



## THE REAL ESTATE BOARD OF NEW YORK

A REVIEW AND ANALYSIS OF CITY PLANNING'S THEATER SUBDISTRICT FUND PROPOSAL



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Images on the cover sheet:

Top photo: Source: Royal Shakespeare Company  
Bottom photo: Source: Wally Gobetz

## INTRODUCTION

*If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds.*

– Alexander Hamilton, Federalist No. 21, December 12, 1787

The Real Estate Board of New York (REBNY) reviewed the Department of City Planning’s (DCP) proposal to amend the contribution to the Theater Subdistrict Fund (“Fund”) for the listed theaters that transfer development rights within the Theater Subdistrict.

Currently, the contribution is established at \$17.60 per square foot (psf) for development rights transferred. When the Fund was established in 1998, the initial rate was \$10 with a requirement to review the contribution amount every three to five years using the assessed value of all properties in the Subdistrict. The contribution rate has since been raised twice: in 2006 to \$14.91 and in 2011 to \$17.60. The proposal is a timely reconsideration of the contribution amount to the Fund.

The proposal recommends that the contribution amount be established at the higher of: twenty percent of the transferred development rights sales price, or twenty percent of the psf of a “floor price”— established by a market study valuation equal to \$347 psf and adjusted every three to five years. In addition, the funding agreement would require a Chairperson Certification, a ministerial action, not an Authorization.

## REVIEW AND ANALYSIS OF THE PROPOSAL

The purpose of allowing the transfer of development rights within the Theater Subdistrict was to provide relief to theater owners unable to demolish their buildings under the applicable zoning controls. Additionally, it would ensure that theater owners commit to perform maintenance work on the theater that would not otherwise be done at that time, and to commit to an ongoing maintenance and inspection program.

REBNY supports the purpose of the Theater Subdistrict Fund and thinks that a fixed dollar amount psf, adjusted regularly, would continue to provide the necessary and meaningful relief for theater owners whose properties are encumbered by the requirement to preserve these theaters as well as to continue to support the theater use. From this perspective, the Theater Subdistrict is unique as there are no other non-landmark buildings in Manhattan that are subject to similar constraints.

However, the DCP proposal is a dramatic departure from the current method of establishing the contribution to the Fund. This persuaded us to analyze DCP's justification for the change and its potential impact on transactions.

### ***City's Basis for Price Adjustment***

The City maintains that establishing a base price of twenty percent of the sales price reflects the underlying intent of the original fixed dollar amount. Based on previous increases in the contribution amount, we do not believe this to be the case.

A fixed dollar psf amount and twenty percent of a sales price are two fundamentally different methods of calculating a contribution. Based on our historical analysis of the transactions and the contributions to the Fund, we have concluded that the original contribution amount, as well as the two subsequent adjustments, were intended to establish a fixed dollar amount—not a percentage of the sales price.

Further, the contribution amount was to be adjusted and fixed based on the City's assessment of changes in the property values within the Theater Subdistrict. The fixed amount functioned effectively as a floor price, since every sale would be subject to this amount regardless of price.

Based on the information provided by DCP, there were four transfer of development rights (TDR) sales approved by DCP in 2006 (the first sales approved) where the contribution was \$10 psf. The contribution amount was considerably less than twenty percent of the sales price. Our analysis shows that a twenty percent contribution would have been an average of \$28 psf (See Attachment One).

In 2006, the contribution amount was raised to \$14.91—approximately fifty percent more than the initial \$10 amount. If the TDR sales between 2006 and 2011 were subject to a contribution amount of twenty percent of the sales price, and this was the basis for the new contribution amount, sellers would have been subject to a \$47 psf contribution (See Attachment Two). Instead, the amount was adjusted to its current price of \$17.60.

This substantial difference in the actual contribution amount and what would have been required based on a percentage of market value clearly indicates that a percentage of the market value was not determinative in establishing new contribution amounts. Instead, in our view, the City was relying on changes in assessed value to establish a fair price that would not thwart the land use goals and the public policy purpose of the Theater Subdistrict.

### ***Potential Impact on Transactions***

City Planning's proposal to increase the contribution rate to the Theater Subdistrict Fund will dramatically decrease the volume of TDR transactions.

We reviewed the twenty TDR transactions that contributed to the Theater Subdistrict Fund since the Subdistrict was created. The weighted average contribution would be slightly more than \$14 psf. At twenty percent of the sales price, the contribution would have been almost \$53 psf—nearly four times greater than the actual contribution amount (See Attachment Three).

Based on a twenty percent contribution, the most recent recorded sales of air rights from the Helen Hayes Theater in 2016 would have increased the contribution amount from \$17.60 to \$95 psf. Such an extreme increase to the contribution amount would stifle market activity.

Further, introducing the concept of a floor price will make transactions less likely. If the market value of development rights per square foot dips below the floor price, the contribution amount will increase as both a percentage and an absolute amount. For example, given the proposed “floor price” of \$347 per square foot, the minimum twenty percent contribution to the Fund would be approximately \$70 per square foot. In this scenario, even if the market value declines to \$300 per square foot, the seller would still be required to make that \$70 per square foot contribution—now almost twenty five percent of the sales price—instead of making a \$60 psf contribution.

