

Real estate developer's toolbox: An introductory guide to incentives available to developers in Upstate New York

By Joseph P. Heins and Timothy P. Moriarty
Phillips Lytle LLP

Bringing a real estate development project from concept to reality in Upstate New York can be a daunting task.

Unfortunately, many exciting proposals have never come to fruition over the years. Many times, a project is shelved because it doesn't "pencil out," meaning that the expected returns (in the form of rent) cannot cover the developer's upfront costs and ongoing debt service, and the project is deemed unsustainable.

To overcome this challenge, federal, state and local governments have created a smorgasbord of incentives aimed at reducing the cost of doing business in Upstate New York. Here is an introduction to some of these incentives to show that, while the macro environment may be challenging, developers can still get deals done if they understand and implement the tools that are available.

Ultimately, each project is unique and requires a bespoke analysis to determine the best combination of incentives and the most efficient legal structure. Developers should keep in mind the following major programs have a proven history of bolstering the projects that move our community forward:

- **Brownfield Cleanup Program (BCP):** BCP is a New York State program that encourages the cleanup and redevelopment of contaminated properties by offering tax incentives and liability protections to participants. Tax credits are available based on site preparation and remediation costs, as well as certain redevelopment costs.
- **Historic Preservation Tax Credits (HTCs):** HTCs are available at both the federal and state level and offer tax incentives to property owners who rehabilitate certified historic buildings, promoting preservation and community revitalization. Certified historic structures can be eligible for tax credits based on a certain percentage of the developer's qualified rehabilitation expenses.
- **Low-Income Housing Tax Credits (LIHTC):** The federal LIHTC program gives state and local allocating agencies annual authority to issue tax incentives to developers to create and preserve affordable rental housing for low-income households.
- **New Market Tax Credits (NMTC):** The NMTC program allows investors to receive federal income tax credits in exchange for making equity investments in specialized financial intermediaries called community development entities, which provide investment capital for operating companies and real estate developers in order to support business growth and economic development in low-income communities.
- **Section 485-a:** To the extent allowed by local option, projects could be eligible for New York State property tax incentives for the conversion of non-residential buildings into mixed use properties, encouraging urban revitalization.
- **Section 485-b:** Section 485-b provides for an as-of-right 50% reduction of the increase in assessed value due to certain business property improvements, encouraging commercial and industrial development.



Joseph P. Heins
Special Counsel



Timothy P. Moriarty
Partner

- **Industrial Development Agency (IDA) Incentives:** Various local and regional IDAs provide project-specific incentives such as property and sales tax abatement, low-cost financing and other benefits to encourage business growth, job creation and economic development.

This list is certainly not exhaustive and does not identify all incentives available. Particularly, there are additional potential incentives available to the end users (or tenants) of

a development, such as the New York State Investment Tax Credit, Federal Work Opportunity Tax Credit and the New York State Excelsior Jobs Program. In addition, grants and low interest loans are available, as well as incentives tailored for specific uses, like manufacturing and film production.

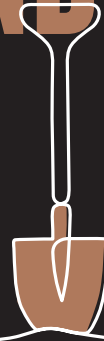
In the end, standard due diligence for property owners must include a comprehensive review of available incentives in the creation of any pro forma — it could ultimately be the difference between a pretty rendering on

the shelf and a productive development on the street.

Joseph P. Heins, Special Counsel and member of Phillips Lytle's Real Estate Industry Team, focuses his practice on commercial real estate and complex transactions. He can be reached at 716-847-7004 or jheins@phillipslytle.com.

Timothy P. Moriarty, Partner and Co-Leader of the Phillips Lytle Real Estate Industry Team, can be reached at 716-847-8329 or tmoriarty@phillipslytle.com.

MORE THAN A LAW FIRM. A GROUNDBREAKER.



Digging into complex issues to keep development projects on track. That's The Phillips Lytle Way.

The attorneys on our Real Estate and Project Development Teams combine the day-to-day "dirt work" of traditional real estate development with specialties like the Brownfield Cleanup Program, land use and zoning, construction compliance (including MWBE requirements), SEQRA and historic tax credits. Our law firm has deep knowledge in emerging areas like New York State electrification mandates and climate change impact analysis. Our multidisciplinary Real Estate Team has played a crucial role in some of the most prominent projects in Western New York, including the Buffalo Bills New Stadium, JB2 Warehouse for Amazon and Seneca One. Sophisticated developers know our team works tirelessly to turn "it's a no" into "it's a go." So, no matter how challenging the hurdles you're facing, there are no issues we can't handle. Talk to us and learn why clients keep building trust in Phillips Lytle.



Phillips Lytle LLP

Visit us at [PhillipsLytle.com/ProjectDevelopment](https://www.phillipslytle.com/ProjectDevelopment)

ONE CANALSIDE, 125 MAIN STREET, BUFFALO, NY 14203 (716) 847-8400
NEW YORK: ALBANY, BUFFALO, CHAUTAUGUA, GARDEN CITY, NEW YORK, ROCHESTER | CHICAGO, IL | WASHINGTON, DC | CANADA: WATERLOO REGION
Prior results do not guarantee a future or similar outcome. © 2025 Phillips Lytle LLP



Scan for Real Estate & Project Development information