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Incentive Zoning: a market-based planning tool

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Incentive zoning is a planning tool that local governments use to entice developers to provide a public good (e.g. affordable housing, open space, community amenities) by offering incentives (e.g. increased density, expedited approvals). The incentives seek to offset the cost to developers of the public goods. In this issue brief we describe research on the use of incentive zoning¹ by communities. We also discuss some of the factors relating to success or failure of the planning tool.

Incentive zoning is a market-based alternative to more command and control regulation. It was pioneered in New York City to entice the creation of public plazas. The city's 1961 Zoning Resolution introduced incentive zoning by offering additional floor-to-area ratio (FAR) to developers who provided public plazas in their projects. This resulted in the construction of more than 500 privately-owned public spaces during the last four decades of the 20th century (Kiefer, 2001). Although the bonus created hundreds of spaces, critics have charged that developers intentionally made them uninviting and that the plazas remain underused (Kiefer, 2001; Smithsimon, 2008). In 1967 in Times Square, which had seen no live theaters built since 1927, developers were offered a FAR bonus of up to 44 percent to preserve historic venues; five classic theaters were put back into operation (Marcus, 1991). A 1971 update offered bonuses in certain New York City districts for other public goods including historic preservation, ground floor retail, subway connections, and pedestrian bridges (Costonis, 1972).

Information for this issue brief comes from multiple sources. First we used a 2013 survey of New York towns, counties, villages, and cities.² The second survey, a 2010 national one, was conducted by the International City/County Management Association (ICMA). Finally, we conducted interviews with officials across the country.

Incentive Zoning in New York State

In New York State, 17.2 percent of responding local governments offer incentive zoning programs. The use of incentive zoning was higher in cities (20.5%) and towns (20.7%) than in villages (11.2%) or counties (9.8%). Another question on the survey asked if developers had taken advantage of incentive zoning programs. Of the 100 New York local governments that have adopted incentive zoning, two-thirds report that developers used it.

In New York, respondents reported seeking a wide variety of public goods as part of an incentive zoning program. Those are listed below in Table 1. The distribution of these choices among municipalities is shown in Figure 1.

Incentive Zoning Across the Nation

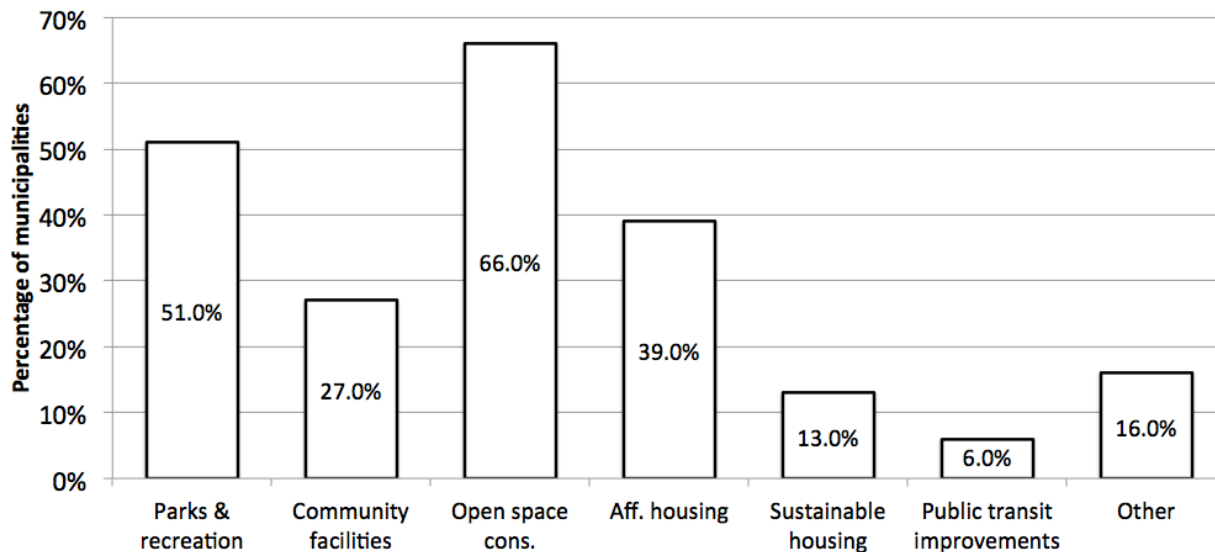
Across the country, the percentage of local governments using incentive zoning (18.9%) is similar to that in New York State. The kinds and distribution of premiums deployed to entice developers to produce public goods are illustrated in Figure 2. The focus of the questions on the national survey, which provided this data, was sustainable development, a topic which could include programs relating to environmental protection,