In the late 1980s and early 1990s, New York State had a Gains Tax which imposed a ten percent tax on the gain in a transaction valued at more than \$1 million. For example, if you purchased a property for \$300 psf and sold it for \$400 psf, the \$100 psf gain would result in a tax of \$10 psf. The recession of the early 1990s led to a precipitous decline in transactions, and the gains tax was eventually repealed in 1995.

This ten percent tax rate on gains was significantly less than the proposed twenty percent of sales price in the Theater Subdistrict. The concept of a “floor price”, a new provision with no apparent basis in the original proposal, would negatively impact transactions in a declining market more significantly than the Gains Tax (See Attachment 4).

## CONCLUSION

Based on the history of price adjustments to the Fund and our analysis of TDR sales, we find no indication that a percentage of the sales price was what the initial proposal was seeking to implement. We have serious concerns that a twenty percent contribution will hinder sales and undermine the land use purpose of the Theater Subdistrict.

In our analysis, we examined 2,349 parcels in the Subdistrict to see how much the values of the parcels had increased between 2011, the last time the contribution fund was adjusted, and 2016. According to Department of Finance records, the total market value of the

parcels in 2016 is \$25,396,950,423; this is a 47 percent increase from 2011, when the total value of all the properties was \$17,244,463,433. We recommend the current contribution fund amount of \$17.60 be adjusted by 47 percent, the same amount the market values of all the properties in the Subdistrict have increased since 2011, which would be \$25.87 psf.

There are benefits to a fixed psf contribution amount, which may have been a reason not to establish the contribution amount as a percentage of sales price. In a rising market, a fixed psf dollar amount would diminish as a percentage of the transaction cost. This would make the contribution less of an impediment to a sale, at least until the contribution amount was reset. This fixed amount approach, instead of fixed percentage, creates opportune moments to encourage a sale which benefits the seller, the buyer and the Theater Fund—the primary public policy goal of the Theater Subdistrict.

Additionally, the proposed appraisal study that would facilitate a price adjustment to the floor price is impractical and does not offer a meaningful measure of relief to theater owners. The process will likely delay any transaction by more than a year and may not accurately reflect declining values following an economic downturn.

We respectfully ask that the Department consider a more reasonable increase to the contribution fee that is based on a fixed amount. An immediate 400% increase to the contribution amount, without any phase-in period, is drastic and unfair. We believe a 47% increase of the fixed dollar psf amount to be fair and consistent with the intent to provide relief for these properties whose uses are extremely restricted. The City should allow for a grace period for contracts entered into before the effective date of the change and closed within one year of the effective date, with any substantial increase in the rate phased in over an appropriate period of time.

# ATTACHMENTS

## Attachment 1- Theater Subdistrict Transactions @ \$10 PSF Level

Current Reported Transactions						Proposed Actions of Previous Transactions		
Theater Name	Receiving Site	Date of CPC Approval	Total SF Transferred	Contribution to the Fund	PPSF to the Fund	Price of Air Rights	PPSF Air Rights	20% of PPSF
<b>Martin Beck aka Hirschfield</b>								
N 060393 ZCM	750 8th Ave	5/22/2006	29,104	\$291,040.00	\$10.0	\$3,784,000	\$130	\$ 26.00
N 060414 ZCM	231 West 54th Street	6/19/2006	7,438	\$74,380.00	\$10.0	\$1,116,000	\$150	\$ 30.01
N 060435 ZAM	750 8th Ave	9/27/2006	28,901	\$289,010.00	\$10.0	\$3,757,500	\$130	\$ 26.00
<b>St. James</b>								
N 060414 ZCM	231 West 54th Street	6/19/2006	77,840	\$778,400.00	\$10.0	\$11,676,000	\$150	\$ 30.00
<b>Total</b>			<b>143,283</b>	<b>\$1,432,830</b>		<b>\$20,333,500</b>		
						<b>Average of 20% of PPSF</b>	<b>\$</b>	<b>28.00</b>

