Manor, Douglaston
Speaker: Rick Chandler, NYC Dept. of Buildings
- Feb. 29** Hockey Outing, Rangers vs. Blue Jackets
Mon., 7 pm
The Lounge at Madison Square Garden
Reservations required, \$225
- Mar. 16** Networking/Mixer Dinner Meeting
Wed., 6 pm
Monahan's, Bayside
Bring your business cards and your story!
- Apr. 20** General Membership Dinner Meeting
Wed., 6 pm
Marina del Rey, Throgs Neck
Speaker: To be Announced
- May 26** QBBA Annual Golf Outing
Thurs., 10:30 a
North Hills Country Club, Manhasset, LI

Info/Reservations: e-mail june@queensbronxba.com or fax: (718) 428-3494

QBBA BULLETIN

QBBA Bulletin is the newsletter of the Queens & Bronx Building Association. For information regarding content and advertising, please contact our Executive Director, June Petrone, at our association headquarters, 16-66 Bell Boulevard, #745, Bayside, NY 11360, (718) 428-3369, fax: (718) 428-3494, e-mail: june@queensbronxba.com. Visit www.queensbronxba.com

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Lawrence Rosano, Jr. (2013-2014) Associated Development Corp.; Ira Brown (2010-2012) The Briarwood Organization; Olga Jobe (2009-2010) Jobe Development; Hercules Argyriou (2007-2008) Mega Contracting Corp.; Joseph G. Ciampa (2004-2006) Ciampa Organization; Leslie A. Lerner (2002-2003) LAL Property Management Corp.; Eric Bluestone (2000-2001) The Bluestone Organization

News from the President



Peter Florey, D & F Development Group

Last summer, the headlines read “Albany and City Hall pass important legislation extending rent regulations J 51 and 421-a to June 15th 2019”. However, there was a caveat on the 421-a program that has been a cause for great concern. The program as we know it was actually only extended to the end of this year. After that, what happens is anyone’s guess. What has to be done to get 421-a extended

beyond that point? It has to be determined how and to what degree prevailing wage and other possible provisions will be incorporated into the application of the program.

What Albany did was to remove themselves from the politically charged debate about what to do with prevailing wages by leaving that question to key building trade unions and the Real Estate Board of New York (REBNY) to hammer out. If an agreement is not reached by year-end, 421-a stops for all projects including affordable housing. So we have a number of potentially ominous outcomes to consider: 1) no resolution and no 421-a; 2) resolution and prevailing wage attached thereby negating the benefit of 421-a; or 3) some carve-out for affordable housing and/or geographic districts. For market rate developers in the outer boroughs, the options as we see them are not good.

Also left on the table for negotiation on what may be exempt or receive modified prevailing wage treatment is the (i) number of units in the project; (ii) application of a wage schedule to different size projects; and (iii) wage schedules for various geographic locations in New York City. If the agreement is not reached by January 15, 2016, the new 421-a program will not take effect and the tax abatements will not be available after that date.

What does this mean for builders outside of Manhattan? Not good news. Though it is clear that REBNY will fight hard to minimize prevailing wage, their constituency is mostly large Manhattan developers who are building very high end residences. Prevailing wages are already part of the equation in many of those projects. But for those of us who are trying to build in the outer boroughs, the imposition of prevailing wage or the election to not use 421-a could well render future projects infeasible meaning a major slow down, if not an all out stop in residential development.

This Fall, the New York City Buildings Department saw a record number of filings for building permits as builders raced against the clock to get projects in the ground before the end of the year and the potential end of 421-a as we know it.

Incidentally, affordable housing developers should be concerned about 421-a as well. While they have other potential options such as 420-c (which requires not for profit partners), the options for a continuation of 421-a without some kind of onerous prevailing wage provision look ominous.

What to do about projects that are in the planning stage for beyond year end is a key unanswered question. Developers on the whole tend to be optimistic, but this leaves little

President's Message, continued on page 3



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City Government Update

by Robert S. Altman, Esq., QBBA Legislative Consultant

Sometimes when I play poker with friends, we play a game called good/bad. You are dealt four cards and then four cards are put out face down in one row and four cards are put out face down in another row. One row is good and the other is bad. You bet your four cards and then one card is flipped up from the good row and one card is flipped up from the bad row. You can use any of the good cards with your hand, but if you have the same number or face card as a bad card, it is discarded and is no longer used. If a card is both in the good row and the bad row, it is bad and you cannot use it and such card in the good row is also discarded. Each time a set of cards from the two rows is turned over you bet.

