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Outside Counsel

## Land Use and Planning: Preventing Flight of Millennials

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It is fair to say that municipalities are in a war over the attraction of millennials. The millennial population is crucial to the vitality and sustainability of a municipality and its financial circumstances. Large-scale employers seek millennials as their primary work force, and are therefore likely to relocate to areas where such a work force is prevalent. In fact, it has been estimated that "[m]illennials are going to be making up half of the workforce in just five years. They're already the largest cohort of American workers."<sup>1</sup> Unless suburban municipalities plan to attract the millennial generation, employers will not relocate to the suburban areas.

Real estate developers in urban areas have known for years the importance of creating communities tailored to the young professional millennial generation: multifamily residences in pedestrian-friendly neighborhoods with easy access to transportation, shopping, and entertainment. Such communities are natural within cities, but have not been an area of focus in the suburbs. The aesthetic draw to New York City, coupled with the abundance of multifamily housing available in its outer boroughs, has left suburbs like Westchester, Fairfield, and Long Island with a flat population growth rate and without the much-needed tax revenue of millennial workers.

Because they are unable to go above the 2 percent tax cap that presently exists in the State of New York, many New York municipalities struggle to stay within their budgets. To be financially sustainable during the era of dwindling municipal budgets and the 2 percent tax cap, municipalities must attract the millennial generation.

However, the millennial generation (currently 25-34 years old) continues to flee suburbia in droves, either because they prefer the urban setting or because they can only afford rental living due to college debt, high unemployment, and limited career advancement opportunities leaving them with lower credit scores and smaller cash reserves for a down payment.

Millennials are starting families at a later age, renting and not buying, and ostensibly preferring to live in cities and not own cars.<sup>2</sup> As such, millennials seek multifamily rental housing to bridge the gap until they are able to purchase a home. However, suburban communities, in particular Westchester, lack diverse multifamily rental housing resulting in millennials leaving the suburban areas for more urban environments, e.g., New York City.<sup>3</sup>

Indeed, the most affluent neighborhoods in Westchester County have seen a decrease in the millennial generation of approximately 44.8 percent,<sup>4</sup> while Westchester County as a whole has witnessed a 13 percent decrease in the millennial population.<sup>5</sup> According to the 2010 U.S. Census, the 24-34 age range possesses the lowest percentage of population in Westchester County.<sup>6</sup> This trend is not uncommon. In fact, these numbers and proportions are similar on Long Island.<sup>7</sup>

To compete with New York City, Westchester, Fairfield, Long Island, and other suburban municipalities must reexamine their local planning goals and transition from "bedroom" communities to communities that facilitate an efficient working and living environment. Luckily, municipalities can embrace certain local planning tools that will enable them to enhance their tax base, without decreasing municipal services.

### Local Planning Tools

As a home rule state, New York municipalities have vast authority to regulate the use of land within their jurisdiction. Local land use planning tools include rezoning, incentive zoning and Planned Unit Developments that can foster transit oriented development zones. Each tool can enable a municipality to target multifamily and transit oriented development within a community to accommodate the needs of the millennial generation.

**Incentive Zoning and Transit Oriented Development.** In New York, a municipality is authorized to provide for a system of

zoning incentives, or bonuses, as they may deem necessary to further the municipality's physical, cultural and social policies in accordance with its comprehensive plan.<sup>8</sup> Incentive zoning can permit an increased density and/or height of a development project in exchange for a public benefit. Importantly, the New York State Court of Appeals has upheld the ability of municipalities to employ incentive zoning approaches to land use planning. See [Golden v. Ramapo](#), 30 N.Y.2d 359, 285 N.E.2d 291 (1972). Furthermore, General City Law Section 81-d, Town Law Section 261-b and Village Law Section 7-703 provide for municipalities to set up incentive zoning schemes.