Table 1 - Public goods sought by NY municipalities

- | | |
|-------------------------------------|--|
| • Parks and recreation improvements | • Sustainable or energy efficient construction |
| • Community facilities | • Infrastructure improvements |
| • Open space conservation | • Sidewalks / street trees |
| • Affordable / senior housing | • Water, sewer, storm water improvements |
| • Public transit | |
| • Parking | |

This paper is part of the Planning for Sustainability Project, which is directed by Dr. George Homsy of Binghamton University's Department of Public Administration and Dr. Mildred Warner of Cornell University's Department of City and Regional Planning.

The New York State survey was conducted in conjunction with the New York Upstate Chapter of the American Planning Association, the New York Conference of Mayors, the New York Association of Towns, and the New York Association of Counties. It was funded by the US Department of Agriculture Hatch and Smith Lever grant program. The national study and the interviews were conducted in conjunction with the International City/County Management Association and funded by a 2014 USDA Agriculture and Food Research Initiative, Foundational Agricultural Economics and Rural Development grant (#2014-68006-21834).

Figure 1 - Public goods chosen by NYS municipalities*(n= 100 municipalities seeking 218 public goods)*

social equity, and economic development. However, given the nature of the entire national survey, it is likely the respondents focused on environmental issues. (A more precise question, specifically has been placed on the 2015 ICMA Sustainability Survey.)

Additional information about national usage of incentive zoning came from the interviews conducted by the authors into the following questions. Why do local governments use incentive zoning? What is the range of public goods sought by communities and how do premiums work to entice developers to provide those public goods? What are factors contribute to a successful incentive zoning program and what are the challenges?

Why use incentive zoning?

Incentives are generally used in order for a municipality to obtain a desired public good at low or no cost and in a politically favorable manner. Within that, different communities have different reasons that drove them to use incentive zoning. The following illustrate some of those motivations.

Ann Arbor, Michigan has used incentives for decades, initially to encourage downtown residential development when the market was not yet present. The planners feared that requiring residential units in every project would have slowed or even stopped

development all together in what was a vibrant commercial core. Incentive zoning gave the city a less risky way to push developers to add a residential component to their projects.

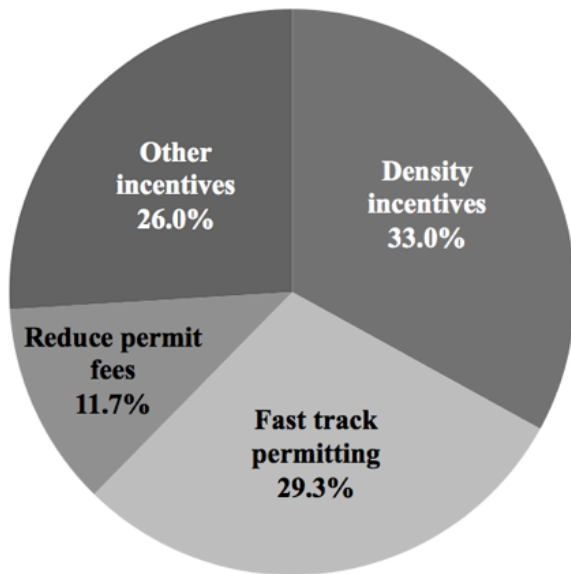
In Asheville, North Carolina, the city government is not allowed by the state to require green building or affordable housing. Incentive zoning provided the means for the city to get around its lack of authority. On the other hand, all municipalities in California are required to offer incentive zoning for affordable housing and state laws specify the minimum density bonuses that cities must offer for various amounts of affordable housing.