Why do I bring up the poker game "good/bad?" In some respects, it is like an analogy for the de Blasio administration. Sometimes it does some good things, but then it turns over some bad things and it eliminates what was good. And the threat of a bad thing happening is always out there, making you wonder if you can trust the good things.

We are two years into the first de Blasio term and what do we know. First, I will say it is not the utter disaster I was expecting. All this frankly out-there talk made me expect the worst (not even David Dinkins spoke in such seemingly inexperienced and naive language as do the acolytes of progressivism). There are actually some good things that he has done, such as expanding pre-K, putting forward a pretty good 421-a revision, and setting in place an aggressive affordable housing program.

But if that is the good, then there is also a wariness that the bad may follow. The Mayor's first year did not inspire confidence in anyone. And the desire to spend for new programs that are basically entitlements is somewhat scary. Having just come through the Great Recession, I cannot say that the body politic in this City does not have the memory of bad economic times. Yet, I fear that spending, which is clearly outpacing inflation, is geared to assume that times will always remain good. Does such a huge expansion of pre-K survive a recession? It will because it is now an entitlement for rich and poor. And if it does, then the question is what gets cut when the economy goes south. Or does the body politic, so much in an anti-establishment mood, just tax the establishment for their revenue? Good/bad. Or what happens to an affordable housing program that relies on inclusionary zoning that already has local officials balking at increased density and potentially increased gentrification? Good/bad. And 421-a? We wonder how long the Mayor holds out against construction trades that he felt pressured to concede some items to outside of 421-a where he got NOTHING in return (those same trades took his concessions and just took their pro-union arguments to Albany).

Even in other areas like broken windows and policing, the Mayor holds the line against some radicals and a City Council who dramatically want that line moved. But he seems not to like holding the line. So we all wonder how confident we should be in his steadfastness. Good/bad?

Politically, he has not made friends with the two most important people to his success: Governor Cuomo and potentially, Hillary Clinton. He tries to mend fences with Hillary (trust me that she will not forget, even if she does forgive). But he



continues to fight with Cuomo, not realizing that Cuomo will not let anyone in this state be top dog except for Cuomo. Bad/good in this instance?

I don't know how well de Blasio plays poker. It may be that all the other players have awful hands that amount to nothing and de Blasio's pair of deuces wins him re-election. But if the bad cards turn up the wrong way and de Blasio loses all his cards, there is no telling who the next Mayor will be.

President's Message, continued from page 2

room for celebration.

What to do? We need to let REBNY know how important this issue is to builders in the boroughs, and in our case, especially Queens and the Bronx. There is the possibility that whatever deal is worked out will take geographic location and project size into account. In which case we may dodge a bullet. But don't bet on that outcome just yet.

Scaffold Law, continued from page 1

been made available, and a person employed... has failed to follow safety instruction or safe work practices in... or was impaired by the use of drugs or alcohol, and such failure, act or impairment is a proximate cause of an injury to such person,... the amount of damages otherwise recoverable shall be determined in accordance with [CPLR] section fourteen hundred eleven [which allows a jury to consider the person's culpable conduct including contributory negligence and assumption of risk]."

States NARI, the problem today is that by judicial decree, the current Labor Law § 240 does not allow a contributory negligence defense that allows a jury to apportion fault between the plaintiff and the defendant. Again, contributory negligence cannot be raised as a defense. Therefore, even if a worker is 90 percent at fault, the employer still has to pay 100 percent of the injured worker's damages. Currently, the party being sued has to show that the injured worker is 100 percent at fault to avoid liability. For a full report from NARI's NYC/LI chapter, visit nari-ny.org/2015/12/reform-the-scaffold-law



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QBBA MEMBERSHIP MEETINGS



Sworn in at our September meeting by NYC Planning Commissioner Orlando Marin, congratulations to our volunteer officers and directors. L-R: Larry Rosano, Les Lerner (past president), Ira Brown (past president), Brian Herz, Gerald Caliendo, Henry Wan, Mr. Marin, Hercules Argyriou (past president), Peter Florey, Matt Adessa, Eric Bluestone (past president), Robert Altman, Dimitri Hanjts. Not shown: Norman Alvy, Craig Axelrod, Lynn Cassone, Michael Della Vecchia, Jack Dragone, Craig Elka, Charles Feld, Anthony J. Ficara, William Hudson IV, Jackie Kamali, Michael Kessler, Ron Luft, Eugene Lvovskiy, Jesenia Quiones, George Raptis, Gerry Romski, Richard Sica, Margherita Venti



Are you networking at our dinner meetings? Beyond the great food and libations lies the opportunity to get to know your fellow QBBA members better and, of course, do business with them. See you Wednesday, January 20th at Marina del Rey with guest speaker Bronx Borough President Ruben Diaz, Jr.

