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LICKING WOUNDS

40B Vote Both Heartens And Hardens

Multifamily, Mixed-Use Developments
May Get Boost After Repeal Failure

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Housing advocates and developers pronounced themselves thoroughly satisfied after a ballot measure calling for the abolition of the state's Chapter 40B affordable housing statute was roundly de-

feated at the polls last week. But advocates for the reform of the law have vowed that defeat doesn't mean they've abandoned the issue.

The measure was defeated by the largest margin of any of the three ballot questions up for consideration – 58 percent in favor of keeping 40B, to 42 percent in favor of its abolition.



Mark Vaughan

"This was a decisive victory," said Aaron Gornstein, executive director of the Citizen's Housing and Planning Association, an affordable housing advocacy group. He said the margin by which the proposal was defeated indicated voters' recognition that affordable housing has provided important benefits to communities across the commonwealth.

Door Opened For Multifamily

Chapter 40B allows developers to circumvent certain local planning and zoning processes, and seek direct state approval, for projects in some municipalities that don't meet a certain threshold of affordable housing units. In exchange, a percentage of units



in the final development must be set aside and sold at affordable levels, as determined by community standards.

Critics of the law argue that it gives developers too much power to steamroll valid local opposition over density and zoning restrictions. Supporters say it is an effective tool to entice developers to build affordable housing in otherwise overly bureaucratic and "Not In My Backyard"-ridden Bay State suburban communities.

In addition to community activists like Gornstein, developers were also pleased with the outcome of the vote. The law is a crucial tool for building workforce housing, argued Mark Vaughan, a senior partner at Boston law firm Riemer & Braunstein, who represents developers seeking permits.

"Massachusetts continues to be unaffordable for many people – one of the things we continue to hear from CEOs is that one of the biggest challenges is finding affordable housing," for employees, Vaughan said.

Now that developers are assured that the law will remain on the books as they have known it, they may be encouraged to develop more mixed-income housing, according to Vaughan. Multifamily housing has been the lone bright spot of late in a dismal housing picture, as demand for rental housing has

increased, driving down vacancy rates.

With many developers currently holding off on office projects – even if they have permits – because of the ongoing downturn in the commercial real estate space, mixed-income multifamily may be poised for a surge in interest.

"Lenders and institutional investors have expressed more willingness to lend on multifamily," Vaughan said. "I think you may see a lot of stalled office developments [reposition themselves] for more of mixed-use," including residential components.

'Not Giving Up'

But 40B's opponents are also taking some comfort from the results, despite the beating. Almost 900,000 voters were in favor of complete repeal, according to John Belskis, an Arlington resident who helped the Repeal 40B Ballot Question Committee. That suggests a solid constituency remains in opposition to the law.

"When the opponent has a million dollars [to help get its message out] and we had very little – it says there's still some strength there that's going to have to be dealt with," Belskis told Banker & Tradesman. "We're not giving up on this."

Continued on Next Page

40B Opponents 'Not Giving Up,' Encouraged By Grassroots Support

Continued from Previous Page

Final pre-election filings submitted to the state's Office of Campaign and Political Finance confirm the financial disparity between the campaigns. Going into the final weeks of the campaign, the Committee Against Repealing the Housing Law – a coalition of lenders, affordable housing advocates and developers in support of keeping the law – had a war chest of \$399,811. In contrast, the Repeal 40B Ballot Question Committee had a kitty of \$2,702.

The repeal campaign relied almost entirely on grassroots efforts, and their volunteers remain committed, Belskis affirmed.

“Over the past year, I've met a lot of hardworking citizens and voters who aren't gonna let this go away,” he said. Belskis explained that opponents of 40B were taking time to regroup and see if the legislature would attempt any reform to the law on its

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own, in light of the substantial opposition revealed at the ballot box.

Asked whether 40B opponents might be interested in submitting a question that attempted to reform the law, rather than re-

peal it entirely, Belskis said the group's approach had yet to be determined.

“The only reason we got to [the point of advocating complete repeal] is that we spent six years trying to get meaningful reforms,” through the legislature without success, he said.

But affordable housing advocates suggested that not only the overall margin of victory, but the fact that the repeal measure was defeated in many of the localities most likely to support it, indicates support for the existing law is solid.

“We did very well in both urban and suburban communities,” said Gornstein, citing victories in towns like Hingham as indicative of the depth of support. “Even in some towns where we didn't do as well, we were close.” ■

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