SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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511 LAFAYETTE LLC,LIOR 854 PUTNAM PROPERTY LLC,577 BED STUY LLC

Petitioners,

- v -

LOUISE CARROLL, AS COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT,

Respondent.

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INDEX NO. 153317/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 12, 14, 22, 23, 38 were read on this motion to/for ARTICLE 78.

The petition to annul respondent's determination which denied petitioners' applications for a tax exemption under Section 421-a of the Real Property Tax Law ("RPTL") is denied.

Background

Petitioners own three separate properties in Brooklyn. They claim that they sought to utilize a specific portion of the tax exemption program under Section 421-a of the RPTL[1] referred to in the amended petition as Option D. Petitioners contend that under Option D, there is no affordability requirement for projects outside of Manhattan with no more than 35 units and with an initial, post-construction average assessed value per unit of $65,000 or below. Option D also contains a shorter tax exemption period (a 14-year full exemption followed by a six-year period with a 25 percent exemption) as compared with the other types of development projects in

[1] The Court recognizes that this proceeding concerns the prior 421-a tax exemption program as this proceeding has been pending for nearly four years. Although it was only recently transferred to the undersigned, the Court apologizes, on behalf of the court system, for the absurd and unacceptable delay in the resolution of this proceeding.

the 421-a program. Petitioners also observe that Option D concerns homeownership projects whereas many of the other options concern rental buildings.

Petitioners allege that the 511 Lafayette project contained only 10 condo units, 854 Putnam had 8 condo units and 577 Madison had only 6 condo units. The central component of this proceeding is petitioners' complaint that respondent insisted on a replacement ratio for each of these projects (NYSCEF Doc. No. 21 [final determinations from respondent]). According to petitioners, the replacement ratio requires that a certain number of units have to be affordable where a project involved the removal of existing units. They insist that for 511 Lafayette, this meant that 3 of the 10 units had to be affordable rental units because 3 units were demolished prior to the start of the construction project. Similar replacement ratio issues were cited for each of the three developments.

The Court observes that the letter from respondent explained the issue as follows: “421-a(16)(i) specifies that if the land on which an Eligible Site is located contained any dwelling units three years prior to the Commencement Date of the first Eligible Multiple Dwelling thereon, then such Eligible Site shall contain at least one Affordable Housing Unit for each dwelling unit that existed on such date and was thereafter demolished, removed or reconfigured” (NYSCEF Doc. No. 36).

Petitioners argue that the insistence on imposing the replacement ratio applicable for rental properties means that they would not be able to utilize Option D at all as it would prevent the units from being sold as condos. They claim it is irrational to insist that a developer create a split project that is both condos and rental units.

In opposition, respondent argues that on each of the development sites, there were dwelling units that existed three years prior to the start of construction which were removed as

part of the development. It acknowledges that Option D applies to a homeownership project. Respondent argues that homeownership projects under Option D must comply with the other requirements under RPTL §421-a, including that they have to replace dwelling units that existed on the site three years prior to the relevant commencement date. It insists that the statutory scheme specifically provides that it applies this replacement ratio to all projects, even homeownership developments that seek the benefits of Option D. Respondent argues that petitioners could have either not removed these prior units or built a split project with both condos and rental units. It notes that the statute directly addresses this issue by noting that a homeownership project can be a multiple dwelling "or a portion thereof."

In reply, petitioners contend that respondent's interpretation of 421-a is irrational. They insist that the replacement ratio does not apply to Option D applications because it would result in the inability of developers to use this program. Petitioners question why the legislature would provide a scheme under which a developer would have to couple a homeownership project with another type (rental) of project. They contend that in order to avoid this outcome, a developer would have to find a location that did not have a prior dwelling and thereby not be required to replace such units. Petitioners maintain it is absurd to suggest that a developer could build around the existing dwelling units.

Discussion

"It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record and once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end. Indeed, the

determination of an agency, acting pursuant to its authority and within the orbit of its expertise, is entitled to deference and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record" (*Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428-29 [1st Dept 2007], *affd* 11 NY3d 859 [2008] [internal quotations and citations omitted]).

The Court's analysis begins with the relevant provisions of the 421-a program. It provides that "Replacement ratio. If the land on which an eligible site is located contained any dwelling units three years prior to the commencement date of the first eligible multiple dwelling thereon, then such eligible site shall contain at least one affordable housing unit for each dwelling unit that existed on such date and was thereafter demolished, removed or reconfigured" (RPTL § 421-a[16][i]). "Eligible Site" is defined under the statute as "either: (A) a tax lot containing an eligible multiple dwelling; or (B) a zoning lot containing two or more eligible multiple dwellings that are part of a single application" (RPTL § 421-a[16][xxix]).

A "Homeownership project" is defined as "a multiple dwelling or portion thereof operated as condominium or cooperative housing, however, it shall not include a multiple dwelling or portion thereof operated as cooperative or condominium housing located within the borough of Manhattan, and shall not include a multiple dwelling that contains more than thirty-five units" (RPTL § 421-a[16][xxvii]). The affordable housing unit cited in the replacement ratio requirement defines an affordable housing unit as "collectively and individually, affordable housing forty percent units, affordable housing sixty percent units, affordable housing seventy percent units, affordable housing one hundred twenty percent units and affordable housing one hundred thirty percent units" (RPTL § 421-a[16][xv]).

This means that the projects at issue here are "eligible sites" under 421-a, which implicates the replacement ratio requirement indicated above and that petitioners had to include affordable housing units pursuant to the statutory scheme. Petitioners cited to no exemption either in the statute or in caselaw that excludes a project under Option D from the replacement ratio.

And there is simply no way for this Court to read the aforementioned provisions to find an exclusion for projects that seek the tax exemption under Option D. Petitioners' objections are not based in statutory interpretation; rather, they are based on their view of the policy outcomes of this statutory scheme. They think that it makes no sense to require developers who are seeking a tax exemption for a homeownership project – here, condos - to have to provide rental units in order to replace units that were removed. But it is not this Court's role to opine on the wisdom of housing policy. Instead, this Court's role is to review the statutory scheme and apply it to the instant facts. This statute does not provide any language that exempts Option D from the requirement to replace lost units and it is not within this Court's power to rewrite a statute so that it might (at least according to petitioners) better serve the purposes of legislation. That is the province of the legislature.

That petitioners don't like this outcome is also not a reason to modify the statute in their favor. Respondent rationally relied upon the clear meaning of the statute- which has an unambiguous requirement that a developer has to replace lost units. Of course, while it may be inconvenient, it is not impossible for a building to contain both condos and rental units nor is it impossible to develop a site without destroying or removing the existing units. To be sure, that might disincentive a developer from picking Option D. But, after all, the purpose of the program

is to provide a tax exemption in exchange for complying with the program's requirements. Nothing requires a developer to utilize this program.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

6/11/2024
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE