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February 5, 2020

Budget Testimony: New York must repeal the 485-a property tax exemption

My name is Robert Galbraith and I am a senior research analyst at the Public Accountability Initiative, a non-profit corporate and government watchdog organization based in Buffalo.

Over the past two years, I have researched how the 485-a tax exemption has been applied in Buffalo and published two reports on the subject: “Buffalo’s Costly Mistake” and “The Rising Cost of Buffalo’s Worst Tax Break.” As one can infer from the titles of these reports, I found that the 485-a tax exemption is ill-defined, easily abused, and fails to achieve its intended purpose. In Buffalo, where 485-a is used more than in any other upstate city, I estimated the cost of 485-a exemptions to be $66.9 million through 2030. This is a transfer of money from other property owners and renters in the city to primarily wealthy real estate developers who frequently receive the benefit of 485-a as an added bonus on top of a stack of other public subsidies.

Abuses of the exemption similar to the ones that I have documented have been reported by Tim Knauss in Syracuse and Michael DeMasi in Albany.

The primary issues with 485-a are the law’s extremely broad statutory language, the lack of discretion given to local governments to approve or deny exemptions, the complete lack of reporting or oversight requirements for the program, and the exclusivity of the properties that receive the subsidy.

However, this particular flawed program is merely a manifestation of a larger problem of political prioritization of real estate industry profits over the well-being of communities. Even with the repeal of 485-a these same issues are bound to arise again and again until there is a broader realignment of priorities within our governing institutions.

The result of these types of policies in Buffalo has been that property owners and renters have been compelled to subsidize the construction of new luxury developments, which have then driven up property values and rents in Buffalo, especially in gentrifying neighborhoods on the West Side and near East Side. When the city completed its first city-wide property tax reassessment in 18 years in 2019, skyrocketing increases in property values sent predicted tax bills up as much as 500%.

The overall impact has been that low- and moderate-income families in Buffalo have been forced to subsidize their own displacement while real estate speculators have profited. While

Buffalo has seen high housing sales volume and fast-rising house prices and rents, homeownership has sunk to near-record lows.

The following is a description of the specific failings of the 485-a tax exemption which – in consideration of the overall impact of the program described above – militate for its repeal.

The statutory language creating 485-a is overly broad and has led to widespread abuse

The content of Section 485-a of the Real Property Tax Law law itself has several deficiencies that have led to its abuse by real estate developers with no recourse for municipalities or property owners.

First, Section 485-a(3) specifies that the exemption applies to the conversion of a “property” from non-residential to mixed-use, as opposed to a structure on a property. This has allowed developers to obtain the exemption – which was created to incentivize the re-use of legacy industrial and commercial buildings in upstate cities – for newly built structures. In some cases in developers have actually demolished houses and received 485-a exemptions for new luxury student apartments built on the land.

A particularly egregious example of this abuse of the tax exemption is the case of the Campus Walk Apartments on Buffalo’s West Side. There, Greenleaf Development demolished 17 houses near the Buffalo State College campus and combined the residential properties where those houses stood into a non-residential property at the corner of the street. Now that the now-vacant land where houses once stood was part of a non-residential parcel, Greenleaf built two luxury student housing buildings and obtained 485-a exemptions worth $2.6 million. In 2018, the apartments in those buildings rented for between $2,715 and $3,420 per month in a Buffalo neighborhood where the median income is $33,303 per year.

This same type of gaming the system has been documented in Syracuse as well.

Another failure of the wording of the 485-a statute is that it defines “mixed-use” as:

> [P]roperty on which will exist, after completion of residential construction work or a combination of residential construction work and commercial construction work, a building or structure used for both residential and commercial purposes.

This broad definition, which does not identify any minimum for “residential or commercial purposes” has created a host of absurd outcomes, including developers claiming that a vending machine in a building lobby is a commercial purpose entitling the apartment building to tax exemptions and developers adding a single, unavailable to the public apartment to an otherwise entirely commercial building to avoid paying property taxes.

We have termed the latter abuse of the 485-a law the “Benderson loophole” after the developer who first exploited it in Buffalo to obtain what remains the city’s most valuable 485-a exemption.