In Hatfield, Pennsylvania, the township wanted to obtain land for a state road project, but buying the land at market value was not politically or financially possible. The township used incentive zoning as a tool to obtain the land for “free” by providing density bonuses to the landowner on property elsewhere in the community.

Uses of Incentive Zoning

The kinds of public goods identified through interviews with planners across the country do not differ much from those in the New York State survey. The interviews did identify different ways that incentive zoning programs were implemented.

Figure 2 - Premiums used by US municipalities
(*n*= 347 municipalities employing 539 incentive types)



Affordable housing is one of the most popular uses of incentive zoning. Some cities require affordable housing and sweeten the deal by offering bonuses for developers to provide more. Other cities try to voluntarily entice developers to include affordable units with density bonuses. Asheville, North Carolina incentivizes affordable housing based on a points system of how many units are affordable and how long they will be affordable. In Sonoma County, California developers can take advantage of a 35 percent state-required density bonus as well as county bonuses that the bonuses could nearly double the density of developments. The county will also fast track land use, subdivision, and construction applications as well as eliminate covered parking requirements and reduce open space, minimum parcel size, and setbacks.

Environmentally friendly project design is also a common public good identified in incentive zoning programs. Open space, LEED building certification, natural resource conservation, public parks and public transit are examples of desired public goods. In one Orland Park, Illinois zoning district every ten percent of open space preserved is incentivized by an increase of one unit per acre in density above the base of 2.5 units per acre. Developers in Orland Park also get credit towards density bonuses if they orient houses to take

advantage of passive solar heating. In Ann Arbor, Michigan achievement by developers of a LEED silver building garners a 50 percent increase in FAR, LEED Gold a 150 percent premium and LEED platinum 250 percent. The city has a formula for calculating penalties if the finished project falls short of its LEED goals.

A variety of public amenities and infrastructure projects were also commonly mentioned. Public goods in this area include: hiding large construction sites from view, providing space for public facilities (e.g. fire station, community building), increased streetscape, and building setbacks. Ann Arbor, Michigan offers 10 extra square feet of FAR for each square foot of pedestrian improvements up to a maximum of 8,000 square feet of additional FAR.

Planners in five out of twelve cities also noted historic preservation and façade maintenance as an important public good. When a historic building is preserved in Arlington County, Virginia, the project's gross floor area may be increased by up to 500 percent of the first 10,000 square feet of preserved historic area and then up to 300 percent of the gross floor area preserved beyond that.

Factors contributing to successful incentive zoning programs

The initial research indicates three factors that may contribute to the success of incentive zoning. (More are likely to be revealed as the research continues.) First, there has to be a strong existing demand for some kind of development. Planners reported in their interviews that having either a growing real estate market or a major anchor such as a health center, research center or university proved to be relevant to many cases of successful incentive use. One planner explained it as "... here we're not trying to create a market, we're trying to shape a market. The market's already here."

Developing incentive zoning in a comprehensive or other planning process helps planners, citizens, and local officials to understand and frame goals and allows for a more informative backdrop. Developers will know what to expect and what projects are likely to be successfully approved. Citizens have a list of public goods to which they can point and concretely ask to be provided.

Case Study – Ossining, New York

The Village of Ossining, New York (2010 pop. 25,060) has two thriving incentive zoning programs. First, the municipality requires all residential developments with more than six units provide affordable housing. This has its own chapter in the village code. Developers receive a ten percent density bonus if the units are affordable to people with 80 percent of the area median income and a 15 percent bonus if the units are priced for those earning 60 percent. The program has produced 26 affordable housing units with 22 under construction and another 19 approved.

