



Experts Say Development Will Slow Without '421-a' Program

BY ANDREW KESHNER

REAL ESTATE experts said the expiration of the "421-a" property tax abatement program could have a serious impact on future development in New York.

While projects that are already underway are unlikely to be affected, several real estate attorneys expressed hope that the program will be renewed, as it has become a key component of negotiating major development deals in the city.

The program, named for the section of Real Property Tax law where it is codified, was established in the 1970s to stimulate New York City residential construction and applied to housing developments of at least three units on vacant or underused sites.

The property owners were exempted from paying the increased property taxes on the improved site for certain lengths of time depending on location and the number of affordable units included.

When state lawmakers passed a short-term extension of the program in June 2015, they said a longer extension depended on whether unions and developers could agree to wage rules for projects operating under the tax break.

The Building and Construction Trades Council of Greater New York and the Real Estate Board of New York failed to reach an agreement and the program went dark for all new projects.

In a statement, Gary LaBarbera, president of the Building and Construction Trades Council of Greater New York, said both sides had negotiated in good faith. "We remain ready to engage with all stakeholders in the weeks and months ahead to achieve our goals of creating needed affordable housing and middle-class jobs for New Yorkers," he said.

Adam Leitman Bailey of Adam Leitman Bailey, P.C. in Manhattan said developers and large landlords have expressed hope that a deal would be worked out.

For many developers, Bailey said, buildings under construction have already secured the exemption, but developers have predicted that new projects would "absolutely come to a halt" in outer-borough locations in Queens, The Bronx and Staten Island. Moreover, he said, developers also anticipated slowdowns in commercial and residential real estate, something that would suppress the demand for new projects.

"It's a really big deal for the future," he said of the 421-a's expiration, "but it's not something developers are sweating over at this time."

Bailey noted the exemption came up in the recent corruption trials of former state Assembly Speaker Sheldon Silver and former Senate Majority Leader Dean Skelos.

Southern District prosecutors said the pair supported a past extension of 421-a in exchange for financial gain to Silver as well as Skelos' son, Adam, at developer Glenwood Management's expense. Both trials ended in convictions and both men have pledged to appeal.

As for other Albany lawmakers, Bailey said the law could have lapsed in part because others "are running away from this hot potato."

Joshua Stein of Joshua Stein PLLC in Manhattan said 421-a factored into key market conditions, such as land values and anticipated developer returns.

"421-a is hugely important. It's baked into everybody's assumption on how to do deals," said Stein, who represents a range of clients, from developers, lenders and landlords to tenants and borrowers.

Stein said he had heard of recent deals where buyers and sellers tried to secure

certain prices per square foot with the assumption of an eventual reinstatement of 421-a.

But the challenge, he said, was guessing what the terms of any revived 421-a program would be. "I tell clients let's just wait and see."

Without 421-a, "developers will offer less for sites" and "people who own will have less incentive to sell, and they'll just sit on their hands and wait for the land values to go up again," Stein said.

Bradley Silverbush, a member at Rosenberg & Estis, said he thought the expiration would have a "chilling effect on new construction."

Mitchell Korbey, a partner at Herrick, Feinstein who chairs the firm's Land Use & Zoning Group, called it "terribly inappropriate" for state lawmakers to "delegate the authority" to craft laws. Still, he said he was "hopeful there will be a meeting of the minds," as far as a revived program.

Korbey said his job was to provide advice on legal and zoning matters, not the business decisions. Nevertheless, "my sense is folks are going to take a pause" in construction "and hope responsible people recognize the importance" of the 421-a program.

Korbey, a former commissioner of the New York City Board of Standards and Appeals, said he hoped the program was renewed, calling it "critical" to the city's affordable housing agenda.

Certain zoning rules could accomplish a lot for affordable housing goals, but Korbey said there had to be a "multi-pronged comprehensive effort."

"You need a comprehensive tax policy to work in conjunction with zoning," he said.

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