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Real estate tax assessing process for affordable housing - by Lynne Sweet

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The real estate tax assessing process for affordable housing is complicated and has posed challenges to both developers and tax assessors alike. There are a lot of competing interests when it comes to assessing real estate taxes for affordable housing developers. Given the speed that is often required to assess properties, it may be hard for municipalities to single out affordable housing for assessing. With the high rate of development, acquisition, and refinancing occurring in today's economy, in general, the experts (professionals in the assessing, housing, and legal industries) agree that it is time to address the issue of real estate tax assessing for affordable housing in Mass.

The many issues surrounding tax assessing of affordable housing in Mass. appear to stem from a lack of guidance communication, understanding, and/or untimely response time by developers, according to a recent report on real estate tax assessing of affordable housing by LDS Consulting Group, LLC. Simultaneously, experts suggested that there is a need for more regulatory guidance from the State Department of Revenue (DOR).

To ameliorate these issues and improve the affordable housing tax assessing process, the study recommends a combination of education and training for the housing and assessing communities. Additionally, for the long term, the study recommends developing and ultimately designating affordable housing use codes.

LDS, based in Newton, conducted the research report on tax assessing of affordable housing on behalf of the Lawyers Clearinghouse (LC), in collaboration with Mass. Housing

Partnership (MHP), and the Mass. Association of Community Development Corps. (MACDC) as well as members of affordable housing development community. LC provided a grant for LDS to research the issue of real estate assessing and taxation on affordable housing in Mass.

The study focused on Massachusetts and included information from over 25 professionals in the assessing, housing, and legal industries and a user survey. At the same time, LC and MHP were overseeing legal research on this matter in Massachusetts and states across the country. The goal was to identify solutions to improve the process for all parties, which will hopefully lead to both time and cost savings.

Concerns About Real Estate Tax Assessing of Affordable Housing

Issues with real estate tax assessing can occur at any point in the development process, with the most troublesome times being upon acquisition, new construction, or in a revaluation.

The issues with acquisition vary from converting a property from one use to another, to acquiring an existing property at a high purchase price. The new construction issues occur during partial completion when properties can be taxed on cost value rather than income and/or, when owners are not aware that there could be an interim evaluation. The revaluation issues may occur because many assessors use outside contractors who may not be aware of or familiar with the affordability restrictions on the property.

There appeared to be consensus that the income approach was the best approach for larger properties, that income tends to be lower and operating expenses are higher in affordable projects, and that cap rates remain an issue to sort out.

On the ownership side, the study identified that there were issues with properties that had older deed riders or no deed rider and only financing restrictions.

There are owners who do not know about the real estate assessing process and assessors who are new to assessing and/or affordable housing. Another major contributor is the lack of regulatory guidance. As a result of these issues, there is the overarching concern that affordable housing is not being properly assessed and may incur excessive real estate taxes.

Creative Solutions

According to the LDS Study, there appears to be consensus among owners, assessors, consultants, and attorneys on potential short term and long-term solutions to these issues. The recommendations to improve tax assessing of affordable housing are summarized below:

Short-Term: Education and Training – This involves creating handbooks for assessors on affordable housing and for owners on assessing and then providing training to all parties. In particular, with regard to new construction, developers need to be informed that they should be starting the process during the permitting phase. In addition, they need to ensure that the permitting boards are in communication with the assessing departments. They also need to understand what avenues are available to them should they need to file for an abatement and/or appeal an assessment.

Long-Term: State Use Codes – Distinguishing the affordable multi-family properties with a separate classification code allows the properties to be handled separately from unrestricted market rate properties, and this means not being compared to sales of market rate properties in setting values to the DOR. This is the same for home ownership deed restricted properties, with distinctions between deed restricted single family homes and deed restricted condominiums. Establishing state use codes would help with both initial assessments and revaluations.

An interim measure would be to educate assessors about the benefit of designating a classification code locally while working with DOR to officially add it as a new property class: Greater Regulatory Guidance.

Other potential tools to aid owners – Using PILOT and/or 121A agreements to the extent there is community support and/or legal authority.

Outcomes and Follow Up

LDS submitted a request in September 2016 to DOR designate affordable housing use categories for both ownership and rental housing with positive feedback from Joanne Graziano. In addition, MHP submitted a request to add guidance on the subject. The DOR is currently considering adding three new property type classification codes to alert assessors that a property subject to an affordable housing restriction requires different considerations from traditional market-rate properties. These new affordable housing classification codes will make affordable properties more easily discernable from market rate properties allow for it to be treated separately during the valuation process. This will make the assessing process more efficient and reduce over taxation of affordable housing.

The three new classification codes are:

• 107 Affordable Housing Deed Restricted Single-Family Home;

• 108 Affordable Housing Deed Restricted Condominium; and

• 114 Affordable Housing Restricted Rental Units.

MHP is also working on a separate request for DOR to provide a guidance on assessing affordable housing.

Additionally, in January 2017, LDS prepared a training manual for Massachusetts Real Estate Assessors. This handbook provides a general overview of affordable housing and typical affordable housing terms, as well as other useful data such as explaining deed riders, how to calculate an ownership resale, etc.

As a result of LDS's work, this issue was included in the June 2017 Massachusetts Association of Assessing Officers continuing educational training!

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