



**Testimony before the Philadelphia City Council,
The Committee on the Environment
on Bill No. 120428
to amend Chapter 9-3400 of the Philadelphia Code,
“Energy Conservation”**

Tuesday June 5, 2012

My name is Doug Hoffman. I am the President of BPG Management Company, L.P. I am here today in my capacity as the Chair of the Building Owners’ and Managers’ Association of Philadelphia, commonly referred to as BOMA.

I would like to thank Councilwoman Blondell Reynolds Brown, as well as the entire Committee on the Environment, for this opportunity to testify on Bill No. 120428.

As many of you know, BOMA is a nonprofit organization whose members provide, within the City limits alone, over 51 million square feet of office space for over a half million office workers. Member buildings include virtually all the major high rise office towers in the City. Our member buildings not only define the Philadelphia skyline and add character to the City, but they are a tremendous economic driver for the City and the region.

I would like to state clearly at the outset that **energy efficiency and sustainability are of the utmost importance to BOMA Philadelphia and its member buildings.** As a civic-minded organization, BOMA stands ready to endorse those courses of action that will promote the City and the greater Philadelphia region as a safe, positive and forward-looking community. Natural resources, regardless of cost, should never be wasted. We are proud to collaborate with the City and other organizations as we strive to earn the moniker “The Greenest City in America.”

I would also be remiss if I did not thank the bill’s sponsor, Councilwoman Blondell Reynolds-Brown, for her coalition-building method in developing the legislation before you today. It is BOMA Philadelphia’s pleasure to work with the Councilwoman, her Legislative Aide Katherine Gilmore, the Mayor’s Office of Sustainability and the Delaware Valley Green Building Council.

While Bill No. 120428 is well intentioned and BOMA Philadelphia supports various facets of the Bill, we are, nevertheless, concerned about the impact of certain features of the legislation and how it could adversely affect certain owners of real estate. That being said, I have broken my testimony into three distinct parts: the first being benchmarking; second being disclosure; and the third addressing compliance and technical issues.

Benchmarking.

First, BOMA Philadelphia is supportive of benchmarking. As an industry, our members are, by and large, extremely competitive. They constantly seek

to understand how their assets perform relative to other properties in their respective market class. We are always looking for “differentiators,” which set our properties ahead of the competition, and those “differentiators” tend to be the things that are exploited.

In fact, for many years BOMA has had the Experience Exchange Report, which enables owners and managers of properties to confidentially share their detailed operating data in exchange for a complete analysis prepared by BOMA. Not only has this tool highlighted the strengths of a property, but, equally important, has shown owners and managers areas to focus upon for financial and operating efficiencies.

In short, benchmarking is an integral part of the area’s commercial real estate community! It is one of the available tools that enables us to operate our buildings more efficiently, thereby attracting and retaining tenants who are seeking quality buildings in which to conduct business. Further, by voluntarily pursuing certifications such as EnergyStar, LEED and BOMA’s 360 designation, our members seek to demonstrate their leadership, thereby marketing their advantage.

If formally surveyed, I would suspect that 80-90% of BOMA member buildings have already benchmarked their properties utilizing the EPA’s Portfolio Manager tool. While Portfolio Manager is not without flaws, if data is properly input, it enables property owners to benchmark their properties effectively and to understand, on a scale of 0 – 100, how their property performs relative to national norms. It also enables operators of

buildings to put new operating strategies to the test, in order to understand if they move the proverbial “needle.”

BOMA Philadelphia understands that benchmarking is a nuanced process. While a building’s tenants may, in fact, have the greatest impact on the building’s overall energy score, it is “the building” that is being rated and effectively labeled. Furthermore, the Portfolio Manager rating is, in many instances, simply a number – and a number does not always tell the whole story. Indeed, the Portfolio Manager Rating is only one indication of a building’s overall energy efficiency. A building with a rating of 65 may very well be more efficient than one that has an 80 rating. Simply, no two buildings are alike. Building construction and internal systems can vary greatly within a comparison class. In fact, it is not uncommon for LEED Certified Buildings to not be eligible or qualify for EnergyStar Certification.

If Bill No. 120428 is intended to enable tenants and/or users to make educated and informed decisions, then the disclosure must facilitate the sharing of truly meaningful and complete information. Education of tenants as well as building owners will provide for a more effective improvement in energy consumption. The key to sustainability is profitability.

Disclosure.

Insofar as disclosure is concerned (given the aforementioned issues, in that ratings are greatly influenced by a building’s tenants and their use of their space) BOMA Philadelphia cannot support a public disclosure vehicle that penalizes a building based upon its occupants.

This is not like the City's "menu disclosure" or a fuel efficiency label on a vehicle. In both of those cases, the chef or automobile manufacturer controls all the ingredients or components. When it comes to Portfolio Manager and benchmarking, a building owner only controls a fraction of the total score/rating.

While other markets across the country have either adopted or are considering benchmarking and disclosure laws, the true impact of "disclosure" is not yet known. The notion of shaming and/or penalizing a building because of its energy score (potentially forcing a tenant and / or building owner to invest capital dollars that it might not have) could have devastating and unintended consequences. As written, the bill could easily and unjustifiably apply a "scarlet letter" to a building. Picture a Class B or C property (or even a Class A assets) which is struggling with vacancy issues, low rents, rising taxes and operating costs, now. Then consider that tenants may opt not to move into (or, worse yet, move out of) that building because of a rating that is outside the owner's control. These can be the very same tenants that cause the low score! Under such circumstances, values will be negatively impacted, which will, in turn, negatively impact the City's tax base.

Sharing EnergyStar scores, as well as information about a building's sustainable practices, are the norm when responding to RFPs for a tenant. This currently happens in a voluntary way. Mandating the sharing of this information with a prospective tenant would be redundant.

Compliance / Technical Concerns with the Bill.

Compliance with the requirements of a bill such as Bill No. 120428 is also a nuanced process. As mentioned previously, the thought of marking a building with a “scarlet letter” is extremely problematic. As a policy matter, BOMA Philadelphia does not object to providing (or sharing) Portfolio Manager data to the City in an aggregate form for the purpose of understanding how the commercial sector is doing relative to the Administration’s established energy goals. But that sharing comes with a request that this type of property-specific data not be disclosed or shared with the public.

Rather than using the energy data collected from Portfolio Manager to publically disclose or list buildings throughout the City, potentially embarrassing some owners (including the City), BOMA suggests that the information be used in a positive fashion. As we see it, the City, in concert with BOMA and the DVGBC, could collectively acknowledge the champions or leaders. The vision is an event recognizing the top tier buildings and/or those buildings that move the proverbial “needle” the furthest in any given year. It is this type of positive strategy that would encourage the commercial sector – building owners/managers and tenants alike – to pursue energy efficiency that will contribute to the City’s overall environmental vitality. It could go a long way towards promoting such efficiency as a City-wide goal and encouraging all members of the community to do their part to turn the ideal into a reality.

With respect to some of the technical and language based concerns not addressed in this testimony will be provided under separate cover.

Thank you again for the opportunity to provide this testimony today. Through our Codes and Legislation Committee we hope to continue working with you on a Bill that results in a win for all parties. I would be happy to address any specific questions you may have. Depending on the nature, I may invite our committee chairs to join me in response.