BUFFALO'S CO$TLY MISTAKE

Widely Abused Tax Break Forces Property Owners and Renters to Subsidize Luxury Housing

public accountability initiative

INTRODUCTION

Amid a growing housing affordability crisis, the City of Buffalo has been compelling taxpayers to subsidize the construction of luxury housing through a state property tax exemption program called 485-a. The program, which was approved by the state government in 2002 and opted-into by the Buffalo Common Council later that year, excuses property taxes on properties converted from non-residential to mixed use over a period of 12 years, forcing other property owners in the city pick up the tab.

This report examines the economic impact of the 485-a program and finds that current 485-a exemptions will shift $63.5 million of tax burden over the next 12 years from major real estate developers to everyone else who does not have access to the exemption. These exemptions do not benefit the vast majority of Buffalo residents, and indeed cost them money. In fact, the price of these subsidies for the rest of Buffalo taxpayers is set to rise as properties in the city are reassessed at higher values and the overall tax rate increases.

Often these exemptions are granted to developments that to do not comport with the spirit of the law (meant to incentivize the reuse of vacant commercial and industrial buildings), creating a need for heightened scrutiny of the entire program.

Further, since the 485-a exemption has mainly been used to subsidize luxury apartments, it has also contributed to rising rents and gentrification in Buffalo. The biggest beneficiaries of the program are three of Buffalo's richest and most prominent developers.

The 485-a tax break was designed to spur redevelopment in Buffalo's commercial core by incentivizing the conversion of disused commercial and industrial buildings into a mix of residential and commercial uses. Congressman Brian Higgins, who championed the legislation as a State Assembly member representing Buffalo, said that the law was meant to encourage the mix of uses prevalent in urban downtowns when he was a child. Higgins' memorandum in support of the bill when he introduced it cited the economic potential of "creative reuse of office, warehouse, manufacturing, and retail buildings for residential and commercial mixed uses" for upstate cities.[1] In an editorial cheering the Buffalo Common Council's adoption of the exemption in 2002, the *Buffalo News* editorial board wrote "nothing will help revive downtown more than affordable rental housing."[2]

In the 16 years since its adoption, however, the 485-a exemption has primarily been used to subsidize luxury apartments. Other applications of the exemption also flout the spirit of the law by exempting taxes for newly constructed developments and projects with negligible residential or commercial components.

By and large, units in developments receiving the 485-a exemption are rented at prices that vastly exceed the regional fair market rent of $799 for a two-bedroom as calculated by the US Department of Housing and Urban Development.[3] According to a recent report by the Partnership for the Public Good, 55% of Buffalo households cannot afford their rent according to the federal definition of "rent burdened," meaning that they pay more than 30% of their income towards rent and utilities.[4]

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1 https://www.documentcloud.org/documents/4569164-RPTL-485-a-Bill-Jacket.html#document/p3/a433882

2 http://buffalonews.com/2002/10/17/a-boost-for-downtown-housing/

3 https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2018_code/2018summary.odn

4 https://ppgbuffalo.org/files/documents/housing_neighborhoods/affordable_housing_policy_for_the_city_of_buffalo.pdf

The most substantial project benefiting from 485-a is One Canalside, Benderson Development's redevelopment of the former Donovan State Office Building. That project converted the eight-story structure primarily into law offices and a hotel, with two restaurants on the first floor and one 904-square-foot apartment. That apartment qualifies One Canalside for the 485-a exemption, which PAI estimates is worth $5.9 million, the most valuable such exemption in the city.

The tax break has also been used in Buffalo to subsidize the construction of new luxury housing on parking lots and vacant land. One particularly noteworthy example is Campus Walk, a $25 million luxury student housing development built by Greenleaf Development along Grant Street where the developer demolished 17 two-family homes. Campus Walk was exempt from 98.8% of its City of Buffalo property taxes in 2018 thanks to the 485-a program.

When asked about a similar student housing development that received the exemption in Syracuse, Congressman Higgins, who was the driving force behind the exemption, said "It defeats the purpose. The idea is to redevelop these older buildings, not demolish them."[5]

The *Albany Business Review* found that many properties in that city had received the exemption in that city but did not meet the requirements of the law, leading Albany to conduct a review of all 485-a exemptions and rescinded five that had been granted in error. Similarly, the *Syracuse Post-Standard* found rampant abuse of the exemption in that city, including a development that was found to qualify for because the vending machine in the lobby was reported as a commercial use.[6]

In Buffalo – which has more properties exempted from taxes under 485-a than any other upstate city – four properties have been stripped of erroneously awarded 485-a exemptions since 2017. However, a comprehensive municipal review of all exemptions similar to what was conducted in Albany does not yet appear to have happened.

Our analysis of public records estimates the extent to which the City of Buffalo is subsidizing luxury housing through the 485-a program and notes several questionable applications of the exemption meriting a further, more thorough review.