Above: Officer Installation Dinner at Marina del Rey. November Mixer at Monahan's, Bayside.



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Without Appropriate Language in Condo Purchase Agreements, Developers and Builders Can Be Exposed to Increased Mortgage Costs of Unit Owners



By Norman D. Alvy, Esq.
Tunstead & Schechter - Legal Counsel for QBBA

Builders and Developers are often caught between the proverbial rock and hard place during periods of economic stress and market volatility which can occur all too often. It is very difficult to stay the course and keep costs down when “construction changes” crop up and timelines are stretched. A recent case involving the sale of a condo unit in lower Manhattan illustrates just the dilemma every developer and builder faces when construction takes longer than can be reasonably anticipated. If this occurs, the developer and builder may be on the hook for a buyer’s increased monthly mortgage payments unless the appropriate written terms are in place. In the reported case, the developer/builder was not held responsible for the increase. The scenario which occurred is set forth below.

A prospective condo buyer (who happened to be a lawyer) put up about \$3.3 million for a unit in a newly constructed building. When he viewed his dream unit in September 2012, it appeared near completion. A contract to purchase was not actually entered into until December 20, 2012. The plaintiff in his complaint alleged the developer’s agents confirmed the other units in the building were also basically finished and a certificate of occupancy or TCO was “imminent”. The plaintiff was not aware, however, that an e-mail message previously sent on December 17 revealed the building had been “locked” for a few weeks. Plaintiff also alleged that on December 21, 2012 another e-mail was sent stating that construction was a few weeks behind and it was unlikely a closing would take place before mid-February 2013. Plaintiff also alleged his own broker had inquired and was informed the owners of the property were “away” but were to apply for a TCO that week. He was further advised the owners were working on the TCO and the “Spring” looked promising. In March he was informed a few inspections still had to be done. At that time, the buyer by letter advised the builder’s attorney that time was of the “essence” and advised the developer he would hold him responsible if his mortgage rates increased before the unit was delivered. He wrote a letter April 2013 advising he needed prompt status reports because he was deciding whether or not to sign an interest rate lock agreement.

Plaintiff was then advised a closing was anticipated in early May 2013. At that time, the buyer claimed he forbore from commencing litigation due to that incorrect assertion. After May 9, the defendants made further positive statements and sent a “notice to close” scheduling a June 24, 2013 closing. On June 11, the buyer claimed the owners advised all construction terms were done and issuance of a TCO was a matter of “filing paperwork”. On June 28, the lender unexpectedly extended the interest rate lock from July 15, 2013 to August 15. Plaintiff advised the developer of this on July 1. The developer’s agents, however, did not cause all of the necessary paperwork to be filed until after the interest rate lock expired on August 15. To “mitigate” his damages, the buyer nevertheless entered into a new interest rate agreement at a higher interest rate.

A TCO was finally issued September 6, 2013. The Plaintiff filed a summons with notice on September 9. The closing actually took place October 16, 2013. The plaintiff in his lawsuit claimed the developer did not act in good faith and delayed contract changes because he wanted some buyers to drop out and then be able to sell to others at higher prices. The plaintiff also claimed the market was rapidly rising at this time and alleged the owner hired an appraisal service to determine market value despite the fact all units were already in contract. He

claimed the only purpose for doing so was to establish new higher prices for the committed units if a buyer rescinded due to the delays.

The Court indicated that the purchase agreement which incorporated the offering plan and its amendments were controlling. Letters written after the contract signing were not legally binding. The contract documents included a provision which provided in bold as follows:

Special Risk 24 of the Plan stated:

“The First Year of Condominium operation is estimated to be July 1, 2012 through June 30, 2013. As in any new construction project, given the vagaries of the construction process, it is difficult to predict with precision the date Sponsor will first be able to close title to the Residential Units. Accordingly, it is a special risk of this Offering Plan that the First Residential Closing may occur sooner or later than the projected First Year of Condominium operation and closing to certain Residential Units may occur substantially before or after closing for other Residential Units”.

