A Taxing Matter: Looking Back on the History of 421-a

The upcoming expiration of the 421-a program has lawmakers, builders and housing advocates casting about for a more effective way to create affordable housing.

By **Kim Velsey** | 05/28/15 11:14am

How well has 421-a served the city over the past 44 years? (Carlos Zamora/NY Observer.)

Stepping into Matt Leisy's one-bedroom apartment at 75 West End Avenue is a bit like entering an alternate reality, a New York in which a young actor might live by himself within walking distance of the Theater District, rather than three to a two-bedroom in Astoria.

Of course, there will always be fledgling actors who, with the benefit of family finances, manage to live very well, but Mr. Leisy's pleasantly furnished space does not show the telltale signs of the trust-funder. And indeed, he is not a wealthy man, but a working actor—soon to depart on a tour of *A Gentleman's Guide to Love and Murder*—who pays $595 a month for the space.

"I think this is one of the best things that ever happened to me. When I walked in for the first time I kissed the floor," said Mr. Leisy, who lives in one of the 200 affordable units that were included when the Brodsky Organization built 75 West End Avenue in 1994 as part the 421-a program, a controversial development incentive that offers generous tax abatements to developers for up to 25 years on the condition—in Manhattan, at least—that they make 20 percent of the units affordable. There is no question as to the need for the affordable housing, but the costs of creating it via 421-a (the Department of Housing Preservation and Development estimates that affordable apartments created by 421-a cost nearly $600,000 per unit and that the city surrendered $1.1 billion in tax revenue last year) have made the abatement program highly controversial, with a number of housing advocates and even *The New York Times* editorial board arguing the best course of action would be to scrap 421-a—which is up for renewal in the state legislature in June—altogether, redirecting that money into a more efficient affordable housing program.

What is clear, however, is that people like Mr. Leisy would not be living at 75 West End Avenue were it not for a program like 421-a, which has carved out a small haven for the low and middle-income in a rapidly gentrifying neighborhood.

“It’s an interesting neighborhood. You have the Trump buildings and the projects, major highs and lows,” he said. (The Amsterdam Houses, a NYCHA development, sit across the street from 75 West End.) “I sort of fit somewhere in between.”

“I’m super-thankful to have this,” he added, glancing out the window, beyond which one could see Extell’s glassy Riverside Boulevard empire, where A-Rod once owned an apartment and some condos come with private swimming pools. Extell is also building 50 Riverside Boulevard along the same corridor, a 421-a condo that set off a firestorm of criticism for creating a separate entrance, a.k.a. a “poor door,” for its affordable rental component. The fact that, in spite of the income-based segregation and highly critical press it garnered, 88,000 people applied for that building’s 55 affordable units illustrates just how complicated and fraught the prospect of either extending or discontinuing the 421-a program has become.

Given the city’s pressing need for more housing, affordable and market-rate alike, legislators and especially the mayor, with his goal of creating 80,000 units of new affordable housing, are loathe to abandon the program outright. The real estate industry, meanwhile, insists that nary a rental unit would be built without it.

At the same time, as the program’s history illustrates, 421-a has been a far from ideal tool for accomplishing the goals it has been altered to achieve over the years, in no small part because of its somewhat awkward recalibration from a straight development incentive to an affordable housing program, as well as a de facto Band-Aid for a flawed property tax system that places an unusually high tax burden on rental property.

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In 1970, New York was bleeding both investment and residents, two trends that Mayor John Lindsay was desperate to reverse when he asked Albany to approve a tax incentive for residential real estate development on vacant and under-utilized land. The 421-a program, created the next year, offered a 10-year tax abatement for any such new construction, regardless of whether or not it included an affordable housing component.

“In the early 1970s, the city’s economy declined sharply. For the next few decades, whenever the national economy went into recession, the city suffered disproportionately,” said Mark Willis, who became an urban economist at the Federal Reserve Bank in ’78, started working in housing policy for Koch in ’83 and is now the executive director of NYU’s Furman Center. “Today, the city’s economy demonstrates impressive strength… Back in the ’70s and ’80s, the fear was that more and more jobs and people were simply going to move out.”

