



with Bob Knakal

Court declines to hear Harmon

Q: Were you surprised that the Supreme Court decided not to hear the Harmon case and what impact do you think this will have on the multi-family market?

A: Last week was a tough

week for the New York City multi-family housing industry as the Supreme Court did indeed decide not to hear the Harmon case, which attempted to challenge the constitutionality of rent regulation.

The arguments in the Harmon case appeared to be very sound - that a temporary emergency is not temporary if it is obviously continuing in perpetuity.

Also, the taking of personal

property, potentially in perpetuity, without compensation would seem to be unfair, but apparently the highest court in the land does not agree. This case would test states rights relative to police power and the court just didn't want to go there.

In terms of the impact on the market, I believe the impact will be non-existent as almost no one expected the court to actually hear the case.

A potentially more impactful development for the multi-family market here was the announcement by City Council Speaker, Christine Quinn, who expressed concern about the effectiveness of the Rent Guidelines Board which determines the level of rent increases for rent regulated apartments.

The Speaker indicated that the RGB was an ineffective body and that the oversight of rent regulated increases should be set by the City Council.

There are aspects of this position that are, obviously, very troubling. The first is that for as long as anyone can remember, the majority of City Council members have endorsed zero percent increases for rent regulated apartments.

Clearly, zero percent does not keep pace with the additional costs that property owners are facing. Another is that the speaker is currently the likely successor of Mayor Bloomberg, making this proposal more likely than less.

In a poll released yesterday, the Speaker would receive 32 percent of the vote if the election were held today and the second place candidate, Bill Thompson, would capture just 12 percent of the vote.

Clearly, we have a long time until the election in 2013 and with 29 percent of those polled remaining undecided it is still completely up in the air.

Can you imagine if the City Council set rent increases for rent regulated apartments? What would be next? Would the inmates at Rikers Island determine the duration of their prison terms?

The Rent Guidelines Board is certainly not as effective as it could be. They are operating under an archaic set of rules which limit their ability to fairly impose appropriate rent increases.

Among other things, the RGB is charged with looking at a "basket of expenses" and determining the increase in those costs, using that inflation rate to help guide increases in rent regulated units.

This basket of expenses was established in 1984 and has not been modified or updated since. There are things within the basket such as ledger paper. Can you even find ledger paper in a store today?

More importantly, what about the hundreds of new requirements placed on multi-family property owners to operate properties? Things such as the installation of window guards, the abatement of asbestos, and dealing with lead paint.

Operating expenses have been growing at a rate far in excess of regulated rent increases. This leads to a troubling trend that many of my clients are faced with who own multi-family buildings.

They have worked very hard to increase top-line revenue over the past two or three years and have done so to the tune of perhaps 10 or 15 percent.

Unfortunately, based on rapid increases in operating expenses, particularly real estate taxes, net operating income during this period have remained essentially flat.

Can you imagine if rent increases were set at zero percent by the City Council for a period of time?

This would have a devastating impact on the quality of the housing stock in the city. Almost every elected official who talks about rent regulation, always refers to it as an "affordable housing" program and that rent regulation is important because it is necessary to keep affordable housing units in the city.

This position could not be more off base. Of course, we need more truly affordable housing to help the city grow and I believe almost everyone in the real estate industry agrees with this.

However, rent regulation has absolutely nothing to do with affordability as there is no means-testing element to determine whether the occupant of a rent regulated unit actually deserves the public subsidy that they are given at the expense of every other non-regulated resident of the city.

What is more perverse about our entire rent regulation system is that it is continually renewed and extended based upon an "emergency condition", but the regulation system itself is the very thing that perpetuates the emergency by constraining supply and limiting the construction of new apartments. It is, effectively, a medicine that is taken for a disease which makes the disease worse.

Rather than having the RGB or City Council set regulated rent increases, perhaps a more equitable system would be to have regulated rent increases and real estate tax increases, set at the same percentages.

When I refer to real estate tax increases, it is important to note that I am referring to the total tax bill, not some political smoke and mirrors policy, where a combination of tax rate increases and assessment increases lead to an over inflated total tax bill.

This would create a fair balance between the two.