According to the Court, the documentary evidence submitted demonstrated a TCO was issued in September 2013 and the plaintiff’s unit was closed in October. The contract language indicated the plaintiff was attempting to obtain a mortgage, but there was no requirement the developer was responsible for whether or not the plaintiff was to obtain or maintain a specific interest rate. The purchase agreement clearly indicated a closing could not take place for a substantial length of time. Plaintiff’s decision to enter into a mortgage lock and its timing as well as market conditions were not items the developer had control over or any connection with. The claim the owner had a duty of good faith or fair dealing was duplicative of the breach of contract allegations. Plaintiff’s claim that he would have obtained a different apartment if it were not for the alleged misrepresentation also was dismissed. Damages for an alleged fraud were to compensate what was lost due to the fraud, not for what they may have “gained”. The plaintiff also could have investigated the DOB records to demonstrate a lack of diligence

Norman Alvy, continued on page 7

QBBA 2015 Trade Show





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Norman Alvy, continued from page 5

by the builder, but other than claiming the DOB records were not “transparent”, did not indicate what information he sought but could not have obtained from the DOB site. The buyer also could have rescinded after filing his complaint, but he chose to proceed indicating that he knew of a falsity but proceeded anyway.

This article is not to be considered legal advice. If you have any specific questions you should contact your legal counsel. You may contact Norman D. Alvy, QBBA Legal Counsel, at Tunstead & Schechter, 500 North Broadway, Jericho, NY, (516) 822-4400, fax (516)822-4462; na@tslawyers.com for any additional inquiry.

Manhattanites Giving It Up for Other Boroughs. Vacancy Rate Highest in Six Years...

As reported in Newsday and AMNY.com, rising real estate prices are pushing residents out of Manhattan and into more favorable boroughs. A Citi Habitats survey shows Manhattan vacancy rates at 2.02 percent in the past six months, the highest level in six years, “with the East Village leading the way with a 3.24 percent vacancy rate”.

Citi Habitats reports that November’s average Manhattan rent was \$3,464.00, about a 2 percent increase from the same period a year ago. The article also referred to a recent market report released by Douglas Elliman showing a 2.87 percent vacancy rate with average rents up 2 percent from November 2014 (\$3,993) to November 2015 (\$4,071). Within the same gamut, real estate group MNS stated average rents were \$3,945 last month, a 4.83 percent increase from the same period last year.

With some studios in the East Village renting for as much as \$4,000, there is concern that there will be major changes to the community’s

character, with that concept the same throughout the borough. Director of Fordham University’s Urban Studies program, Rosemary Wakeman, is quoted saying vacancies can pose a problem for Manhattan communities due to a loss in tax revenue and a loss in economic activity for mom and pop retailers. Quotes Ms. Wakeman, “People have to take a train for a cheap laundry service sometimes.” In response, according to Citi Habitats, “renters are flocking to cheaper and more spacious options in Queens and Brooklyn”. The article quotes an East Village resident for thirty years observing that, “New Yorkers are increasingly looking further afield in the search for reasonably priced space. Ridgewood has become trendy – that’s how far people are moving out.” The trend for new developments and the tremendous rents that come with them are stated as reasons that will probably keep middle and lower class renters away from Manhattan although whether the pendulum could swing back is a matter of debate.

In the meanwhile, according to Multiple Listing Service of LI, prices are rising in Queens County for residential, condos, and co-ops.

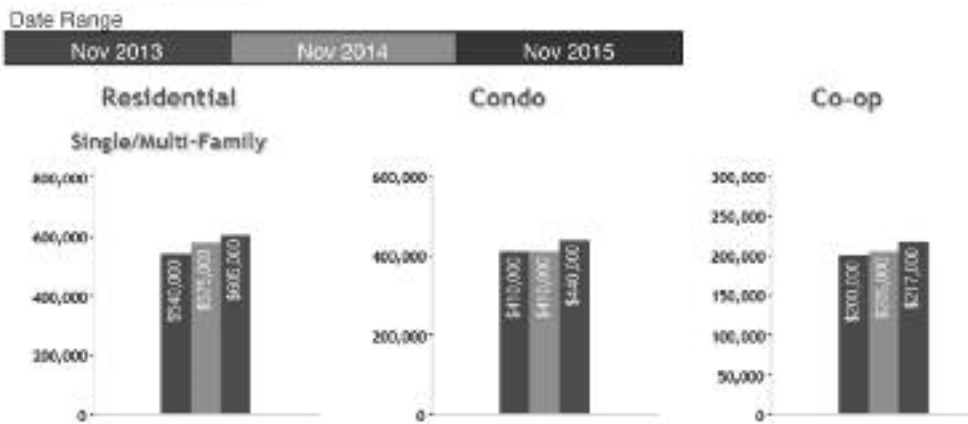
As demonstrated by statistics provided by MSLI, prices are jumping in Queens with the median price for sold property in Queens over the past 24 months rising from \$380,000 to \$432,000. This is an increase of almost 14 percent. As reported by real estate site StreetEasy.com, demand in Queens will rise in 2016 with Jamaica predicted to be the borough’s hot spot. In fact, five of the ten neighborhoods to be the most in demand for rent next year are also in Queens.

