

THE REAL DEAL

NEW YORK REAL ESTATE NEWS

NYC real estate lawyers stupefied by Albany's 421a stance

Attorneys say abatement is crucial to ensure new affordable housing stock

<http://therealdeal.com/2016/01/25/nyc-real-estate-lawyers-stupefied-by-albanys-421a-stance/>

January 25, 2016

By Rey Mashayekhi

Many of the real estate attorneys who advise New York City developers on the 421a tax abatement share one sentiment – they can't believe Albany let it get to this point.

"It's deplorable," said Mitch Korbey of Herrick, Feinstein, "that we have a legislature that essentially delegated the responsibility for writing law in this fashion."

Alvin Schein of Seiden & Schein said "this has never been done in the history of the state of New York – in the history of the United States – where two private organizations are going to determine the outcome of a law."

Schein was referring to the Real Estate Board of New York and the Building and Construction Trades Council of Greater New York, which represents construction unions. While the two parties were reportedly edging closer to an agreement earlier this month, the Jan. 15 deadline came and went with no deal. The sticking point was a prevailing wage requirement, which was insisted upon by Gov. Andrew Cuomo and sharply opposed by the real estate industry and by Mayor Bill de Blasio, who said it would curtail the development of affordable housing.

"It's ridiculous," said Gary Rosen of Rosen Law. "You can't put the law into the hands of private entities – a builder's group and labor unions – and have them decide how it's going to happen. That's why we have politicians to do their jobs."

While the future is uncertain, those who serve as legal counsel to the city's developers agree that, 421a or no 421a, something needs to be done to assist the development of much-needed rental housing in New York.

"As a whole, real estate developers are an optimistic bunch," Schein said. "There's hope and concern at the same time. No one really believes that it's going to stay the way it is, without the 421a program."

That could entail changes to what Schein termed "a broken tax system" that makes it "very hard to develop rental housing when you're paying 25 to 30 percent of the gross rent roll off the bat."

Steven Hochberg, who oversees the tax certiorari department at Stempel Bennett Claman & Hochberg, said 421a was created to establish new residential housing stock in New York.

“It’s done a fairly good job of that,” he said, noting that 421a had over time evolved into a solution for developing “workforce housing” in the city.

Hochberg said it was time for it to “go back to the legislature to look at and see whether or not the current statute works – and if not, what needs to be changed to make it work.”

It seemed developers may have been onto the fact that a deal looked unlikely heading into 2016; by many accounts, there was what Schein termed a “frenzy to get into the ground” and obtain requisite permits from the city’s Department of Buildings in order to avail of 421a benefits while they were still in place. He repeated the common industry argument that sans abatement, the only projects that will make financial sense for developers are condominiums.

“If this progresses long-term, I don’t think you’ll see any [rental] development,” Schein said. “The 100 percent affordable projects could go ahead, but you’re not going to get mixed-income projects,” he said. “And the majority of projects [the city is] hoping to get is mixed income.”

The city’s proposed Mandatory Inclusionary Zoning policy is currently making the rounds at community boards across the city, in preparation for an eventual City Council vote. But it would have little bearing without an accompanying abatement, according to Korbey, who was a commissioner of the city’s Board of Standards of Appeals in the Giuliani and Bloomberg administrations.

It’s “extraordinary difficult to just have zoning be the tool to incentivize affordable housing,” he said.