5 https://www.syracuse.com/news/index.ssf/2018/05/3_vending_machines_saved_a_builder_3_million_in_property_taxes_a_ny_law_exploite.html

6 https://www.syracuse.com/news/index.ssf/2018/05/3_vending_machines_saved_a_builder_3_million_in_property_taxes_a_ny_law_exploite.html

KEY FINDINGS

- **PAI estimates the City of Buffalo has shifted $63.5 million in taxes on 85 properties from luxury developers to other taxpayers.** This is the amount for properties that currently have the 485-a exemption and will increase as more properties are awarded the exemption. The estimate derives from the exemption base of the 85 properties that had received the 485-a exemption as of May 10, 2018 multiplied by $28.92 per $1,000 of value, which is the average of the past 10 years' non-homestead tax rate in the City of Buffalo.

- **Developers who have been awarded the 485-a exemption were exempted from $18.6 million of taxes from 2007 through 2018.** One-third of this total – $6.3 million – is for 2018 alone and represents 4.3% of the city's entire tax levy for the 2018-2019 fiscal year.

- **The top three beneficiaries of the exemption are Carl Paladino, Rocco Termini, and Randy Benderson, whose firms have obtained 485-a exemptions on 23 properties that PAI estimates are worth $25 million.** Paladino's Ellicott Development owns 15 properties with exemptions, the most in the city, worth $9.5 million. Termini's Signature Development owns the second most, six properties with exemptions worth $6.8 million, and Benderson Development's one 485-a exemption is the most valuable, worth $5.9 million. Nick Sinatra owns the third most properties with exemptions – his 5 properties have exemptions worth $1.6 million.

- **Although 485-a was designed to subsidize the re-use of abandoned buildings, several developers have received the exemption for new builds on formerly vacant lots.** Notable new builds include James Swiezy's Campus Walk apartments near Buffalo State College, Carl Paladino's 301 Ohio Street luxury apartment complex, and the Benchmark Group's mixed use development at 766 Elmwood Avenue.

METHODOLOGY

PAI identified properties granted the 485-a exemption through May 2018 by searching in the City of Buffalo's Online Assessment Roll System (OARS) database and identifying properties with the "Mix-use properties outside NYC" exemption listed.[7]

By multiplying the exempt amount given in each property's OARS listing by the "non-homestead" tax rate for commercial properties in the 2018 City budget, we calculated the total 2018 value of the 485-a tax exemptions that had been awarded through May of this year. We determined the value of the exemptions in past years by applying the commercial tax rate in those years to the exempted amount for each property for that year.

To project the value of the exemption going forward, we took an average of the commercial tax rates over the past 10 years and applied it to the exempted amount for each property for each year going forward.

Because tax rates vary from year to year depending on the total levy adopted in each year's budget, the total value of the 485-a exemption will increase if the commercial tax rate goes up, as is planned in the next fiscal year. Further, because property values in the City of Buffalo are on the rise, as properties are reassessed at higher values, the value of the tax breaks will likewise increase. Finally, the total value of the exemptions is subject to increase as more properties are awarded the exemption.

Due to all of these factors, our estimate of $63.5 million of tax burden being shifted from real estate developers to other property owners is a conservative one and, absent a repeal or reform of the policy, is likely to keep growing.

How 485-a harms Buffalo homeowners and renters

Exempting developers of luxury apartments from millions of dollars per year in property taxes has the effect of increasing tax bills – which are ultimately passed through rents, as well – for everyone else who does not have access to the tax breaks.

Over the time that the 485-a exemption has been available to Buffalo developers, rents and housing prices in the city have risen considerably, particularly in certain neighborhoods. Beyond creating upward pressure on rents by passing the property tax for luxury developments onto other city property owners, the 485-a exemption contributes to gentrification by subsidizing luxury apartments, which pushes rents higher and people out of their communities.

The exemption has been used to subsidize the construction of new buildings on commercial lots and has been applied to other projects that meet the technical requirements of the law, but not its spirit. Some projects have been inappropriately awarded the exemption and have since had it revoked, raising questions about whether more properties are wrongly being exempt from taxes.

7 http://www.buffalo.oarsystem.com/SearchOARS.aspx

Other taxpayers subsidize break for luxury developers

Since taxes are calculated annually based on the total amount the city plans on spending minus the amount brought in through non-tax revenues, exempting multi-million dollar developments from their taxes shifts that tax burden onto other property tax payers in the City of Buffalo, the vast majority of whom have far fewer resources than the major developers receiving the tax break.

In any given year, millions of dollars of taxes that would be collected from developers are instead shifted to other property taxpayers. The 485-a exemptions in effect through May 2018 totalled $6,303,350, which is 4.3% of the entire $145,320,000 tax levy for Buffalo's 2018-2019 fiscal year.[8]

Higher property taxes for small property owners fuels displacement, forcing low- and fixed-income homeowners to sell their homes and causing landlords to pass along their higher tax bills to tenants by hiking rents.

"In any given year, millions of dollars of taxes that would be collected from developers are instead shifted to other property taxpayers."