According to their report, rents citywide are predicted to increase at a

slower rate next year, rising to a median of \$3,055. Manhattan increases are predicted as \$3,192, Brooklyn at \$2,700, Queens at \$2,257, and the Bronx at \$1,611 (the site did not analyze Staten Island).

With rising rents comes the ongoing concern of affordability ratios and displacement/gentrification. StreetEasy.com predicts the income-to-rent ratio citywide at 65.4 percent with Brooklyn to be the city’s worst at 65.7 percent, and the Bronx at 56.9 percent. As to Queens, Jamaica’s cheaper rents indicate a income-to-rent ratio next year at 51.7 percent.

Sold Property Median Price for Queens County (last 24 months – all property types)

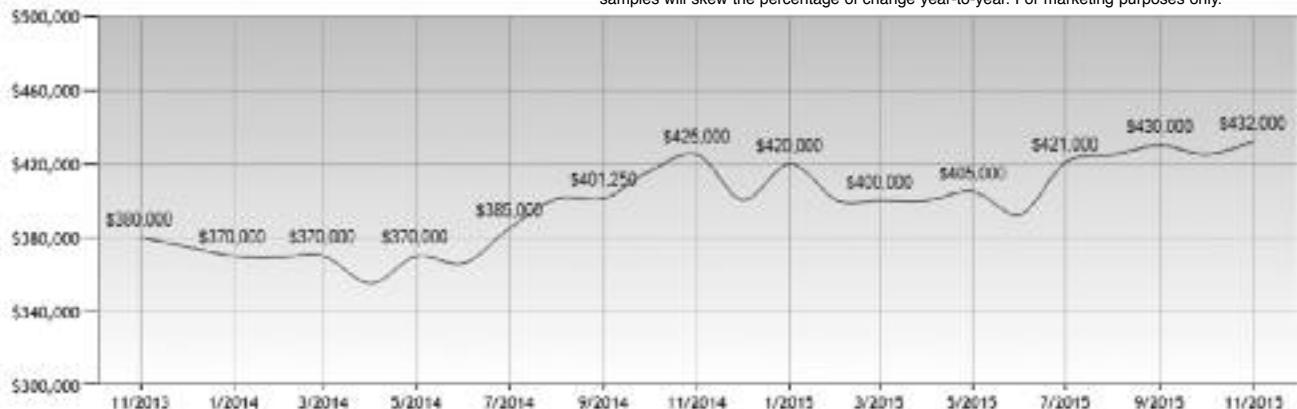


Bar graphs represent data compiled by MSLI, Inc. and provide year-to-year comparison for a specific month over a three year period. For marketing purposes only.

Current Available Inventory - 4,011
Current Median List Price - \$489,000

All Property Types			
Month	Current Year	Prior Year	% Change
Nov-2015	\$432,000	\$425,000	1.6
Oct-2015	\$425,000	\$416,000	2.2
Sep-2015	\$430,000	\$401,250	7.2
Aug-2015	\$425,000	\$401,000	6.0
Jul-2015	\$421,000	\$385,000	9.4
Jun-2015	\$392,500	\$398,000	7.2
May-2015	\$405,000	\$370,000	9.5
Apr-2015	\$400,000	\$355,000	12.7
Mar-2015	\$400,000	\$370,000	8.1
Feb-2015	\$400,000	\$389,500	6.3
Jan-2015	\$420,000	\$370,000	13.5
Dec-2014	\$400,250	\$375,000	6.7

Information displayed in the above data table is compiled by MSLI, Inc. and represents a combined total of all residential, condo, and co-op sales for the selected time frame. Please note that small data samples will skew the percentage of change year-to-year. For marketing purposes only.



The Real Estate Market Update for November 2015 is provided by the Multiple Listing Service of Long Island Inc.™ serving Nassau, Suffolk, Queens and Brooklyn. This graph represents a combined total of all residential, condo, and coop sales for the selected time frame. Note: small data samples will skew the percentage of change year-to-year. For marketing purposes only.



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