By the early ’80s, however, though the city’s housing market was far from resurgent, rising prices and displacement concerns were big enough in many parts of Manhattan that pressure built for reforms.

“There was this weird time in the 1980s, where a lot of the city was a mess, but you also had these weird pockets of real estate speculation in places,” said Jerilyn Perine, the executive director of housing research nonprofit Citizens Housing and Planning Council. “You had the South Bronx falling apart, but also bad guys on the Upper West Side trying to kick out tenants so they could convert the building.”

It wasn’t until 1985 that the first affordability requirement was added (after Mayor Ed Koch denied a $50 million abatement to Trump Tower on Fifth Avenue in 1984, sparking a lawsuit the city lost), mandating that any projects below from 14th to 96 streets in Manhattan provide on- or off-site affordable housing to get the benefit.

But despite the changes in 1985, 421-a has been slow to make the transition to an affordable housing program. Which is not really so surprising, according to Rafael Cestero, a former HPD commissioner and current head of the nonprofit Community Preservation Corporation, who argued that until 2006, when the Geographic Exclusion Area was expanded into parts of the outer boroughs and the certificate program that allowed developers to get the abatement for funding affordable projects off-site ended, 421-a *was* primarily a development incentive, especially in the outer boroughs. “Prior to 2006, it wasn’t really an affordable housing program, it was a program aimed at spurring development investment across the city,” he said.

Still, in those intervening years, it did create affordable housing like 75 West End Avenue, which was the first 80/20 development to receive a 20-year tax abatement in the mid-’90s for making 200 of its 1,000 units affordable. “People say you can give a lesser subsidy and get affordable housing someplace else. But what you get is affordable housing in the poorer areas, you don’t get the mix,” said Daniel Brodsky of the Brodsky Organization. “I think it’s a great program because it mixes people up economically and racially. You’re building affordable housing where it should be built.” This has been the case, at least, since 2006, when the certificate program that allowed developers to fund off-site affordable housing was also discontinued, though certificates, which trade on the private market, continue to circulate. It was via a still-circulating certificate that billionaires at One57, the super-luxury condo on 57th Street where a penthouse sold earlier this year for $100.5 million, were able to get a 95 percent tax break on their opulent units.

“To me, it’s a little bit of an irony that One57 has become a lightning rod over a change that was already made,” said Mr. Cestero. “The change in 2006 was trying to ensure that neighborhoods getting market-rate developments were also getting affordable housing.” It was, in fact, a similarly extravagant condo, 15 Central Park West, whose off-site certificate helped turn public opinion sufficiently against the 421-a program to eliminate the feature in the first place.

Meanwhile, a number of developers and housing advocates said that 421-a abatements for condos—which would be eliminated in favor of a rental-only abatement under Mayor de Blasio's proposal—have become less and less the norm in Manhattan anyway, as certificates have disappeared and the cost of land and condo prices have risen high enough that fewer and fewer Manhattan developers elect to do on-site inclusionary. It's no longer a "you need one because everyone else has one" situation, as one developer put it—which may account for one of the reasons why the Real Estate Board of New York is backing Mayor de Blasio's reform plan.
Perhaps the strongest argument for a continuation of the 421-a program for rental development is the fact that, at present, multi-family housing shoulders the brunt of the property tax burden. Unlike single-family homes and those with no more than three units, which are assessed at 6 percent of their value, multi-family housing is assessed at 45 percent. And while the city offers other abatements to offset the disparity for the owners who keep their condos and co-ops as primary residences, 421-a is the only corrective for rentals. In short, without 421-a developers are incentivized *against* building rentals, even though rentals represent the housing category that the city has the greatest need for and in which the majority of New Yorkers live.

"The main root cause is that the property tax system is, excuse the expression, all fucked up," said a housing policy veteran of the Lindsay administration. "It's absolutely better to reform, but they can't because the people who would get hurt would be the homeowners. Still, the current tax system is a reduction in burden for people of considerable wealth."

"Almost any rental project without a tax abatement would be difficult if not impossible," said Ron Moelis, the co-founder of L+M Development Partners. He pointed to a 180-unit mixed-income project his company did at 11 Broadway in Williamsburg that opened in 2010, in a very distressed market. "Even though I'm not a huge proponent of 80/20s, they provide a level of housing that's different from luxury condos and subsidized housing." Which, perversely, is a housing category that, at least in New York, does need help to remain in what urban planners refer to "opportunity rich" neighborhoods.