Rising rents drive displacement

As mentioned above, Buffalo is facing a growing crisis of housing affordability. The fair market rent for a two-bedroom apartment reported by the US Department of Housing and Urban Development (HUD) has increased by 29.7% from $616 to $799 since 2007, the year that the earliest 485-a exemption analyzed by this report was granted.[9]

Above and beyond this increase, the rents charged for developments that have the 485-a exemption greatly exceed the 2018 fair market rent for the Buffalo-Cheektowaga-Niagara Falls metropolitan area. In downtown Buffalo, where many 485-a properties are located, the average rental rate for a two-bedroom apartment is $1,647, according to a recent study commissioned by the Buffalo Urban Development Corporation, a public entity that markets city-owned property, and the Buffalo Niagara Partnership, a local corporate lobbying group.[10]

Based on the prices reported by developers and on listings on real estate websites, the lowest rate we found for a two-bedroom apartment in a development with the 485-a exemption was $1,175, more than 45% higher than the fair market rent.[11]

According to a recent report by the Partnership for the Public Good (PPG), 55% of Buffalo households cannot afford their rent, meaning that they meet HUD's definition of rent burden: paying more than 30% of their income towards rent and utilities.[12] High housing costs contribute to Buffalo's 30.5% poverty rate and to homelessness, which was experienced by 5,953 people in 2016, a 10% increase over the previous year, according to another PPG report.[13]

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8 https://www.buffalony.gov/DocumentCenter/View/4533/Section-I_Summary_Statements_Graphics1a

9 https://www.huduser.gov/portal/datasets/fmr.html

10 https://www.bizjournals.com/buffalo/news/2018/05/24/downtown-housing-study-the-good-the-bad-the.html

11 https://buffalofts.com/property/31-tamarack-108c/

12 https://ppgbuffalo.org/files/documents/housing_neighborhoods/affordable_housing_policy_for_the_city_of_buffalo.pdf

13 https://ppgbuffalo.org/files/documents/poverty_low_wage_work_income_inequality/truth_commission_report__poverty_in_buffalo_causes__impacts__solutions.pdf

As rents go up in the most desirable neighborhoods, homebuyers and renters are pushed into lower-income communities where rents are more affordable. This increased demand leads to higher prices there, pushing families with the lowest incomes out even further from the urban core, from employment opportunities, and often from the neighborhoods where they have lived for generations.

Questionable uses of exemption

Several projects that have been subsidized with the 485-a exemption have only the faintest relationship to the intent of the program – incentivizing "the creative reuse of office, warehouse, manufacturing, and retail buildings" – as it was described when it was first proposed.[14] The tax breaks have since been granted to newly built luxury student housing, new structures built on parking lots and formerly vacant land, and adaptive reuse projects with only negligible mixed-use components.

Since 2017, four properties in Buffalo that had received the 485-a exemption were found to have been granted the break in error and had it rescinded. These properties – 1035 Abbott, 430 Virginia, 201 Huron West and 249 North – were all listed in a 2017 report from the Erie County Industrial Development Agency about 485-a and other adaptive reuse incentives, but had had the exemption removed by the time we conducted our analysis. Three of the properties that had been erroneously granted the 485-a exemption were owned by Kanandague Interests LLC, a shell company owned by the Kissling Interests. Those properties had been exempted from $225,401 through 2017, which has since been paid back.

In 2017, an *Albany Business Review* report that the Albany tax assessor may have erroneously granted 485-a tax breaks to developments that did not qualify prompted the city to hire a law firm to review the exemptions.[15] That review identified nine properties that were not mixed-use that received the 485-a break, and five of those were stripped of the exemption.[16]

In May 2018, the *Syracuse Post-Standard* reported that developers in that city were also exploiting the 485-a program.[17] There, the most valuable exemptions were being awarded to out-of-state developers building new luxury apartments for college students. The *Post-Standard* found that developers had so far obtained exemptions worth $53 million.

At the time of the *Albany Business Review*'s report, that city had 50 properties exempted from property taxes through 485-a. In May 2018, the *Syracuse Post-Standard* found 40 properties with 485-a exemptions. By the end of 2017, Buffalo had 68 properties with 485-a exemptions and currently has 85, more than any other upstate city.

Beyond the four properties in Buffalo that lost their 485-a exemption since 2017, others that still have the tax break appear to only technically meet the requirements for the program, if they meet them at all. For example, the One Canalside project at 125 Main Street – which has received the most valuable 485-a exemption, worth nearly $6 million – has 175,546 square-feet of gross floor area, all of which is commercial, except for one 904-square-foot apartment. Similarly, the Graystone Building at 24 Johnson Park, includes 42 apartments and, according to the owner Ellicott Development's website, one commercial space on the ground floor.[18]

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14 https://www.documentcloud.org/documents/4569164-RPTL-485-a-Bill-Jacket.html#document/p3/a433882

15 https://www.bizjournals.com/albany/news/2017/06/15/exclusive-albany-city-assessors-mistake-could-mean.html

16 https://www.bizjournals.com/albany/news/2017/10/10/five-apartment-buildings-in-albany-losing-tax.html

17 https://www.syracuse.com/news/index.ssf/2018/05/3_vending_machines_saved_a_builder_3_million_in_property_taxes_a_ny_law_exploite.html