Incentive zoning is defined by these statutes as "the system by which specific incentives or bonuses are granted...on condition that specific physical, social or cultural benefits or amenities would inure to the community." Indeed, "incentives or bonuses" are defined as "adjustments to the permissible population density, area, height, open space, use, or other provisions of a zoning ordinance or local law for a specific purpose authorized by the town board." The municipal legislative body shall set forth specific procedures within its incentive law. Such a law must include:

- 1) the incentives, or bonuses, which may be granted by the town to the applicant;
- 2) the community benefits or amenities which may be accepted from the applicant by the town;
- 3) criteria for approval, including methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the town;
- 4) the procedure for obtaining bonuses, including applications and the review process, and the imposition of terms and conditions attached to any approval; and
- 5) provision for a public hearing, if such public hearing is required as part of a zoning ordinance or local law adopted pursuant to this section and give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

Why is this important? In Westchester, great opportunity exists to develop transit-oriented projects that will attract the younger generation. Oftentimes, developers need increased density to meet pro forma/investor guidelines, an increase that may be possible through incentive zoning. Moreover, these incentive zones allow municipalities to also lower the number of cars on the road and focus on mass transportation.

For example, the Village of Farmingdale in Nassau County, in accordance with the Long Island Workforce Housing Act of 2008,<sup>9</sup> adopted incentive bonus permitting in its Downtown Mixed Use (D-MU) Zoning District. As a result, the development company JPI and Anthony Bartone successfully deployed the Jefferson Plaza at Farmingdale Station development—of 39 apartments above 6,000 square feet of retail space—which was wholly consistent with the Village's Downtown Master Plan. Most important to the attraction of millennials, the development is located diagonally across the street from the Farmingdale train station of the Long Island Rail Road, and is also one block away from Farmingdale's Main Street retail corridor that includes a variety of charming shops and restaurants.

Another 115 apartments above 13,200 square feet of retail anticipate completion by October 2015. In accordance with the zoning incentives allowing increased density and fewer parking spaces in the Village of Farmingdale per zoning code sections 105-98 and 105-99, JPI/Bartone agreed to a 10 percent work-force housing set-aside, to make incentive development payments, to undertake traffic roadway improvements, to create a municipal park, and to correct a drainage problem in the vicinity.

**Rezoning Opportunities and Comprehensive Planning.** Many municipalities have utilized rezoning to target transit oriented and mixed use development to accommodate the millennial housing cycle. Typically, prior to any rezoning, the municipality will conduct a study as the foundation of the future rezoning. Indeed, it is wise for a municipality to study and base any potential rezoning on planning documents such as a Comprehensive Plan to protect against any legal challenges, e.g., spot zoning. See [Rodgers v. Vill. of Tarrytown](#), 302 N.Y. 115, 123, 96 N.E.2d 731, 734 (1951); see also [Little Joseph Realty v. Town Bd. of Town of Babylon](#), 52 A.D.3d 478, 479, 859 N.Y.S.2d 696, 697 (2d Dept. 2008).

Many Westchester communities are reexamining their local codes to focus specifically on transit-oriented development in an attempt to attract young professionals. For example, the Village of Mamaroneck recently approved a Transit Oriented Development District in the Washingtonville neighborhood (near the Mamaroneck Metro-North Rail station) after considering the Village of Mamaroneck Transit Oriented Study (TOD Study). The TOD Study provides that the newly enacted TOD Overlay District seeks to fill in street gaps, rebuild sidewalks, and reduce the number of vacant buildings and parcels.<sup>10</sup> On Oct. 19, 2014, the Board of Trustees enacted the new TOD regulations allowing for increased density and in-fill development.

**Planned Unit Developments.** In enacting the Planned Unit Development statutes (General City Law Section 81-F, Town Law Section 261-c and Village Law Section 7-703-a), the New York Legislature permitted local legislative bodies to:

enact, as part of its zoning local law or ordinance, procedures and requirements for the establishment and mapping of planned unit development zoning districts. Planned unit development district regulations are intended to provide for residential, commercial, industrial or other land uses, or a mix thereof, in which economies of scale, creative architectural or planning concepts and open space preservation may be achieved by a developer in furtherance of the town comprehensive plan and zoning local law or ordinance.

Planned Unit Developments (PUDs) permit a community to tailor its zoning code and allow for comprehensive large-scale development.

PUDs provide developers with the opportunity to examine the needs of a community and design a holistic development plan that incorporates a mix of uses, transit oriented design and open spaces. In essence, a PUD would not simply focus on project to project, but create a regulatory approval process for a certain area with specific and flexible zoning regulations that directly relate to the needs of the community. PUDs allow a municipality to target an area of land that is available for large-scale mixed use, multifamily development that would make a meaningful contribution to the community.

## Conclusion

Preparing for the next wave of housing is vital to the sustainability of suburban communities. The existing residential neighborhoods are not feasible for the up-and-coming millennial work force. Through the above-mentioned land use tools, municipalities can welcome private capital as the catalyst for this change easing the pressure and financial stress many municipalities face or will face shortly.

### Endnotes:

The current population stagnation and young white collar flight from Westchester, Fairfield, and Long Island demands change. Municipalities need increased revenue to maintain services and nationally recognized school districts; but, are mandated to stay within the 2 percent tax cap. The above tools provide municipalities with ways to make those changes, and to look to the future.

1. "How The Millennial Generation Could Affect The Economy Over The Next Five Years," Laura Shin, Forbes (April 30, 2015)(available at <http://www.forbes.com/sites/laurashin/2015/04/30/how-the-millennial-generation-could-affect-the-economy-over-the-next-five-years/>).
2. "How The Millennial Generation Could Affect The Economy Over The Next Five Years," Laura Shin, Forbes (April 30, 2015)(available at <http://www.forbes.com/sites/laurashin/2015/04/30/how-the-millennial-generation-could-affect-the-economy-over-the-next-five-years/>).
3. "Multifamily Homes, Percent of Housing Units in Structures Having Three Units or More, Including Single-Family Attached Units," Westchester County, New York, (available at <http://planning.westchestergov.com/images/stories/Census/ACSmaps/MultiFamilyHomes.pdf>); See also Richest Communities on Long Island and in Westchester Experiencing Demographic Collapse of Young Adult Workforce, Alexander Roberts, Executive Director, Community Housing Innovations (Feb. 25, 2014)(available at <http://chigrants.org/wp-content/uploads/2014/02/Demographic-Collapse-Report-2-25-14.pdf>).
4. Richest Communities on Long Island and in Westchester Experiencing Demographic Collapse of Young Adult Workforce, Alexander Roberts, Executive Director, Community Housing Innovations (February 25, 2014)(available at <http://chigrants.org/wp-content/uploads/2014/02/Demographic-Collapse-Report-2-25-14.pdf>).
5. Populations By 5-Year Age Cohorts, 2000 & 2010, Westchester County, NY, Westchester County Planning Department (available at <http://planning.westchestergov.com/population-stats>).
6. Populations By 5-Year Age Cohorts, Westchester County, 2010 Census, Westchester County Planning Department (available at <http://planning.westchestergov.com/population-stats>).
7. Richest Communities on Long Island and in Westchester Experiencing Demographic Collapse of Young Adult Workforce, Alexander Roberts, Executive Director, Community Housing Innovations (Feb. 25, 2014)(available at <http://chigrants.org/wp-content/uploads/2014/02/Demographic-Collapse-Report-2-25-14.pdf>).
8. N.Y. Town Law §261-b, N.Y. Village Law §7-703, N.Y. Gen City Law §81-D.
9. General Municipal Law §699-b. <http://codes.lp.findlaw.com/nycode/GMU/16-A/699-b>.
10. See Village of Mamaroneck Transit Oriented Study, pp. 24-27.

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