Will a 421a Deal Save the Land Market?

There are many observers of the New York City development site sales market that believe the expiration of the 421a program on Dec. 31, 2015, was a death knell for residential construction. This position is only partially accurate. While many developers believe that rental housing cannot be constructed without the 421a program even if the land was throw in for free, the market for land actually started to shown signs of stress months before the expiration of the program.

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In late September, early October 2015, we noticed a tangible shift in the appetite from developers who were starting to feel the effects of a softening condominium market. Additionally, there has been a significant shift in the rental market for luxury housing as market participants underestimated the impact that all of the new condominium construction would have on the rental market.

Historically, New York City has been a housing market in which 92 to 93 percent of homes (co-ops, condos and single-family residences) were owner occupied. During this cycle, it is estimated that about 40 percent of all condominiums have been purchased by investors, effectively making these units rental apartments. This additional supply has exerted downward pressure on luxury unit rent levels, and the negative trend is spilling over into lower rent level units as well.

Therefore, the land market was under stress for months before the expiration of 421a, which simply exacerbated the challenges faced by sellers of land. More importantly, the expiration of the 421a program has led to about a 50 percent reduction in the number of new residential development applications in 2016. The creation of affordable housing units has also dried up given the elimination of the 421a program.

The current administration states that they are well ahead of schedule on their affordable housing objectives. As politicians often do, their objectives are fashioned in such a way that it is difficult to confirm the accuracy of their statements. The current administration stated a goal of 200,000 affordable units over 10 years either in the form of new construction or "preservation."

The preservation part of it provides cover from having to arithmetically prove where they are relative to their objective. For instance, the only way they could possibly be ahead of schedule is if they claim that somehow they preserved the 11,232 units in the Stuyvesant Town-Peter Cooper Village development, which was sold last year. Under this approach, why don't they just take credit for every single property that has been sold that had rent-regulated tenants in them? In a meeting I had with city officials, I was told they had an itemized listing of all affordable units created or preserved. After several attempts to get that list, I have not received anything.

New construction is what is really needed to solve our affordable housing needs, and the recently announced deal regarding a reincarnation of the 421a program could help get there. The Real Estate Board of New York and the Building and Construction Trades Council of Greater New York reached agreement on terms of a deal that changes many aspects of the old 421a program and, while nothing is perfect, has seemingly met the objectives of most stakeholders.

The new agreement states that in all 300 unit or more residential rental developments in Manhattan south of 96th Street, average wages for workers will be $60 per hour, including benefits. In Brooklyn and Queens, portions of community boards 1 and 2 that are within one mile of the river will have a minimum average salary of $45 per hour for construction workers. Under the old law, the tax benefit was for 20 or 25 years, phasing subsequently for 10 years into full taxes. Under the new plan, the abatement will be for a full 35 years (the de Blasio administration was hoping for 25 years only). Projects that are in process of construction subject to the old program can opt into the new program. And developments where more than 50 percent of the units are affordable are exempt from these rules.

Under the old rules, the affordable component of buildings was filled half by a lottery system and half by "community preference" units, which were typically occupied by those who were disabled, veterans or senior citizens. The city has proposed a modification to this where half of the community preference units would be occupied by residents from homeless shelters. This component has been controversial and has been met with opposition from some in the industry.

This new iteration of the 421a program still needs to be passed by the state legislature, and there could be changes that occur. That process could take as little as a couple of months but also might take until the middle of next year before a final version and approvals are obtained. Meanwhile, this is a very positive development for a program that is essential to the future of New York City's affordable housing stock.

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