18 https://www.ellicottdevelopment.com/portfolio/project-the-graystone/

Elsewhere, the exemption has been used to subsidize the construction of new buildings on parking lots or vacant land. Most notably, the Campus Walk student housing development on Grant and Rees Streets near Buffalo State College has received two 485-a exemptions worth $2,592,553. That development was built on property that previously held 17 two-family houses.[19] Another student housing project, Axis 360 in North Buffalo, was built on a vacant industrial brownfield and has received a 485-a exemption worth $2,068,019. Ellicott Development's 301 Ohio Street luxury development was built on land that owner Carl Paladino held vacant for more than a decade and was described in the *Buffalo News* as "a desolate post-industrial stretch of Ohio Street."[20] Smaller new-builds include the Benchmark Group's mixed use project at 766 Elmwood Avenue and HES Properties' building at 363 Grant Street.

Buffalo's 485-a beneficiaries

Through May 2018, developer Rocco Termini and his firm Signature Development have been the biggest beneficiaries of the 485-a program in terms of the total value of property taxes exempted – $3.6 million – while Carl Paladino's firm Ellicott Development has obtained the exemption for the greatest number of properties – 16.

Notable among the top beneficiaries of the exemption is Benderson Development whose 485-a exemption on one property – the Phillips Lytle headquarters at 125 Main Street – is so valuable that it puts that Benderson above even Paladino in terms of total amount saved so far through the program.

The biggest beneficiaries of Buffalo's 485-a program sorted by the number of properties enrolled and by the value of the tax breaks through 2018 are listed in the tables below.

Developer	Number of Properties Through May 2018
Ellicott Development (Carl & William Paladino)	16*
Signature Development (Rocco Termini)	6
Sinatra & Company (Nick Sinatra)	5*
Greenleaf & Company (James Swiezy)	4
Schneider Development (Jake Schneider)	3
Frizlen Group (Karl Frizlen)	3
Creative Structure Services (David Pawlik & Russell Kyte)	3

Developer	Value of Exemptions Through 2018
Signature Development (Rocco Termini)	$3,571,057
Benderson Development (Randy Benderson)	$2,290,719
Ellicott Development (Carl & William Paladino)	$2,139,246*
Schneider Development (Jake Schneider)	$1,812,758
Hamister Group (Mark Hamister)	$1,219,568

** Ellicott Development and Sinatra & Company each have a 40% stake in 722 West Delavan, which is counted towards both developers' total number of properties and towards the total value of each developer's exemptions*

19 https://buffalonews.com/2015/07/29/traffic-environmental-reviews-delay-student-housing-project-at-buffalo-state/

20 http://buffalonews.com/2010/08/27/scholastic-rowing-association-makes-a-splash-in-buffalo-river/

Projecting the total value of the currently awarded 485-a exemptions through to 2029 when the most recently awarded exemptions expire shuffles the list of top beneficiaries somewhat.

Though the actual numbers in this analysis are more speculative than the totals through 2018 (they were calculated by multiplying the exemption base of each property by the average commercial tax rate over the past 10 years and the declining factor of the exemption, see "Methodology" above for more), it gives a clearer picture of who the top beneficiaries of the 485-a program are because it aggregates the value of the entire tax exemption.

Since the rate at which 485-a exemptions are awarded is increasing over the years, many projects which have recently been awarded the exemption have not realized as much of its benefit as other projects that were awarded the exemption earlier and have had more time for the total benefit to accrue.

