

**AIMS Washington Update
NAA/NMHC Joint Legislative Program**

June 26, 2008

- 1. Articles Note Cracks in the "Ownership Society"**
- 2. A New American Dream? Suburban Development Under Attack**
- 3. Lawsuits Target Apartment Firms "Harboring" Illegal Immigrants**
- 4. Congress Struggles to Pass Comprehensive Housing Stimulus Bill**
- 5. Carried Interest Once Again Targeted**
- 6. Brownfield and Energy Tax Incentives Caught in Partisan Battle**
- 7. Climate Change/"Green" Legislation**
- 8. Immigration: Employee Screening Proposal**

ARTICLES NOTE CRACKS IN THE "OWNERSHIP SOCIETY"

Two recent articles in *The New York Times* declare President Bush's "ownership society" by and large a failure. The 2002 policy effort was designed to increase homeownership among minorities. The first article ("Rise in Renters Erasing Gains for Ownership," June 21) says the foreclosure crisis will essentially wipe out the homeownership gains recorded in recent years.

It quotes William C. Apgar, former FHA Commissioner and now a senior housing scholar at Harvard University, as noting that "The bloom is off of homeownership....People are beginning to understand that homeownership can be a very risky venture." Apgar documented the dramatic growth in renters, noting that Harvard had predicted an increase of 1.8 million renters from 2005 to 2015; instead they documented 1.5 million new renters from 2005 to 2007 alone. (See <http://tinyurl.com/5wat3t>.)

The second *Times* article, a column by Paul Krugman ("Home Not-So-Sweet Home;" June 23), questions the wisdom of an "ownership society" initiative to begin with. Krugman asks why ever-increasing homeownership should be a policy goal and notes that both political parties unfairly treat renters like second-class citizens. He outlines some of the overlooked disadvantages of homeownership, such as financial risk, inability to move to where the jobs are and long commutes.

Krugman suggests "we drop the obsession with ownership" and level the playing field, which "at the moment is hugely tilted against renting." He adds, "while we're at it, let's try to open our

minds to the possibility that those who choose to rent rather than buy can still share in the American dream — and still have a stake in the nation's future.” (See <http://tinyurl.com/5ata9d>.)

A NEW AMERICAN DREAM? SUBURBAN DEVELOPMENT UNDER ATTACK

Record-setting gasoline prices, changing demographics and shifts in lifestyle preferences are causing many households—and the media—to rethink how and where we live. A series of recent articles points to increasing demand for urban living and a bleak outlook for America's suburbs.

On June 16, CNN posted an article on its web site titled “**Is America's suburban dream collapsing into a nightmare?**”. The piece explores how the foreclosure crisis is turning many American suburbs into wastelands of abandoned properties and rising crime. It then examines how the American dream is being redefined to include more “walkable urbanism” and says that as a result of these changes, there will be a surplus of 22 million large-lot houses by 2025. It predicts that these houses will be occupied by lower-income households who have been pushed out of the once-affordable inner city. (See <http://tinyurl.com/6yo768>.)

A June 12 editorial in the *Salt Lake Tribune* (“**Sensible living: Government needs to get out of the way**”) echoes that message, saying that “in our new ‘energy-restricted’ economy, condos and high-rises will become the new ‘McMansions.’” (See www.sltrib.com/opinion/ci_9567608.) The newspaper notes that in this new environment “...‘high density’ can no longer be dirty words” and governments should be giving tax credits to and expediting permitting for transit-oriented, urban infill and new urbanism developments.

On June 27, *The Wall Street Journal* ran an article, “**Suburbs a Mile Too Far for Some,**” that profiled baby boomers and echo boomers who have traded suburban living for higher-density housing downtown. It quotes experts who say that fundamental changes in housing demand are occurring throughout the country, changes that one scholar at the Brookings Institution calls “the beginning of the end of sprawl.” (See <http://tinyurl.com/4584j4>; subscription required.)

Not only is higher-density housing increasingly desirable, it's also increasingly necessary, according to a growing body of research connecting our development patterns to global warming. A new report from the Brookings Institution, “**Shrinking the Carbon Footprint of Metropolitan America,**” quantifies the carbon emissions of the 100 largest U.S. metro areas and finds the smallest carbon footprints in dense metro regions with rail transit. It calls for policies that encourage transit-oriented and walkable developments. (See <http://tinyurl.com/6c8a8w>.)

Last year, a report by the Urban Land Institute (ULI), “**Growing Cooler: Evidence on Urban Development and Climate Change,**” found that changing America's land development patterns

to emphasize compact, mixed-use, walkable neighborhoods could do as much to lower greenhouse gas emissions as many of the other climate policies being promoted by politicians at the state and national level. (See <http://tinyurl.com/28mf2q>.) NMHC and ULI recently published a toolkit that identifies policies and practices localities can adopt to promote compact development. (See the May 29 *Washington Update*.) To purchase a copy, visit <http://tinyURL.com/6cnqto>.

