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NAIOP's priorities and Western New York

From Feb. 8 to 11 I was in Washington, D.C., taking part in the National Legislative Retreat on Capitol Hill for NAIOP — the Commercial Real Estate Development Association.

I am the president of the Upstate New York Chapter. We are the largest commercial real estate association in the United States. Along with seminars on national and state issues that effect industrial and commercial development in their chapter areas, they also lobby local senators and members of Congress on concerns that affect their regions.

The important issues now facing Western New York when it comes to commercial development include:

Taxes

- Carried interest — compensation provided to a general partner tied to the ultimate success of a development venture. It is now taxed at the capital gains rate of 15 percent. New legislation introduced seeks to change it to the ordinary income rate of 35 percent. NAIOP opposes the change because it will decrease the incentive to invest in new commercial projects, which create many jobs.

- Leasehold improvement depreciation — allows developers to depreciate the cost of tenant improvements over 15 years. Legislation introduced would change the depreciation period to 39 years. NAIOP opposes the change because most commercial leases last five to 10 years.

- Brownfield remediation expensing, which allows costs incurred in a clean-up to be expensed immediately by the developer is scheduled to run out at the end of 2009. The provision must be extended; without it, there will be no incentive for developers to revitalize old properties, many of which are located in urban centers.

Capital and credit

As a result of recent market losses, the availability of credit for refinancing is severely constrained. In 2009, an estimated \$300 to \$400 billion of performing commercial real estate debt will mature and need to be refinanced.

With continued unavailability of credit due to the problems in the banking system and the Commercial Mortgage Backed Securities market, commercial real estate faces a severe liquidity shortfall unless strong action is taken by the federal government.

We suggest the Federal Reserve establish a credit facility for commercial real estate debt. Another option is to extend the existing Term-Asset Backed securities Loan Facility, created to purchase consumer-debt backed credit that includes commercial mortgage backed securities and commercial mortgage debt.

Accounting rules requiring assets held by financial institutions to be “marked-to-market” also are deteriorating the capital condition of these institutions, undermining federal efforts to foster increased lending.

The rules should be adapted to take into account the current condition of the financial markets, and to ensure refinancing of performing loans that mature in 2009 will occur. This probably is the issue of greatest concern to Western New York development.

Joining me on the trip were John D’Amanda of the Chamberlain D’Amanda law firm; Brenden Crossing from the commercial loan department at Canandaigua National Bank; Dave Topian from Westminister Real Estate Advisors; Laura Zaepfel of Uniland Development and Karen McCready, executive director of NAIOP’s Upstate Chapter.

We met with staffers from Sen. Schumer’s and Rep. Slaughter’s offices, and personally met with Sen. Gillibrand and Reps. Higgins, Massa, Maffei and Lee.

We all agreed that, no matter on which side of the political aisle you fall, the plan is necessary to stabilize today’s faltering markets and return confidence to the American economy. It was a very exciting time to be in the nation’s capital and be a part of the process.

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