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REAL ESTATE WEEKLY

WEDNESDAY, JULY 7, 2010

Tax plan defeat a major victory for industry

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The Senate recently voted on the Tax Extender Package, that included the carried interest provision, and for third time failed to pass it by a 57-41 vote.

This was a great victory for our industry.

REBNY has been very active in the effort to retain the current tax treatment of carried interest on behalf of our industry.

I want to thank all those who responded to our call for action, contacted our elected officials and made a decisive impact on the outcome in Washington on this important real estate issue.

This decision will continue to allow funding for projects without higher taxes.

We had successfully prevented unfavorable amendments to the carried interest tax in 2007 and 2009.

As the federal government attempts to reduce a record deficit, a tax increase on carried interest will likely be reintroduced. We will continue to be vigilant in protecting our industry from these tax increases.

The bill, HR 4213 - American Jobs and Closing Tax Loopholes Act of 2010, included a carried interest provision which would have been devastating to the real estate industry and would have dramatically increased the financial barriers to development during this time of economic recovery.

It included tax rates for managing partners that would have increased the capital gains rate of 15 percent to an effective rate of about 34.7

percent for holdings less than 5 years, and an effective rate of about 29.6 percent for holdings greater than 5 years.

Additionally, the carried interest also had a Family Partnership provision that would apply this increased rate to interests held by family members of a managing partner as well.

Senate Majority Leader Harry Reid and Senate Finance Committee Chairman Max Baucus, who have been leading a large Democratic delegation in pushing this bill for the past eight weeks, are now setting aside this bill and will most likely take up a small-business tax bill. Although carried interest may be revived in another Congressional proposal, there has been no indication from Senate Leadership when the Senate will revisit the Tax Extender Package.

The successes in fighting the carried interest proposal are due to the heroic efforts of REBNY and our members including Bill Rudin, the Speyer family, Hal Fetner, Jeff Gural, Burt Resnick, the Lefrak Family, Stuart Gross of Roberts & Holland LP and our colleagues at the Real Estate Roundtable led by Jeff DeBoer.

Congratulations to everyone for your accomplishments, hard work, and support of this important effort.

The Challenge of Adjoining Properties to New Construction Discussed

REBNY and Associated General Contractors of New York State recently hosted a seminar "The Adjoining Property Challenge to New Construction in New York City."

The meeting was planned to give owners and developers



clarity to the process of dealing with buildings adjacent to construction projects, to what the responsibilities of the developers are in protecting the adjacent properties and to identify avenues of recourse if the adjacent property owner is unresponsive or unreasonable in providing access to make this property safe during construction.

Nearly 60 attendees filled the Mendik Room to hear about how to better navigate the difficulties of adjacent buildings in NYC. Attorney Howard Rosen of Peckar & Abramson opened the panel discussion describing the common law and legal requirements in safeguarding adjacent property. Rosen also discussed the practical and legal methods of obtaining the adjoining neighbor's consent to take protective measures.

David Marino of Aon Construction Services Group addressed how developers, engineers and contractor teams can assess the risks and liabilities of potential and actual damage caused to the adjoining building.

Then, David Peraza of Exponent talked about the engineering challenges in safeguarding adjacent buildings, and addressed the different methods an engineer may use.

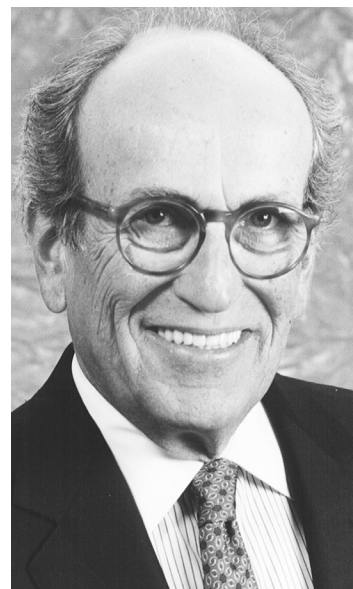
Tim Lynch of the Department of Buildings emphasized the fragility of many of the foundations in NYC's older buildings and that this challenge will remain relevant in the future.

At the end, panelists discussed draft legislation currently at the City Council that tries to address some of the legal difficulties in securing an adjoining building during construction and whether the proposed reform would be effective in facilitating the process.

REBNY will monitor the progress of this draft legislation and inform its members and REW readers of its status.



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