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Some Suggestions To Solve The Housing Crisis

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New York City needs more housing desperately. To achieve it, should we have more programs? Or maybe fewer programs? [-] GETTY

The nation remains in the midst of a housing crisis. It needs several million more residences than it has. New Yorkers in particular face an abysmally low vacancy rate for rental housing. Politicians trip over one another to suggest governmental programs and expenditures to try to solve the housing

crisis: tax credits, subsidized financing, affordability requirements, bonds, and more. Surely the desire to “do something” represents a laudable and noble instinct for any government.

As a constructive alternative, perhaps the politicians should instead consider having government do less, by cutting back the myriad restraints on housing development that already exist. One could start by asking whether zoning and the development approval process more generally have gotten completely out of control, especially as they relate to residential projects.

In New York, for example, many major projects must endure a land use (and environmental) review process that can easily take a year or more. During that delay, the developer (or someone) needs to pay carrying costs for the site. That burden can sometimes in itself make a project uneconomic. That doesn't even consider the out-of-pocket costs the developer lays out to pay for the review process.

Substantively, the process creates a political minefield and obstacle course, in which various levels of government see how many goodies they can squeeze out of the developer without asking for so much that the developer gives up. Much of the process is discretionary and unpredictable. In New York City the process gives the local City Council member an opportunity to grab what they can as the price of their approval of the project. That runs up more costs for the developer, above and beyond the carrying costs during the approval process and the out of pocket costs of the process itself. The uncertainty of the process doesn't help much either.

Over time, approval processes and requirements for substantial projects have expanded and become more complex. Each time that happens it creates new opportunities for project opponents to file suit and further delay the process. Project opponents seize those opportunities. The only people who favor the projects are often the developers themselves, who obviously act from self-interest and thus don't have the same weight as the opponents. Others—who don't care about the project or might even favor it—have other things to do.



If government wanted to encourage the development of housing – a good thing, one would think – then our elected officials would also ask what other governmental constraints stand in the way. Even without a discretionary (political) approval process for individual projects, zoning and development laws often establish detailed, complex, and restrictive requirements that projects must satisfy. Zoning began as a mechanism to prevent nursery schools next to slaughterhouses. It grew and grew to the point where it often prescribes an overly detailed rulebook for any development project.

It might make sense to figure out how to simplify and cut back zoning requirements. While it probably still makes sense to prevent slaughterhouses next to nursery schools, some of the multitude of accumulated detail would probably benefit from a tough, zero-based look at whether it all still makes sense in an environment where government should

encourage housing development rather than make it difficult. Some of that has started to happen in New York City, but it's a slow process against a backdrop of (a) zoning law that has become more restrictive rather than less over the preceding few decades, and (b) politicians who like to govern.

Landmarking laws experienced a trajectory much like zoning. They started with a laudable and noble purpose: preserving true landmarks like the Penn Station that was demolished in the Sixties. Then landmarking grew and grew, to the point where a substantial percentage of all the land in Manhattan is subject to landmark restrictions. Inevitably those restrictions make it harder and more expensive to build housing or anything else. A government that wants to encourage housing might also take a hard look at landmarking and ask whether it's gone too far.

Any movement to ease restrictions on development would need to start with elected officials who care about the issue. But most people who run for office focus on using the power of government to do things, as opposed to figuring out ways to cut back the role of government. That's not a great start.

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I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals.