

# Practical Insights Into The Changes Affecting Land Use, Planning And Zoning

## Part 3

### Incentive Zoning

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Many communities are using incentive zoning as a tool to obtain additional infrastructure improvements, other benefits, and/or cash, from a proposed development. These are benefits that would not normally be provided by, or legally required of, an applicant seeking approval to develop within the community. In return, the applicant receives specific incentives, or bonuses, that would increase the value and marketability of their project.

Incentive zoning (town law section 261-b, village law section 7-703 and city law section 81-d) was adopted by the state legislature to allow municipalities the option to grant incentives, or bonuses, to an applicant in return for specific benefits that are identified in a local law or ordinance. These benefits, or amenities, can include: open space, low or moderate income housing, parks, senior care facilities, day care facilities, or any other types of social or cultural amenities that the municipality identifies. The law also allows a cash donation to the municipality, in lieu of providing a specific amenity. The incentives that an applicant may receive could be any adjustments too “..density, area, height, open space, use, or other provisions of a zoning ordinance or local law” (town law sec. 261-b, 1.a).

To use incentive zoning a municipality has to adopt a local law or ordinance that defines: (1) those benefits to the community that they are willing to accept from the applicant; (2) the incentives that would be available to the applicant; (3) the zoning district or districts in which incentives could apply, and; (4) the procedures to be followed for providing those incentives. In addition, the municipality must consider the environmental impacts that may occur within the district(s) and, if significant, a generic environmental impact statement must be prepared. This is primarily to determine whether or not the infrastructure will be adversely affected by the adoption of this law. If there are significant impacts, then mitigation measures would be identified and any subsequent application would have to include mitigation.

The town board, village board, or city council, are the only boards that may approve or deny an incentive zoning application. An applicant will essentially enter into a public negotiation, where elected officials may be concerned about political consequences if it appears that they are giving too great an incentive, while not receiving enough of a community benefit in return. For this reason informal discussions should be held to determine whether or not local officials would be willing to consider an incentive zoning application. These discussions can also present an opportunity to realistically discuss the relative costs associated with specific community benefits compared to the value of the incentives being requested. Quite often a municipality will not understand all of the factors that influence an applicant's costs. Or, they may have an inflated idea of the value that certain incentives will add to a project. As in any negotiation an applicant should know what their 'bottom line' is, and be prepared to walk away if the demands from the municipality outweigh the value of the incentives that they are likely to receive.

The intent of incentive zoning is to provide a win-win scenario for the applicant and the municipality. If an applicant can obtain adequate relief from zoning code restrictions and expensive development standards and a community receives something that it has identified as being needed and beneficial, without spending public funds, everyone benefits.

The Legislative Commission on Rural Resources, which sponsored the incentive zoning legislation, continues to review and update the State's land use laws. As you assemble a project team for your next development be sure you include an attorney and a consultant familiar with the application of these laws, regulations and procedures.

This article has recently been published in the New York Real Estate Journal, the Empire State Builder magazine and the Empire State Surveyor.