The second program is in the zoning code and provides incentives in certain districts. The planning board may grant a 10 percent density bonus for each public good provided by the developer. The public goods sought by the village are the provision of: access to river trails, public park/public open space, historic preservation, green building certification of LEED silver or better, brownfields remediation, infrastructure improvements, public artwork, and stream bank restoration.

One example of Ossining's successful use of incentive zoning was the development of the Avalon Bay Community, which received incentives through both programs. In exchange for additional density from six to eight dwelling units per acre (a 33% bonus), the Village received the following amenities.

- 10% of the units are part of the affordable housing program
- Preservation, rehabilitation, and adaptive re-use of the Kane House, a gothic revival building built around 1845 and identified as eligible for the National Register
- Donation to the village of eight acres of parkland
- Installation of walking trails that loop the site and connect to existing trail systems

One factor that could contribute to the village's success is the strong real estate market; Ossining is in the metropolitan area of New York City and therefore experiences significant development pressure. Additionally, the desired list of public goods has been set out in the comprehensive plan and village zoning code so that citizens, developers, and local officials start out on the same page.



Preservation of the historic Kane House on the property developed by Avalon Bay earned the developers a density bonus. (Photo courtesy of Village of Ossining.)

Incentive zoning is also effective when part of a larger set of strategies. Affordable housing or green buildings are achievable through incentive zoning, but in most places other programs are needed. For example, in Sonoma County, California affordable housing projects using a density bonus also receive county grants as seed money. The combination of tools makes the projects viable.

One question that the research has not answered is whether it is better for a local government to have flexibility in the incentive zoning – that is to negotiate premium and public good packages? Or whether it is better to set out a fixed menu of options? Successful communities report doing it either way and this will be a topic of future research.

What are some challenges pertaining to incentive zoning?

Getting the price right: Understanding the correct price of public goods versus incentives offered would provide local governments with a more knowledgeable criteria for designing their programs. It is potentially harmful for municipalities to be giving away too much, and if they do not offer enough incentive to developers there is little chance achieving the creation of the desired public goods. This has been an ongoing problem. A New York State comptroller report found that in 15 incentive projects in New York City with a public benefit worth about \$5 million the developers received density bonuses with a market value of over \$100 million (Lassar, 1989). On the other hand, critics claim that Seattle's incentive

zoning program has created far fewer affordable housing units than expected (Downtown Seattle Association, 2014).

Public good prioritization: Municipalities generally desire a number of public goods. However, given a long list of options, developers often choose the ones that enhance the value of their project. Numerous planners interviewed expressed frustration that developers were bypassing important public goods for others on the list. Some planners reflected that their lists were too long and need to be better prioritized.

Public resistance: In some municipalities, planners report resistance to incentive zoning because it changes the rules. For example, adding density or building height is a change that may be resisted by neighboring residents, who might not have thought such changes possible. Increasing building height can cause other residents to be unsatisfied with the aesthetic of the building and neighborhood. Conveying the benefits and drawbacks of developer premiums and public goods is an important part of any project.

Lack of demand: Incentive zoning is usually only effective when the region is already attractive to developers. Planners whose incentive zoning did not work as well as expected report that very little development occurred in any case. Reshaping development through incentive zoning can only occur when development is happening.

Conclusion

Incentive zoning can be an important tool for local governments seeking to increase the provision of certain public goods. This is especially true if legal or political barriers prevent municipalities from pursuing these goals through standard zoning regulations. While incentive zoning is widely used, most planners admit that they do not have the capacity to undertake more than cursory research into the kinds and scales of incentives that would allow for the most effective implementation. More experience and research into incentive zoning is warranted to make it a more precise tool for planners.

End Notes

¹ This paper does not examine economic or other incentives designed to attract development; our goal is to examine the use of incentives to shape development usually through changes to the zoning code. Incentive zoning is also different from, but obviously related to, impact fees that require developers to contribute to a fund to be used by government for the provision of a community good.

² The City of New York and its five constituent counties were not included in the survey.

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