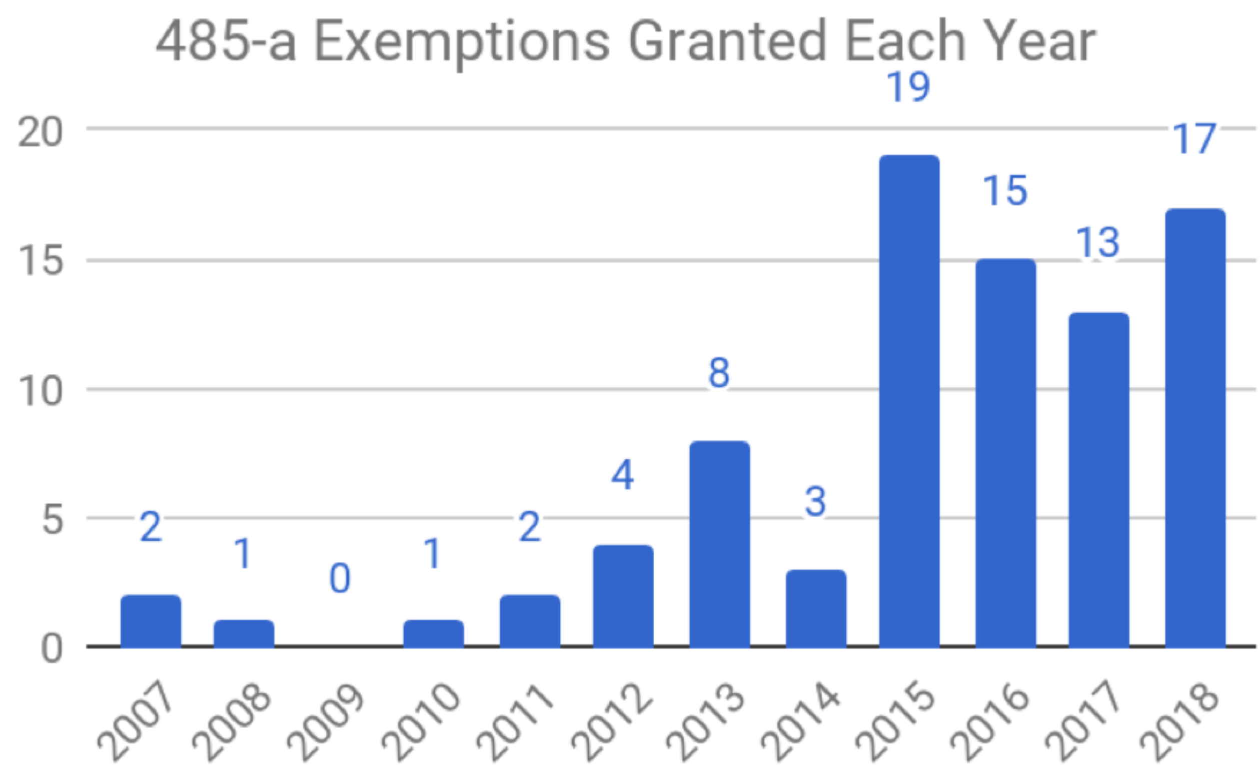
In this view of the data, Paladino's Ellicott development emerges as the top beneficiary, followed by Termini's Signature Development. The total 485-a tax break for Benderson's One Canalside project puts that developer in the middle of the top 5 despite only having the exemption on that one project. Rounding out the top beneficiaries are architect and developer Jake Schneider's Schneider Development and James Swiezy's Greenleaf & Company.

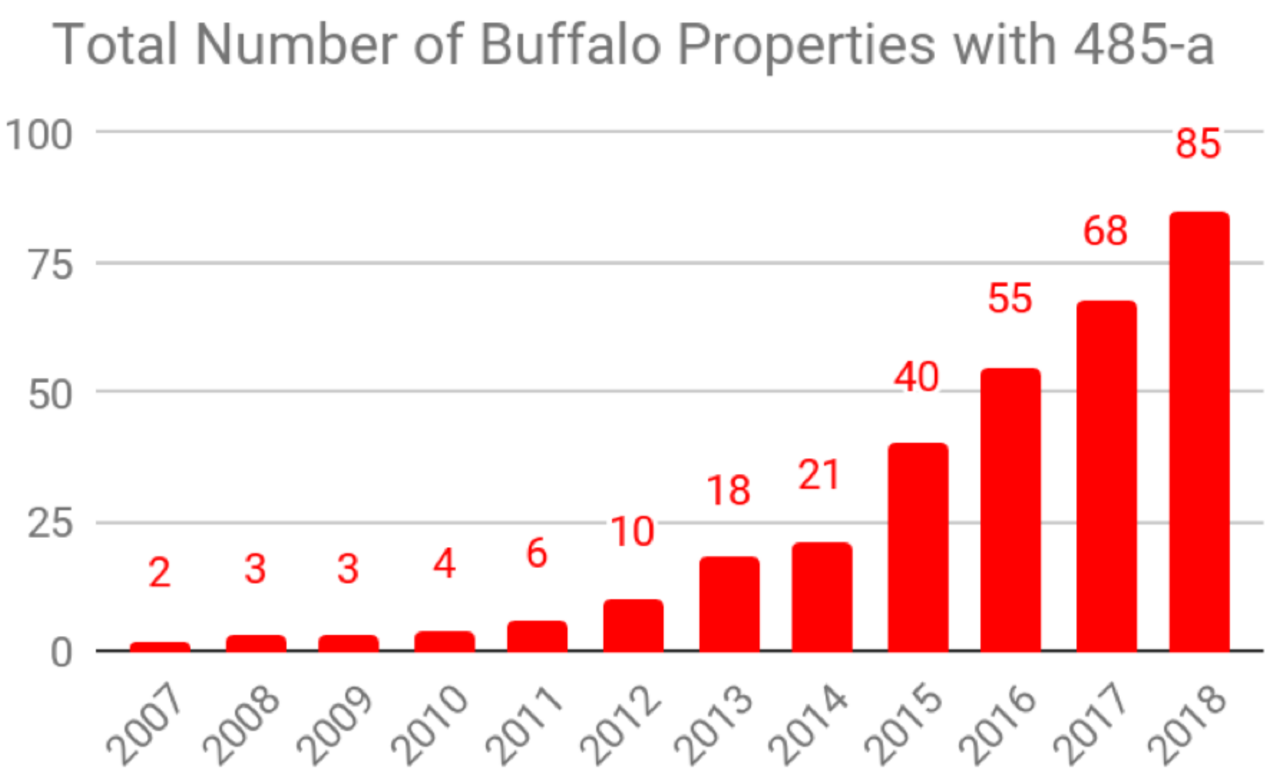
Developer	**Value of Exemptions Through 2029**
Ellicott Development (Carl & William Paladino)	$9,508,345*
Signature Development (Rocco Termini)	$6,753,824
Benderson Development (Randy Benderson)	$5,940,933
Schneider Development (Jake Schneider)	$3,755,314
Greenleaf & Company (James Swiezy)	$3,755,314

