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The Renewal of 421a And The Need For Revisions

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Two years ago, the New York City housing market was vibrant. The average annual sale price for a Manhattan condominium in the first quarter of 2008 reached \$1,829,000. Average annual sales prices were increasing by double digits and new sales price records were seemingly achieved every quarter.

This remarkable demand for housing had been fueled by easily available credit, low interest rates, a weak dollar, our steadily growing population, and the increase in the number of permits for new housing units. In addition, the rezoning of underutilized industrial areas for residential use in Brooklyn and Queens created new opportunities to meet this market demand.

This unprecedented growth was fueled even more by the partial tax exemption benefits available with the 421a program.

When the 421a program was renewed in 2007 there was a significant reduction in benefits that reflected the strong housing market. REBNY worked to incorporate a phase-in of these reduced benefits to provide an orderly transition for the residential development market. Unfortunately, the financial crisis that hit our city and our economy in September 2008 undermined this phase-in plan, curtailed the number of apartment sales, and virtually ground new housing development to a halt.

As we mentioned in last month's column, sales activity is improving, but new residential development has not shown any signs of a rebound. Many developments that commenced construction in 2008 to vest their project before the reduction in 421a benefits took effect are stalled due to lack of financing. New housing permits issued in 2009 are down more than 80 percent from the 30,000 average of the four year period noted above. This decline is the result of the sluggish sales market during the last half of 2008 and the first half of 2009 compared to the height of the market, the lack of financing for new development, and the more restrictive provisions of the 421a changes enacted in 2007 which are in full effect today.

The 421a program is up for renewal in 2010. We need to extend and amend the 421a program to ignite new private sector housing development. State and city elected officials need to send a strong and clear message that the 421a program will be renewed, and that they will consider amendments that would lead to more new housing construction that benefits the city by creating jobs and new housing units.

There could be as many as 15,000 to 20,000 new housing units that have commenced construction and have been delayed as a result of a lack of financing. These projects and their lenders need absolute assurance that they would receive the tax exemption benefits that were available when they resume construction. The extension of the 421a program is crucial for these projects and the extension must contain an amendment that makes it clear that these projects, despite delays, are eligible for the benefits they were entitled to when they commenced construction.

In the extension of the program in 2007, there was an inadvertent omission in drafting that excluded areas of midtown and downtown that were zoned with a FAR 15 from receiving 421a benefits. This error would not only lead to the abandonment of the housing in these areas, but the commercial component as well that made many of these projects economically feasible with the 421a benefits. This error must be corrected.

The current law requires that sites pass an underutilization test to qualify for benefits. For a site to be underutilized it must be under built or have a land value significantly greater than the value of the improvement. This requirement in practice is complicated and imposes significant government staff time to make this determination. It has also led to the elimination of many ideal housing sites because they would be ineligible for 421a benefits.

Buildable sites for new housing development are still in short supply in part due to this requirement. It is this shortage that had led to an increase in land costs during the strong market and a slow recovery in a weak market. We can improve the climate and opportunity for new housing development if the underutilization test is eliminated as a 421a program requirement.

Also, the requirement for a maximum allowable rent, the definition of commencement of construction, the scope of the geographic exclusion area, and the assessment cap have all hampered new development and need to be improved. These items should be revisited given the depth of the city's recession. A renewal of 421a and a reconsideration of these issues would be a catalyst for new housing development. It would lead to the creation of new affordable and market rate housing, new construction jobs and new tax revenue, all which are needed now.

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