## Attachment 2- Theater Subdistrict Transactions @ \$14.90 PSF Level

Current Reported Transactions						Proposed Actions of Previous Transactions		
Theater Name	Receiving Site	Date of CPC Approval	Total SF Transferred	Contribution to the Fund	PPSF to the Fund	Price of Air Rights	PPSF Air Rights	20% of PPSF
<b>Broadhurst Theater</b>								
N 110249 ZCM	120 West 57th Street	9/6/2011	18,075	\$269,498.25	\$14.9	\$4,066,875	\$225	\$45.00
<b>Broadhurst and Booth Theater</b>								
N 080439 ZCM	120 West 41st Street	2/17/2009	9,480	\$141,346.80	\$14.9	\$3,792,000	\$400	\$80.00
<b>Majestic Theater</b>								
N 080414 ZAM	306 West 44th Street	9/24/2008	48,180	\$718,363.80	\$14.9	\$12,404,000	\$257	\$51.49
<b>Shubert</b>								
N 080045 ZAM	250 West 55th Street	1/28/2008	29,667	\$442,334.97	\$14.9			
N 080046 ZCM	250 West 55th Street	1/28/2008	67,351	\$1,004,203.41	\$14.9			
<b>Booth</b>								
N 080045 ZAM	250 West 55th Street	1/28/2008	18,537	\$276,386.67	\$14.9			
N 080046 ZCM	250 West 55th Street	1/28/2008	42,081	\$627,427.71	\$14.9			
<b>Total</b>	250 West 55th Street		<b>157,636</b>			<b>\$33,310,560</b>	<b>\$211</b>	<b>\$42.26</b>
<b>Broadhurst</b>								
N 070242 ZCM	131-139 West 45th Street	4/23/2007	54,820	\$817,366.20	\$14.9	\$10,964,000	\$200	\$40.00
<b>St. James</b>								
N 070196 ZCM	131-139 West 45th Street	4/23/2007	9,489	\$141,480.99	\$14.9	\$1,661,000	\$175	\$35.01
<b>Martin Beck aka Hirschfield</b>								
N 070196 ZCM	131-139 West 45th Street	4/23/2007	8,483	\$126,481.53	\$14.9	\$1,458,000	\$172	\$34.37
<b>Total</b>			<b>306,163</b>	<b>\$4,564,890</b>		<b>\$67,656,435</b>		
						<b>Average of 20% of PPSF</b>		<b>\$46.88</b>



### Attachment 3 - All Theater Subdistrict transactions since 2006

Current Reported Transactions						Proposed Actions of Previous Transactions		
Theater Name	Receiving Site	Date of CPC Approval	Total SF Transferred	Contribution to the Fund	PPSF to the Fund	Price of Air Rights	PPSF Air Rights	20% of PPSF
<b>Helen Hayes Theater</b>								
N160013 ZCM	250 West 49th Street	1/4/2016	16,000	\$281,600.00	\$17.6	\$7,040,000	\$440	\$88.00
N 160048 ZCM	1710 Broadway	1/4/2016	42,378	\$745,852.00	\$17.6	\$20,129,550	\$475	\$95.00
<b>Neil Simon Theater</b>								
N 150281 ZCM	560 7th Ave	6/29/2015	19,772	\$347,978.40	\$17.6	\$9,166,316	\$464	\$92.72
<b>Majestic and Broadhurst Theaters</b>								
N 140143 ZCM	239 West 52nd Street	2/3/2014	58,392	\$1,027,699.20	\$17.6	\$17,517,600	\$300	\$60.00
<b>Booth and Schoenfeld Theater</b>								
N 140129 ZCM	701 7th Ave	2/3/2014	44,988	\$791,791.62	\$17.6	\$18,391,504	\$409	\$81.76
<b>Booth Theater</b>								
N 120059 ZCM	237 West 54th Street	1/3/2012	24,100	\$424,160.00	\$17.6	\$5,420,500	\$225	\$44.98
<b>Broadhurst Theater</b>								
N 110249 ZCM	120 West 57th Street	9/6/2011	18,075	\$269,498.25	\$14.9	\$4,066,875	\$225	\$45.00
<b>Broadhurst and Booth Theaters</b>								
N 080439 ZCM	120 West 41st Street	2/17/2009	9,480	\$141,346.80	\$14.9	\$3,792,000	\$400	\$80.00

**Attachment 3 - All Theater Subdistrict transactions since 2006 continued**

<b>Majestic Theater</b>								
N 080414 ZAM	306 West 44th Street	9/24/2008	48,180	\$718,363.80	\$14.9	\$12,404,000	\$257	\$51.49
<b>Shubert</b>								
N 080045 ZAM	250 West 55th Street	1/28/2008	29,667	\$442,334.97	\$14.9			
N 080046 ZCM	250 West 55th Street	1/28/2008	67,351	\$1,004,203.41	\$14.9			
<b>Booth</b>								
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N 080046 ZCM	250 West 55th Street	1/28/2008	42,081	\$627,427.71	\$14.9			
<b>Total</b>	250 West 55th Street		<b>157,636</b>			<b>\$33,310,560</b>	<b>\$211</b>	<b>\$42.26</b>
<b>Broadhurst</b>								
N 070242 ZCM	131-139 West 45th Street	4/23/2007	54,820	\$817,366.20	\$14.9	\$10,964,000	\$200	\$40.00
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N 060435 ZAM	750 8th Ave	9/27/2006	28,901	\$289,010.00	\$10.0	\$3,757,500	\$130	\$26.00
<b>St. James</b>								
N 060414 ZCM	231 West 54th Street	6/19/2006	77,840	\$778,400.00	\$10.0	\$11,676,000	\$150	\$30.00
<b>Total</b>			<b>812,712</b>	<b>\$9,616,802</b>		<b>\$165,655,405</b>	<b>Average of 20% of PPSF</b>	<b>\$53.10</b>

**Attachment 4 - NYS Real Property Transfer Gains Tax Revenue**