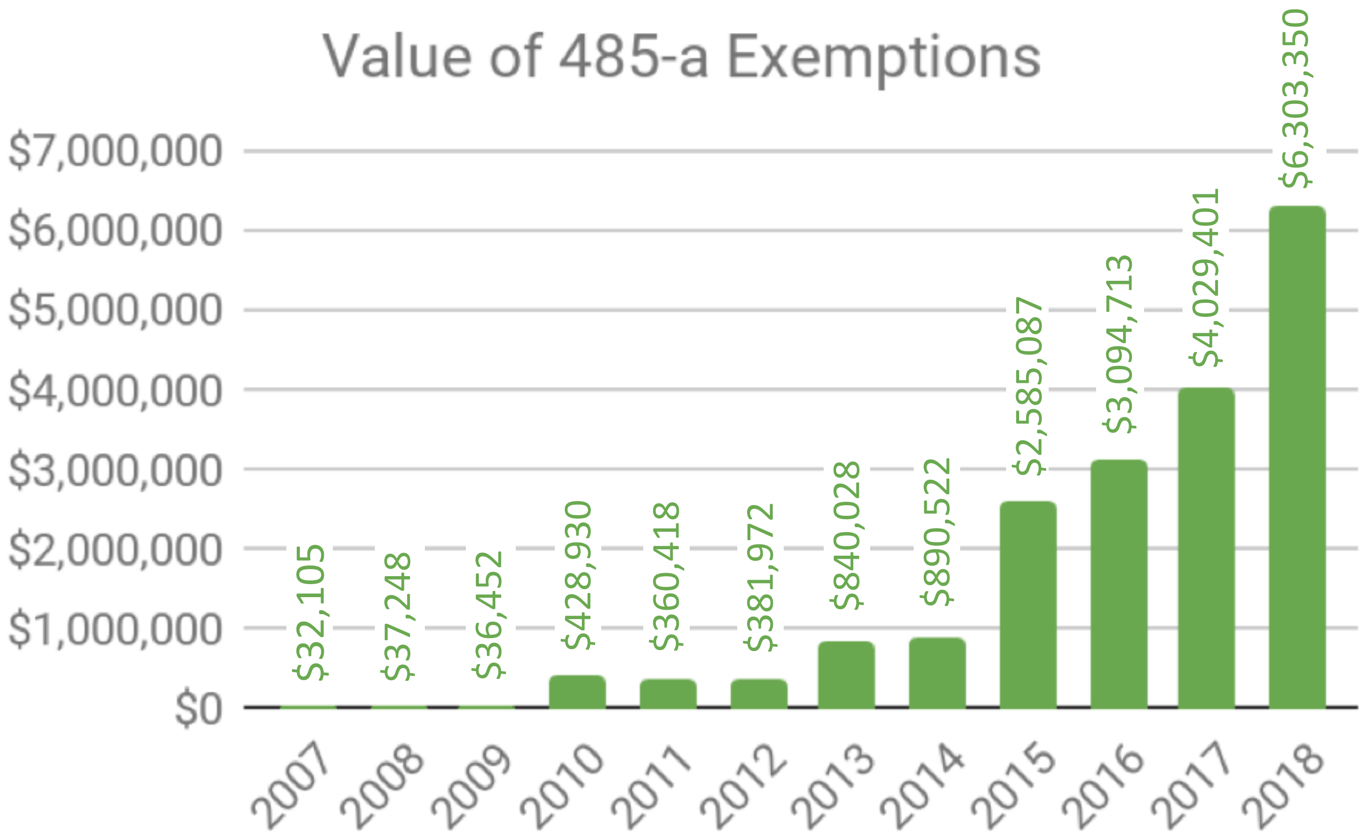
** Ellicott Development and Sinatra & Company each have a 40% stake in 722 West Delavan, which is counted towards both developers' total number of properties and towards the total value of each developer's exemptions*

PAI estimates that the total value of the 485-a exemptions currently awarded is $63,524,369. As mentioned above, this estimate is derived from adding the actual amounts exempted for each property from the year the exemption was awarded through 2018, then to estimate the future value of the exemption, we used an average of the past 10 years of commercial tax rates.

As the actual tax rates are set to increase in future years and as properties are reassessed at higher values, the value of these exemptions will rise. The total value of all exemptions will also increase as new exemptions are awarded. We found that since 2007, the rate at which 485-a exemptions have been awarded has markedly increased, as can be seen in the charts below.