Benderson Development received $11.7 million in subsidies from Erie Canal Harbor Development Corporation, Erie County IDA, and the DEC’s Brownfield Tax Credit program for its One Canalside building in downtown Buffalo. The building, which has 175,546 square feet of space dedicated to offices for the law firm Phillips Lytle, a Marriott hotel, and a pizza restaurant, has one 904 square-foot apartment. That one apartment, which amounts to 0.5% of the total area of the building, qualifies One Canalside for a 485-a exemption worth $5.9 million on top of the other $11.7 million public subsidies Benderson received, a more than 33% increase.

Several other prominent projects in Buffalo have gone on to exploit this loophole or express the intent to, including the Curtiss Hotel and the forthcoming Rosanna Elizabeth Visual and Performing Arts Center and Emerson School of Hospitality.

In the latter case, Erie County IDA minutes show that the developers of the second Buffalo Public Schools Emerson School of Hospitality building added a single apartment to their plan for the building to obtain a 485-a exemption on top of the $3 million per year in rent they had negotiated with Buffalo Public Schools.

Municipalities have no discretion over 485-a exemptions

While the expansive scope of the statute to include all properties (rather than just buildings) with any mix of commercial and residential uses (with no minimums on residential or commercial area) has led real estate developers and their lawyers to seek exemptions for projects that have nothing to do with the statute’s intent, the law also grants no discretion to municipalities in awarding exemptions.

Real Property Tax Law § 485-a(6) specifies that assessors “shall” approve 485-a applications, exempting properties from taxes, if they meet the low, and ill-defined bar for mixed-use conversion.

Once a municipality has opted into the program – which many did before abuse was as rampant as it has become – it has no discretion over granting exemptions other than opting out completely.

There is no oversight over 485-a exemptions

After a 485-a exemption has been granted there is no required oversight to ensure that the property is actually being put to the uses that qualify it for the exemption. There is also no reporting requirement for 485-a exemptions, rendering information about the program extremely onerous and time-consuming to compile.

By contrast, every year the Office of the State Comptroller issues an annual performance report analyzing subsidies awarded by industrial development agencies and the Department of Taxation and Finance publishes reports annually on a variety of subsidy programs, including brownfield tax credits and film tax credits.

With no transparency or oversight, the 485-a program has facilitated abuse that is shifting millions of dollars in tax burden from wealthy real estate investors onto property owners and renters.

Housing subsidized through 485-a is exclusive and unaffordable

In a 2017 report Partnership for the Public Good (PPG found that 55% of Buffalo households cannot afford their rent, meaning that they meet HUD's definition of rent burden: paying more than 30% of their income towards rent and utilities. High housing costs contribute to Buffalo's 30.5% poverty rate and to homelessness, which was experienced by 5,953 people in 2016, a 10% increase over the previous year, according to a different PPG report from 2018.

According to the US Department of Housing and Urban Development (HUD) the fair market rent for a two-bedroom apartment in Buffalo is $799.

When investigating the 485-a program we were unable to find any apartments in exempted buildings in Buffalo that rented for less than $1,175 per month for a two-bedroom apartment. As mentioned above, apartments in the exempted Campus Walk Apartments rent for between $2,715 and $3,420 per month. In downtown Buffalo, where many 485-a properties are located, the average rental rate for a two-bedroom apartment is $1,647, according to a recent study commissioned by the Buffalo Urban Development Corporation.

The 421-g tax exemption, upon which 485-a was modeled when it was drafted in 2002, requires that all residential units subsidized through the program be rent stabilized. Because 485-a was created before rent stabilization was extended to upstate New York, that requirement was discarded.

The result has been a massive subsidy, frequently stacked with other subsidy programs, the vast majority of which benefits wealthy investors while regular property owners and renters are stuck with the bill in the form of higher property tax bills from displacing the tax burden of exempt properties onto the rest of tax base. Working people end up paying for these subsidies again as subsidized construction projects drive up nearby rents and assessments.

There are a great many programs that incentivize real estate development in upstate cities. The 485-a program is not achieving its intended outcomes and is squeezing the people who have the least to give in order to merely expand the profit margins of real estate developers who are already doing well.

While the above description of the specific shortcomings of the 485-a program may suggest that it can simply be amended and fixed, the myriad other incentives that already exist and need for a new approach to economic development that prioritizes the well-being of communities of people over profits demands that 485-a be repealed outright.