New Development Projects, Affordable Housing Requirements and the Future of Tax Abatements

By Pierre E. Debbas, Esq., Romer Debbas, LLP

This year is proving to be very interesting in terms of how the landscape of new development is changing and the city's initiative to bolster affordable housing within New York City. Over the past half-decade, we have experienced another construction boom largely fueled by luxury high-rise condominiums. Part of the issue at hand is that the crop of affordable housing is declining and the city in general is becoming unaffordable for most. On March 22, 2016, City Council approved the Mandatory Inclusionary Housing amendments which can require 20-30% of all units in a project be affordable housing units. The required percentages for each project vary based on the new city zoning and also on the approvals the developer obtained for land-use actions. Additionally, no longer will developers be able to develop a separate entrance for the condominium owners versus the affordable housing tenants. This entrance was commonly referred to as the "poor door."

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Historically, developers were able to receive property tax abatements for their projects partially to incentivize developers to develop and also to develop affordable housing units. The most common abatements are the J51, 421a and 421g. The J51 is typically a 25-year abatement where the taxes are fully abated for 21 years and then the abatement is phased out at 20% per annum from years 21-25. The 421a is a 10-year abatement where it is phased out every 2 years at 20%. The 421g is a 15-year abatement where the taxes are fully abated for 10 years and then phase out at 20% annually for the remaining 5 years.

Over the last couple of years, new development projects were not able to obtain these tax abatements. It is currently up in Albany for discussion on how to amend the current abatements and whether luxury condominium projects should be eligible to receive these abatements. A couple of years ago, an article appeared in the New York Times discussing how marquee projects such as 56 Leonard, 150 Charles and One57 all have property tax abatements. The issue is that these projects are tailored to the super wealthy of the world with most buyers not being New York State residents or, furthermore, being foreign nationals. The argument against projects like these having a tax abatement is that, often, the majority of the lights in these buildings are turned off. The owners are rarely using these properties, which further brings up the issue of these purchasers not paying local city and state income taxes (if they do not derive any income in New York or the United States), not contributing to the local economies by shopping at our stores, eating at our restaurants, etc., and on top of all of this, receiving a rather large break on their property taxes.

The fear for not having a tax abatement for condominium projects is that it would disincentivize developers of condominium projects. This fear has been somewhat negated given the recent construction boom we have experienced. Without question, it will be a delicate balancing act on how to amend the tax abatement programs, how condominium developments can be eligible for such abatements and balancing the city's requirements for affordable housing.

It is a matter of opinion on how any of these changes will impact our market. The reality of the market is that the cost of construction and land has become so high that luxury condominiums need to be built in order for a developer to make a profit. Furthermore, the target buyers for that product are frequently foreign nationals, and our market has become dependent on the demand from overseas. Those individuals who are engaged in making the changes that are currently being considered should keep this in mind. While there can be a negative view on whom these projects are being built for, these projects do in fact create thousands of jobs for the city. How these topics unfold in the balance of 2016 should be one of the biggest focal points for the real estate community and can shape the future of development in the city.

Pierre E. Debbas, Esq.
Romer Debbas, LLP
275 Madison Avenue, Suite 801
New York, NY 10016
(P) (212) 888-3100
(C) (646) 599-6994
(F) (212) 888-3201
PDebbas@romerdebbas.com
www.romerdebbas.com