485-a Exemptions Granted Each Year
20
15
10
5
0
2
1
0
1
2
4
8
3
19
15
13
17
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018


Total Number of Buffalo Properties with 485-a
100
75
50
25
0
2
3
3
4
6
10
18
21
40
55
68
85
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018


Value of 485-a Exemptions
$7,000,000
$6,000,000
$5,000,000
$4,000,000
$3,000,000
$2,000,000
$1,000,000
$0
$32,105
$37,248
$36,452
$428,930
$360,418
$381,972
$840,028
$890,522
$2,585,087
$3,094,713
$4,029,401
$6,303,350
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018

NOTABLE 485-A PROJECTS IN BUFFALO

One Canalside

Developer: Benderson Development
2018 city taxes billed: $27,175.10
2018 city taxes without exemption: $620,840
Estimated total value of 485-a exemption: $5.9 million

Benderson Development's conversion of the former Donovan State building near the end Main Street has far and away the most valuable 485-a exemption in the city. With $2,290,719 in property taxes exempted through 2018, PAI estimates that the total value of the exemption is $5,940,933, nearly twice that of the next most valuable exemption.

The project – dubbed One Canalside by Benderson – is home to the offices of Phillips Lytle LLP, a major Buffalo law firm, as well as a 96-room Courtyard by Marriott hotel[21], a Pizza Plant restaurant, and a Starbucks coffee shop.[22]

While the development of One Canalside – which involved a public bidding process to select a developer, stripping the building down to its steel frame, and rebuilding it – was covered extensively in the local press, there was no mention of any residential component of the development.

The entry for the property in the City of Buffalo OARS database does list one 904 square-foot apartment in the building, which is 0.5% of the building's gross floor area. Though the law does not require a specific percentage of residential or commercial use for a property to qualify for the 485-a exemption, the application of the tax break to $22 million, 175,546-square-foot building with one apartment seems to go against its intent.

> "Benderson Development's conversion of the former Donovan State building near the end Main Street has far and away the most valuable 485-a exemption in the city."

21 https://www.bizjournals.com/buffalo/news/2013/11/25/phillips-lytle-at-home-in-one-canalside.html

22 https://www.bizjournals.com/buffalo/news/2015/11/05/pizza-plant-starts-hiring-canalside-opening.html

Campus Walk

Developer: Greenleaf & Company
2018 city taxes billed: $2,447.75
2018 city taxes without exemption: $256,519.80
Estimated total value of 485-a exemption: $2.6 million

Campus Walk is a luxury student housing development directly adjacent to the Buffalo State College campus built by Greenleaf & Company, which is owned by developer James Swiezy. Apartments in the complex rent out for $905 per room for 3-bedroom units and $805 or $855 per room for 4-bedroom units depending on the total size – or $2,715, $3,220, and $3,420 per apartment – according to online listings.[23] The development was built as part of an affiliation agreement between the college and the developer which required Buffalo State to market the Campus Walk to students, to swap land owned by a campus non-profit with parcels owned by Greenleaf, and, controversially, to change its housing policy to prohibit seniors from living on-campus unless Campus Walk had no vacancies.[24]

Investigative Post, a local non-profit journalism organization, reported on the affiliation agreement, noting the cozy relationship between Buffalo State and Greenleaf.[25] According to *Investigative Post*, the developer gave a set of golf clubs to the college vice president for finance and management and donated $15,000 to the college's foundation.

The complex began construction in the summer 2016 on property that had been accumulated by Greenleaf between 2008 and 2014 and on the lots acquired from the college. The property opened in 2017 and in 2018, Campus Walk began receiving tax exemptions through the 485-a program for 643 Grant Street and 140 Rees Street.

According to the City OARS database, $4,569,900 of the total assessed value of $4,625,000 at 643 Grant and $4,416,700 of the total assessed value of $4,465,000 are exempt from city property taxes this year. In all, 98.9% of the city property taxes on Campus Walk have been exempted, a total of $124,639 in 2018. PAI estimates the total value of the Campus Walk exemptions to be $2,592,553.

There is a question of whether Campus Walk ought to qualify for the 485-a exemption at all. To qualify for the exemption, a developer must convert a non-residential property to a mix of residential and commercial uses. It is unclear whether any commercial properties were included in the total area where Campus Walk was built; however, it appears that the bulk of the land was originally residential. According to a *Buffalo News* story from July 2015, Swiezy needed to demolish 17 two-story, two-family homes along Grant Street to construct the project.[26]

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23 https://www.apartments.com/campus-walk-buffalo-ny/c6x4ytf/

24 http://ipost.wpengine.netdna-cdn.com/wp-content/uploads/2017/02/D-Telvock-FOIL-1-1-1.pdf

25 http://www.investigativepost.org/2017/02/21/buff-states-deal-with-greenleaf-raises-red-flags/

26 http://buffalonews.com/2015/07/29/traffic-environmental-reviews-delay-student-housing-project-at-buffalo-state/

301 Ohio Street

Developer: Ellicott Development
2018 city taxes billed: $1,224.71
2018 city taxes without exemption: $118,524
Estimated total value of 485-a exemption: $1.2 million

