Testimony of Reinvent Albany for the Joint Legislative Hearing On Housing

February 27, 2025

Reinvent Albany advocates for open, accountable New York government and fact-based public policy.

First, we urge you to end New York's $424 million a year Opportunity Zone (OZ) tax break – stop subsidizing out-of-state and in-state luxury housing. We urge the Senate and Assembly to put into your one-house budgets S3340 (Gianaris) / A3247 (Dinowitz), which would end the state's Opportunity Zone (OZ) tax break.

Today's hearing is about how to build more housing in New York. But what most New Yorkers do not know is that under the state's Opportunity Zone program, their tax dollars are subsidizing out-of-state construction in luxury apartments across the country.

In the federal 2017 Tax Cuts and Jobs Act, the Trump administration established Opportunity Zones, which give capital gains tax breaks to some investments in areas with low household incomes. Though supposedly intended to help needy people, there is overwhelming evidence that the biggest beneficiaries are the very wealthy and high-end real estate. Importantly, New-York-based investors can receive state and city capital gains tax breaks for investing in an Opportunity Zone anywhere in the USA. This means New York tax dollars are potentially underwriting everything from gun distributors in Florida and oil rigs in Texas to luxury developments in North Carolina.

As we noted in our economic development testimony, the lobbyists who helped write the original OZ program have urged the U.S. Treasury Department to pass a regulation reinterpreting the law so that investors do not need to hold their OZ investments for 10 years – they can sell them, reinvest in a different OZ, and still pay no taxes on their gains (emphasis ours):

> *Under the OZ incentive, investors are required to hold their investments in a QOF for a minimum of 10 years to qualify for exclusion of the capital gains created by their investments. In regulations, Treasury has interpreted current*

law to say that any capital gains recognized by a QOF prior to 10 years are generally taxable to its investors, unless the taxpayer reinvests the gain in a QOF. As such, if an OZ fund sells property within 10 years, any capital gain from that sale is generally fully taxable to its investors. This discourages many investors and investment fund managers with a shorter-period investment hold strategy from participating in the OZ incentive. ***A far better result would be to treat gains from the sale of OZ property by an OZ fund similarly to Section 1031 gains whereby an OZ fund that reinvests 100% of the proceeds from a sale into OZ property would not recognize the gain.*** *This modification would allow OZ funds to capitalize on successful investments and inject additional investments into even more low-income communities.*

If the Treasury does pass such a regulation – as seems likely – New York will not be able to collect benefits from capital gains that occur under this proposal. Citizens Budget Commission originally projected that OZs will cost NYS up to $284 million and NYC up to $140 million annually from 2029 – but in fact, that day could come in 2026.

Most research suggests that OZs are doing little to help those in need. One study's sample found more than half of OZ investments going to real estate, and a second study found that OZ investors "primarily targeted the high end real estate market." It follows that under OZs, a staggering amount of NY tax dollars could go to luxury apartments in other states rather than to NY's schools, clean water, and public transit.

Second, stop Industrial Development Agencies from illegally and unconstitutionally abating local property taxes for housing developments. The NYS Constitution states that IDAs can only theoretically be allowed to help build housing for "low-income persons." (New York State uses the federal Housing Urban Development classification of "low-income" as 80% or less of the Area Median Income [AMI]. We note that "low-income housing" is not the same as "affordable housing.")

IDAs were created in 1969 to promote "economically sound commerce and industry." Article 18-A of the General Municipal Law lists specific potential activities for IDAs including various ways to promote "manufacturing, warehousing, commercial and research facilities." The law pointedly does not include subsidizing housing as part of the mission of "industrial" development agencies. Currently, IDAs are structured to subsidize for-profit businesses – not housing for low-income people, which in most cases may never turn a profit or break even.

Reinvent Albany believes IDAs' ideology, experience, and outlook makes them the wrong part of government to be creating housing, especially low-income housing – which is more of a social service than a job creation program. Further, we believe it is illegal for IDAs to be subsidizing anything other than potentially low-income housing, though they are anyway. A study by the IDA trade group, the Economic Development Council, found that only 25% of units subsidized by IDAs were "affordable" – and even the affordability of these apartments is questionable.

We note that there are numerous public authorities already dedicated to fostering affordable housing, including:

State Authorities

- Homeless Housing Assistance Corporation
- Housing Trust Fund Corporation
- New York State Affordable Housing Corporation
- New York State Housing Finance Agency

Local Authorities

- New York City Housing Development Corporation
- New York City Public Housing Preservation Trust

Local Development Corporations

- Albion Housing and Economic Development Corporation
- Ulster County Housing Development Corporation

Why add IDAs to this extensive list of housing-related authorities? IDA tax breaks already drain $1.8 billion a year from public schools in New York State. We believe it is completely illogical to allow IDAs to give away yet more local property tax revenue to encourage housing that will draw more residents and create more demands on public schools and other services.

Our take is that IDA subsidies are politically attractive because they are off-budget and appear to be free money – but there is no such thing as a free subsidy or free money. What is really happening here is a complicated shifting of the costs of low-income housing away from the very large and diverse state tax base to local governments and local schools that rely on property taxes. Housing for low-income people is essential, and it's worth paying for with real, on-budget tax dollars, not fiscal gimmicks.

The Constitution

Reinvent Albany believes Article VII and Article XVIII of the New York State Constitution make it very clear that Industrial Development Agencies can only subsidize housing for "persons of low income."

Article VII of the New York State Constitution speaks to economic development and authorizes the State to finance or fund businesses, and for the State to do things like pass the 1969 law creating Industrial Development Agencies.

Importantly, Article VII Section 8(3) specifically prohibits public corporations, including IDAs, from subsidizing housing (emphasis ours):

> *Such plants, buildings or facilities or machinery and equipment [financed by public corporations] therefor* ***shall not be****…* ***(ii) used primarily as a hotel, apartment house or other place of business which furnishes dwelling space or accommodations to either residents or transients***

Article XVIII of the State Constitution is dedicated to housing. Article XVIII Section 1 authorizes the State Legislature to provide for:

> ***Low rent housing*** *and* ***nursing home accommodations for persons of low income*** *as defined by law, or for the* ***clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas****, or for both such purposes.*

Article XVIII Section 6 emphasizes that any state housing aid is restricted to low-income housing:

> ***The occupancy of any such project shall be restricted to persons of low income***

Article XVIII Section 10 makes clear that housing subsidies are for low-income people:

> ***Nothing in this article contained shall be deemed to authorize or empower the state, or any city, town, village or public corporation to engage in any private business or enterprise other than the building and operation of low rent dwelling houses for persons of low income or the loaning of money to owners of existing multiple dwellings as herein provided****.*

Thank you for your consideration.