LAWSUITS TARGET APARTMENT FIRMS “HARBORING” ILLEGAL IMMIGRANTS

Apartment providers are once again being targeted by groups that seek to curb illegal immigration. Last year, with the support of the Washington, DC-based Immigration Reform Law Institute (IRLI), several localities (Hazleton, PA, Escondido, CA, Farmer’s Branch, TX) enacted laws prohibiting apartment owners from renting to undocumented immigrants. For the most part, the laws have been overturned or placed on hold by the courts.

Now, in a new development, the IRLI has filed a lawsuit against a New Jersey management firm, claiming the company knowingly rented apartments to undocumented immigrants in violation of federal law. The suit alleges that the company actively seeks out the immigrants, engages in racial segregation among residents and steers lower-income and undocumented residents to decaying properties (*Delrio-Mocci v. Connolly Properties Inc.*). The complaint alleges violations of the federal Racketeer Influenced and Corrupt Organizations Act (RICO), which was enacted in 1970 to combat organized crime and has not been previously applied in this way.

In March, the U.S. Department of Homeland Security (DHS) initiated a separate lawsuit against a Kentucky apartment owner for violating immigration law by allegedly harboring undocumented residents. Importantly, federal law does not require apartment firms to screen residents for their immigration status. The New Jersey case has yet to go to court; on June 17, however, a federal judge in Lexington ruled that the owner being sued by DHS could use ignorance of the law as a permissible defense. In other words, the court will allow the firm to claim that even if it violated the law it should not be held accountable because it was unaware of its obligations under the law.

NAA/NMHC are actively following this issue and will publish a special *Property Management Update* newsletter on the topic next month. We are also educating policymakers that apartment firms should not be forced under federal or local law to verify the legal status of current or prospective residents.

CONGRESS STRUGGLES TO PASS COMPREHENSIVE HOUSING STIMULUS BILL

The Senate version of a comprehensive housing stimulus bill stalled unexpectedly this week. The package includes a \$300 billion foreclosure prevention measure, FHA reform, GSE reform and a package of housing-related tax incentives. The House passed its version of the bill (H.R. 5380) on May 8, and lawmakers have been working behind the scenes to resolve differences between the House bill and a Senate version that passed a key committee in April. Lawmakers originally hoped to complete the bill and send it to President Bush before leaving for their July 4th recess.

Early in the week it appeared that the Senate would quickly pass its now-modified bill after an overwhelmingly bipartisan 83-9 vote on Tuesday to limit debate on the measure. On Thursday, however, a standoff over energy tax incentives delayed final consideration of the measure. Senator John Ensign (R-NV) demanded a vote on an amendment to provide \$8.3 billion of renewable energy tax-credit extensions; the incentives were included in the earlier Senate bill but did not survive the House. Senate Democrats opposed the amendment as non-germane and because it violates "pay as you go" budget rules.

Unable to reach a compromise, the measure has been postponed until after the July 4th recess. Even if it passes the Senate, the package faces more obstacles, including a veto threat by President Bush and remaining differences between the House and Senate versions. In addition, House Republicans are now threatening to delay the bill by demanding that hearings first be held on mortgages some Democratic Senators received from Countrywide Mortgage to determine if the housing package could benefit Countrywide.

If enacted, the measure contains a number of provisions of interest to apartment firms, including a modification of the Low-Income Housing Tax Credit (LIHTC) program as well as improvements to the LIHTC program to help restore liquidity to the program; a ban on seller-financed downpayment "gifts;" a temporary increase in the tax-exempt private-activity bond cap for multifamily and mortgage revenue bonds; and a number of provisions sought by the REIT industry. NAA/NMHC will continue our aggressive lobbying efforts on the measure to ensure that any final package balances homeownership incentives with rental incentives.

CARRIED INTEREST ONCE AGAIN TARGETED

The annual battle on Capitol Hill to prevent 20 million middle-class taxpayers from having to pay the Alternative Minimum Tax (AMT) is underway and the real estate industry is once again caught in the middle of a partisan battle over whether and how to "pay for" the patch. As expected, lawmakers are once again targeting "carried interest" or the "promote" received by a general partnership as a source of federal tax revenue.

On June 25, the House of Representatives passed a one-year AMT patch (H.R. 6275) that is largely paid for by taxing carried interest as ordinary income, which could raise taxes on this

income by up to 133 percent. During the Ways and Means Committee markup of the bill, Representative Kevin Brady (R-TX) offered an unsuccessful amendment to exempt real estate partnerships from the change, noting that they make up 46 percent of the partnerships that would see a tax increase. Despite this latest action, a tax increase on carried interest is unlikely to be enacted in 2008 because Senate Republicans continue to insist that the AMT patch not be accompanied by offsetting tax increases.

