



TAMS and Development Moratoria Actions Call For Industry Attention

By Michael J. Novogradac, CPA

Two important issues surfaced last month, issues that call for vigilance and action from affordable housing professionals.

On the legislative front, Sen. Bob Graham's (D-Fla.) effort to attach his TAMs (Technical Advice Memoranda) legislation, S. 2006, to a business tax bill currently being considered by the Senate Finance Committee would ensure that LIHTC developers could include land preparation and other costs in eligible basis. On the legal front, the U.S. Supreme Court, in a 6 to 3 ruling, denied compensation to property owners who challenged a series of temporary development moratoria near Lake Tahoe, Calif. In the words of Gus Bauman, an attorney with the law firm Beveridge and Diamond in Washington, D.C, the Supreme Court's ruling failed to see that moratoria are admissions of planning failure – "a failure to plan for and provide adequate housing that is affordable to all segments of society." The land-use attorney addressed his comments to a gathering of the National Association of Home Builders (NAHB) media seminar. He pointed out that the Supreme Court decision was by no means an endorsement for a moratorium, which he described as a blunt instrument of planners. According to NAHB President Gary Garczynski, if local governments see this ruling as a green light to impose specious moratoria, then the Supreme Court's decision will affect housing affordability. "This is bad news for working families in search of affordable new housing, bad news for builders trying to provide that housing and bad news for communities wishing to house and employ all segments of society," he says. (See related story on page one.) On the positive side, Graham's attempts to attach the TAMs legislation is that the Senate Finance Committee has shown interest in including some housing legislation in the small business tax bill. There is a downside however, interest exists only if the cost of that housing legislation doesn't exceed \$1 billion — the TAMs legislation has an estimated cost of only \$520 million but when added to the other housing measures included in the package, the costs exceed the \$1 billion cap. Senate Bill 2006, to amend the Internal Revenue Code of 1986 to clarify the eligibility of certain expenses for the low-income housing tax credit, is being carried by Graham, Orrin Hatch (R-Utah), James Jeffords (I-Vt.), John Kerry (D-Mass.) and Robert Torricelli (D-N.J.)

The Finance Committee has proposed implementing the housing measures for one year in order to stay within the cost cap. While this is not a complete victory, it would set a solid precedent for the TAMs legislation to be made permanent next year. ❖

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