

# City Council Wants to End as-of-Right Zoning? Yikes!!!!

A recent application brought by the East River Fifties Alliance (ERFA) and backed by several City Council members is attempting to block a new development in Sutton Place that is as-of-right. The byproducts of this legislation could have a devastating impact on the development market overall.

One aspect of New York City's zoning resolution that provides tremendous benefits to both the development market and the city itself is the as-of-right nature of what is often a laborious, costly and uncertain process of land entitlement. If, suddenly, as-of-right development (properly zoned development which is allowed to proceed without additional action by the Department of City Planning or the New York City Board of Standards and Appeals) is thrown into question, it will lead to reductions in land value, reductions in jobs and reductions in tax revenue to the city.

The application grows out of Gamma Real Estate's 3 Sutton Place (now called Sutton 58). The project was previously enmeshed in squabbles between its original developer and lender. Now the project has been hit with the ERFA zoning application co-signed by Councilmen Ben Kallos and Dan Garodnick, Manhattan Borough President Gale Brewer

and State Senator Liz Krueger and proposing capping the height of the building. Why? A recent article in Commercial Observer suggests that Gamma officials believe the zoning application stems from the tower's neighbors complaining that they would lose their views.

The approval of this application would erode the positive aspects of the city's beneficial as-of-right zoning framework and would have a chilling effect on economic growth.

New York City does not have site plan review. If a project complies fully with the zoning resolution and the building codes, then the only review that occurs is at the building permit application stage. This framework offers flexibility and efficiency and plays a critical role in maintaining the level of growth necessary for our city to continue to be a thriving economic center.

As-of-right zoning also provides certainty to local communities. In a city where change is constant, the built environment is tightly constrained by zoning. Whenever a developer wishes to depart from these prescribed rules, the community can take comfort in knowing that a public review process exists to protect them from unwanted surprises.

Every major real estate project requires a

significant amount of money, often hundreds of millions of dollars. A tangible amount of this investment is incurred early in the development process. Case in point: The development that this application has been designed to stop involves an assemblage consisting of three development parcels and nine sites with air rights that have taken years to put together.

Capital markets are willing to underwrite these significant projects, in large part, based on the knowledge that, from a regulatory standpoint, the project is as-of-right and may proceed on the basis of a building permit alone. But when, as alleged here, a small group of neighbors suddenly decides it doesn't like a particular development plan, what is the point of having as-of-right zoning at all?

This ultimately leads to a broader question to be asked by lenders: Why should I invest in New York City if there are other locations with a reasonably predictable land use framework that offer an acceptable level of risk?

If each and every development transaction were subject to the parameters outlined in this application, it would create incentives for widespread corruption. The New York City Department of Buildings has struggled for decades with a seemingly unending series of bribery scandals—but this would be peanuts compared to the tens of millions or hundreds of millions of dollars that would be on the

line at other large development sites should the application be approved.

To the extent this application is greenlighted, it will exert downward pressure on land values—something the city (itself the metropolis' biggest landowner) should care about because if land values fall, land selling is greatly reduced. Remember that in 2006, there were 267 development sites sold in Manhattan and when values fell in 2009, there were just 13. In this past cycle, downward pressure has been exerted on land values and although values have only dropped 19 percent, the volume of land sales has dropped 78 percent.

Moreover, lower land value will result in reduced transfer tax collections and lower mortgage recording tax collections.

Additionally, and no less important, construction jobs of all types will disappear as fewer new buildings will be constructed. Many of these jobs are high-paying, union jobs—precisely the type of jobs the city needs.

The real estate industry simply cannot afford to take sought-after risks if local groups with special interests can spontaneously disregard this framework after significant investments of time and money have been made.

Let's hope the City Planning Commission can see the negative impacts of this legislation on the city.



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