BROWNFIELD AND ENERGY TAX INCENTIVES CAUGHT IN PARTISAN BATTLE

The partisan stalemate over whether tax law changes should be paid for has also ensnared efforts to extend several expired and expiring tax incentives of interest to real estate. Senate Republicans, along with some Democrats, believe that a renewal or extension of current law should not require a “pay-for.” House Democrats, meanwhile, argue that any and all tax bills should be paid for.

On June 10, Senate Democrats failed to secure enough votes to overcome a filibuster of a House-passed bill (H.R. 6049) that would, among other things, retroactively extend brownfields expensing and extend for one year the commercial buildings energy efficiency tax deduction that is scheduled to expire on December 31. On June 6, Senate Republicans unveiled an alternative (S. 3098) that would patch the AMT and extend the temporary tax provisions for two years without paying for any part of the bill, but consideration of that legislation has not taken place. Although the extenders enjoy strong bipartisan support, the impasse over paying for them makes the path to enactment this year unclear.

CLIMATE CHANGE/“GREEN” LEGISLATION

Efforts to pass comprehensive climate change legislation this year effectively ended on June 6 when the Senate failed to secure enough votes to overcome a filibuster on the Lieberman-Warner Climate Security Act (S. 2191); the measure sought to reduce greenhouse gases by nearly 70 percent through a cap-and-trade program. House lawmakers are considering a bill (H.R. 6186) that would reduce emissions by 85 percent. Of interest to apartment firms, both bills include NAA/NMHC-supported incentives for energy efficiency in new and existing buildings. However, they also include NAA/NMHC-opposed language that would create mandatory federal standards for state energy-efficiency building codes that greatly exceed current standards.

Despite this latest setback, climate change is expected to be a top priority for the next Congress and the new Administration. Senate leaders, who view S. 2191 as a blueprint for future action in this area, have already begun efforts to lay the groundwork for passage of the bill next year.

In addition to the cap-and-trade measures discussed above, lawmakers are also considering legislation to address climate change through energy-efficiency standards and mortgage-related incentives. On June 11, NAA/NMHC testified before Congress on a bill (H.R. 6078) that would set minimum energy-efficiency standards, create a new energy-efficiency demonstration program for HUD multifamily properties and provide an additional credit for Fannie Mae and Freddie Mac's housing goals for energy-efficient mortgages, among other provisions.

Testifying on NAA/NMHC's behalf, Alan George, Executive Vice President and Chief Investment Officer of Equity Residential, explained that the apartment industry is committed to increasing the energy efficiency and overall sustainability of its properties in a way that does not jeopardize the availability and affordability of housing. George offered improvements for the bill, including tying minimum efficiency standards or sustainability benchmarks to nationally recognized codes and standards and providing financial and other incentives to developers to help them meet higher energy standards. He also stressed the importance of making benchmarks voluntary rather than mandatory. NAA/NMHC's testimony is at www.naahq.org/govern_affairs/Issues/.

IMMIGRATION: EMPLOYEE SCREENING PROPOSAL

The Bush Administration continues its efforts to enforce and expand existing immigration laws, particularly in the area of employment. On June 12, the federal agency that oversees federal contracting rules, the Federal Acquisition Regulation (FAR) Council, issued a proposed regulation that would require many federal contractors to verify the legal status of certain employees using the Department of Homeland Security's flawed e-Verify system. E-Verify (formerly called Basic Pilot) is a voluntary Internet-based system that electronically compares information on I-9 forms against government records to determine an individual's work status.

NAA/NMHC have opposed Congressional efforts to mandate participation in the federal screening program because the system is fraught with errors and could subject firms to legal liability. It also raises privacy issues and concerns over potential discrimination in employment decisions. If implemented, the rule would apply to all newly hired employees and existing employees directly involved in performing work on covered federal contracts. The proposed rule is available at <http://tinyurl.com/3zatp7>. The rule is in response to an Executive Order issued on June 9 and posted here: <http://tinyurl.com/6gbbp5d>.

NAA/NMHC are analyzing the potential impact of the rule on member companies. We are also following several bills pending in Congress that would mandate participation in the e-Verify program. Congressional debate on the E-Verify system is also being fueled by the fact that authorization for the program is set to expire on December 31. At a June 10 House panel hearing, lawmakers disagreed on whether to extend the current federal E-Verify system or to replace the system in favor of a new employment verification system based heavily on state databases that would include background checks and biometric safeguards.

The material in this NAA/NMHC AIMS update is copyrighted and intended for AIMS members only. It cannot be posted on public web sites, reprinted or distributed to non-AIMS members without prior permission.