Omira Ortiz, for example, just signed her second two-year lease for a studio at 11 Broadway. "I'm never leaving," said Ms. Ortiz, a native New Yorker who has worked as a pre-school teacher for the past 19 years. Her rent is hardly a negligible sum—even as an occupant of the building's 20 percent affordable, she pays $1,279 a month, which is, in fact, more than she was paying at the one-bedroom where she lived on Maujer Street (also in Williamsburg). But the new building, she said, still feels like a better deal because it's meticulously run, well-maintained and she loves her new neighbors: a "mix of kids, toddlers, babies, professionals, gay couples."

The old building, in any event, is no longer affordable—since she left it's gone from rent-stabilized to market-rate "luxury," she said, after the owner bought all the leaseholders out. Which raises the question of whether the mid-aughts, mixed-income development along Williamsburg's waterfront helped to spur changes that may have done more to hurt than the cause of affordable housing, causing widespread displacement while creating a few carefully tended preserves of a mixed-income

New York. Then again, it's debatable whether other alternatives are possible in the more highly sought-out neighborhoods of an increasingly class-stratified city.

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In the end, the most difficult question to answer in the debate over 421-a is what, exactly, it has wrought so far. The program has been so entwined with New York's broader housing policy during the past 44 years, and in place through such drastic changes to the city's economy, that it's essentially impossible to gauge its impact. "Even if you took a simple number like how many units were created with 421-a, how do you know how many would have been created without it?" said Ms. Perine. "You get one of those, 'If you went back in time and killed your grandfather' problems. It's one of those things that is very hard to isolate." "But what we do know today is that taxes on multi-family are very high and if there wasn't some relief you'd only see housing built in some of the most expensive parts of the city at the highest prices," she continued. "Taxes can be 30 percent of your costs, and when that's the case you're not going to see something built in Mott Haven. Has it been successful? I don't know. I think it's fair to say that it has been needed."

Jackson Strong, a Bronx developer who is planning to build a 10-unit rental building by 163rd Street and College Avenue where one-bedrooms would rent for $1,250, said that without 421-a, the tax rate for rentals is so high that the numbers wouldn't add up in a market like the South Bronx. At the same time, he thinks that Mayor de Blasio's proposal, which allows developments in less affluent neighborhoods to charge 130 percent of average median income in exchange for longer abatements, might prove a boon. The proposal would also eliminate the Geographic Exclusion Areas. "One of the things we wanted to get away from was the line drawing because we can't predict the future," said HPD Commissioner Vicki Been. "The New York real estate markets move really fast." She added that giving condos exemptions had been "an incredibly expensive way to provide affordable housing and also very inefficient." According to HPD estimates, if the de Blasio reform were enacted vs. a straight continuation of the existing abatement, the cost per unit would drop from about $573,000 to $391,000 which Ms. Been said is less than what the city would have to pay to buy land and construct units itself in comparable neighborhoods.

Of course, offering tax abatements for new construction rentals could have the effect of placing a heavier burden on older rental buildings, one housing advocate pointed out, leaving them as one of the few non-abated properties. Tom Waters, a housing policy analyst at the Community Service Society, posited that a much more effective way of creating affordable housing would be to imitate the federal low income housing tax credit, in which developers apply for a fixed number of housing grants. "I understand the fact that people like that it's on the tax side—it's politically durable that way, but I think you can have those benefits without it's being so inefficient," he said. What does seem clear is that Mayor de Blasio's reform, like the iterations of the program before it, would be far from a fix-all, but that with federal support continuing to wane, there is little choice but to work out a solution that incentivizes the market to create a significant portion of the vast number of affordable housing units the city needs. And, perhaps as well, to make sure those incentives are commensurate with what the program can and will actually give in return.

“I think the de Blasio plan is great, but the 421-a program in and of itself is never going to solve an affordable housing problem,” opined Mr. Moelis. “You can’t create mixed-income rentals without it, but in order to build affordable housing that’s deeply subsidized, you need more than a tax abatement.”