

## **Q ■ Will the installation of a wheelchair ramp qualify for a Major Capital Improvement Rent Increase and a J-51 Tax Abatement?** *By Paul J. Korngold and Grace Betancourt*

In the November *Reporter*, owners were advised about a State Supreme Court decision, *Riverbay Corp. v. City Commission on Human Rights*, which upheld a City Human Rights Commission ruling that it was not “unduly burdensome” to require the property owner to install a wheelchair access ramp, which the owner estimated to cost almost \$20,000, as a “reasonable accommodation” under the City’s Human Rights Law. As a follow-up, we were asked to explore whether an owner can obtain a rent increase or tax abatement to recoup the cost of the installation of such a ramp.

**A** Pursuant to Section 2522.4 of the Rent Stabilization Code, an owner may apply for a major capital improvement rent increase (MCI) when there has been an increase in services or an improvement to the building (other than for ordinary repairs). The improvement must be building-wide, depreciable under the Internal Revenue Code, required for the operation, preservation and maintenance of the structure and replace an item whose useful life has expired.

Recent decisions by the DHCR have granted owners’ applications for an MCI based on the installation of a wheelchair ramp. In *64-20 Saunders Street*, Docket#WJ110017RT, (decided on July 22, 2011), DHCR allowed the owner to receive an MCI for a wheelchair ramp and lobby door installations. DHCR ruled that “the work performed meets the definitional requirements of a major capital improvement for which a rent increase may be warranted.” In *33-52 85th Street*, Docket#TE110078RO (decided on February 6, 2008), DHCR again approved an owner’s application for an MCI based on the installation of a wheelchair ramp. In addition to the owner submitting all the required evidence to comply with the MCI application, the Commissioner noted that “a new handicap ramp was built, and the record shows that the building houses a disabled tenant and the owner constructed the ramp in compliance with the Human Rights Law by giving reasonable accommodation to its tenant with a disability. Therefore, the Commissioner finds the handicap ramp eligible for an MCI rent increase.”

Furthermore, in *35-65 Bruckner Boulevard*, Docket#PH630076RO (decided on January 15, 2004), DHCR decided that “where there has been an increase in services or improvement, other than repairs, on a building-wide basis, which the owner can demonstrate is necessary in order to comply with a specific requirement of law, an MCI rent increase may be warranted.” Here, the record shows that the building housed a disabled tenant and that the owner constructed the ramp complying with the intent of the Local

Law 58 of 1987 and, as a result, the MCI application for the ramp was approved.

DHCR has not issued a formal policy but these decisions indicate that for a ramp to be considered eligible for treatment as an MCI, the owner should have received a complaint from a tenant who has mobility problems and/or the owner has been contacted by a governmental agency dealing with accommodations, such as the Commission on Human Rights. In such cases, the ramp should comply with local construction requirements. DHCR recommends that owners who are unsure of their situation should ask for a Prior Opinion.

With respect to J-51 benefits, in the rare case of a building (1) which performs a J-51 moderate rehabilitation or (2) obtains a new certificate of occupancy, it is possible (but not definite) that J-51 benefits might be granted under the category of concrete flatwork. J-51 benefits are given only for items listed in the itemized cost breakdown schedule. Since a handicap ramp is not a listed item, it would not normally be eligible. However, eligibility for certain items is often left to the discretion of the J-51 engineering unit and owners may be granted J-51 benefits if the J-51 engineer feels it is “equivalent” to a listed item in the J-51 itemized cost breakdown schedule. There is some indication in the 1993 edition of the J-51 engineer’s “Field Inspection Guide” that a ramp might be deemed eligible for J-51 benefits as concrete flatwork. Unfortunately, the J-51 allowance for this item is set at only \$4.00 per square foot and, after deducting J-51 filing fees and processing costs, unless this is an exceptionally long ramp, it will not result in an appreciable costs savings. Furthermore, the law requires that 50% of the annual real estate tax savings will be deducted from any major capital improvement rent increase which is granted for the same work. ■

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