301 Ohio Street is a $4.5 million[27] development built from 2015 to 2016 on what the *Buffalo News* once called "a desolate post-industrial stretch of Ohio Street in Buffalo's Old First Ward."[28] Apartments in the complex rent for $1,595 for a one-bedroom and $2,195 to $2,495 for a two-bedroom according to the real estate website HotPads.com.[29]

Paladino has owned the six-acre site since 1983. In 1998, when the Buffalo Zoo was seeking to relocate to the waterfront, Paladino told the *Buffalo News* that he had been planning to build there for five years, but was waiting for the right conditions.[30] Paladino used this property – and his reluctance to build on it – for years to advocate the demolition of the nearby Perry housing projects. In 2012, he told the *Buffalo News* "No one's going to want to move down there when you have all that rot," referring to the long-neglected public housing project.[31] When reiterated this complaint in 2013, the *Buffalo News* noted that at the time his property "held seven trucks, a motor boat and construction equipment behind barbed-wire fencing."[32]

After $11.3 million in public investment in Ohio Street from 2013 through 2015, Paladino began building on his riverfront property, which began leasing in 2016.

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27 https://www.buffalorising.com/2015/08/ellicott-can-dig-it-301-ohio-street-under-construction/

28 http://buffalonews.com/2010/08/27/scholastic-rowing-association-makes-a-splash-in-buffalo-river/

29 https://hotpads.com/301-ohio-buffalo-ny-14204-1sc6af7/pad?lat=42.8683&lon=-78.8796&z=14

30 http://buffalonews.com/1998/10/06/land-sought-for-new-zoo-held-by-paladino-developer-says-he-wont-sell-riverfront-parcel/

31 http://buffalonews.com/2012/07/26/the-future-of-ohio-street-plan-is-gaining-steam-to-convert-roadway-near-cobblestone-district-into-attractive-parkway-connecting-the-inner-and-outer-harbors/

32 http://buffalonews.com/2013/12/17/ohio-street-rebirth-stalled-by-dispute-over-housing-complex/

RECOMMENDATIONS

There are numerous actions that the City of Buffalo and New York State can take to stop developers from forcing property owners to pay the taxes on their luxury apartment developments or at the very least increase oversight and transparency to avoid the widespread abuse that has occurred around the state.

For the 485-a tax break to go into effect in a municipal area, the local government had to opt into it. That occurred in Buffalo in 2002, shortly after the tax break was created by the state legislature. With one act of the Buffalo Common Council, the city could simply cease giving out the tax break.

Similarly, the New York State Legislature could repeal the 485-a law statewide. Misapplication and abuses of the program have been previously documented in Albany and Syracuse, and now Buffalo, making it apparent that the law is not having its intended effect. By the same action that the tax break was implemented, lawmakers could undo it, though it would likely face considerable opposition from the developers and real estate lobbies benefiting from the program.

Though the developers who benefit from 485-a might argue that these developments would not be built but for their tax breaks, the fact is that developers cannot obtain the exemption until after the work to convert the property from non-residential to mixed-use is complete. This means that projects that receive the 485-a exemption must necessarily be able to be built without it and that the tax break is not an inducement (such as those granted by industrial development agencies, which must be applied for and awarded before a project breaks ground) as much as it is an added bonus for developers to build projects that they already would have built otherwise.

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Currently, there is very little transparency or oversight over the administration of the program. Determinations about eligibility for 485-a tax breaks are made by the tax assessors for the municipal bodies where the exemption is being sought, and after that there is no reporting required or oversight in place to ensure that developments are actually complying with the requirements of the law.

Every year the Office of the State Comptroller issues an annual performance report analyzing subsidies awarded by state industrial development agencies.[33] The Department of Taxation and Finance publishes reports annually on a variety of subsidy programs, including brownfield tax credits and film tax credits.[34] If 485-a is to be retained, municipal tax assessors should at the very minimum report on how many projects are receiving the tax breaks and an estimate of the tax burden being shifted from developers to other taxpayers.

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33 http://www.osc.state.ny.us/localgov/pubs/research/ida_reports/2018/ida-performance.pdf

34 https://www.tax.ny.gov/research/stats/statistics/special_int_reports.htm

The state legislature or municipal governments could also introduce provisions to try to ensure public benefit from properties subsidized through 485-a. While 485-a was originally modeled on New York City's 421-g tax exemption[35], one major difference between the two tax breaks is that 421-g subjects residential units subsidized by the program to rent stabilization.[36] By conditioning the award of a 485-a tax exemption on rent control or inclusionary zoning (a policy by which a certain percentage of new units must be made affordable), policymakers can secure at least a modicum of public benefit from a program that currently just transfers wealth from regular property owners and renters to big real estate developers. However, it should be noted that there are much simpler ways of developing affordable housing than reconfiguring an unwieldy and ill-considered tax abatement.

35 https://www.documentcloud.org/documents/4569164-RPTL-485-a-Bill-Jacket.html#document/p17/a434396

36 http://furmancenter.org/institute/directory/entry/421-g-tax-incentive-program