

RESOLUTION ADDRESSING PLANNING BOARD
RECOMMENDATIONS REGARDING ORDINANCE 2011-05

- WHEREAS, the West Windsor Township Council introduced Ordinances 2011-04 and 2011-05 to implement the Settlement Agreement with Intercap Holdings which had been approved by Resolution 2010-R256 on November 22, 2010; and
- WHEREAS, Ordinance 2011-05 set forth the land use standards that would be applied to the 24.5 acre Intercap site and that Ordinance amended the Redevelopment Plan for the Princeton Junction redevelopment area (hereinafter "Redevelopment Plan"); and
- WHEREAS, on January 19, 2011, both the aforesaid Ordinances were transmitted to the West Windsor Township Planning Board (hereinafter "Board") for a review of such Ordinances pursuant to *N.J.S.A. 40:55D-26*; and
- WHEREAS, *N.J.S.A. 40:55D-26* provides that the Board shall make a report and recommendations, concerning a proposed Land Use Ordinance including identifying any provisions of the development regulations inconsistent with the Master Plan and other matters as the Board deems appropriate; and
- WHEREAS, the Board determined to retain separate consultants to assist it in this review; which consultants prepared reports to the Board, which were the subject of Board hearings on February 23 and March 2, 2011; and
- WHEREAS, in the late afternoon of Friday, March 4, 2011, the Planning Board sent its report in the form of a Resolution of inconsistencies to the Council; and
- WHEREAS, the Settlement Agreement with Intercap required consideration for final approval of Ordinance 2011-05 by the Council no later than March 7, 2011; and
- WHEREAS, *N.J.S.A. 40:55D-26* requires the Council to review the report of the Board and may disapprove or change any recommendation in such report by a vote of a majority of its full membership and shall record in its minutes the reasons for not following said recommendations; and
- WHEREAS, the Township Council has reviewed the Board Resolution, whose recommendations are fully set forth herein and makes the following responses to those recommendations.

NOW THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Windsor as follows:

1. After careful review and consideration of the Board Professional's reports and in view of the Board's familiarity with the West Windsor Township Master Plan and the Princeton Junction Redevelopment Plan, the Board finds that the proposed implementing Ordinance is inconsistent with the Master Plan as it includes the Princeton Junction Re-development Plan and the espoused intent, purpose and goals of the plan related to District 1.

Response: When the Council introduced Ordinance 2011-05, it took note of the fact that inconsistencies with the Redevelopment Plan were already identified and contained in that Ordinance. The Ordinance amends the Ordinance approving the Redevelopment Plan and therefore there are no inconsistencies. Therefore it was unnecessary for the Board to identify such inconsistencies, which are already contained within the text of Ordinance 2011-05.

a. Goal 1 in the Re-development Plan states that the Plan will result in development which is tax positive or tax neutral. The Planning Board recommends that the Township Council obtain a developed and updated fiscal impact report in order to establish that the development regulation which is proposed will result in a tax positive or tax neutral financial impact upon the municipality;

Response: The redeveloper has committed itself to complying with Goal 1 of the Redevelopment Plan at the time it is seeking site plan approval. The Redevelopment Plan does not require that the fiscal report be submitted at the time of the implementing Ordinance.

b. Goal 3 of the Re-development Plan requires compliance with COAH growth share requirements. While the Board recognizes that the Growth Share requirements are no longer valid, it also recognizes that it is likely to be replaced by a 10% – 20% affordable housing share requirement. The proposed implementing Ordinance and agreement require a 5% share of affordable housing or inclusionary housing units on site. The Planning Board recommends that the agreement and implementing Ordinance be modified to require the developer of District 1 to satisfy any and all inclusionary housing requirement which may be imposed upon West Windsor Township pursuant to then existing regulation entirely on site. Such a requirement will thereby ensure that West Windsor Township will not be exposed to any future costs and/or expense associated with satisfying any inclusionary housing requirements generated by present or future regulation as a result of the development of District 1;

Response: As to whether the Growth Share requirements will be replaced by a requirement of 10% to 20% is speculative. However, in the event a

reviewing Court determines that the 5% share for Affordable Housing is insufficient to satisfy Mt. Laurel obligations, the Township will not be obligated to assume a higher percentage of Affordable Housing. In that event, the settlement will end or the redeveloper will be asked to assume more of an Affordable Housing obligation. Finally, the requirement that all Affordable Housing must be satisfied entirely on the 24.5 acre Intercap site would preclude the possibility of allowing the redeveloper to increase the 5% of Affordable Housing share to a higher amount at a different appropriate site within the Redevelopment area.

c. Goal 11 of the Re-development Plan states that no streets will cross through the Promenade leaving a continuous open space within the Promenade. The proposed implementing Ordinance provides and permits cross streets within the Promenade. The Planning Board recommends that the cross streets be eliminated to preserve the intended character of the Promenade.

Response: If the cross streets presents a health and safety problem then they can be eliminated in whole or in part at site plan review.

d. Goal 11 of the Re-development Plan prohibits new single story single use structures. The Planning Board recognizes that the proposed implementing Ordinance would permit a single story retail and restaurant building on the Promenade, as well as, a single story retail kiosk. The Planning Board recommends that the goals of the Re-development Plan be modified in order to permit the proposed single story structures as the Board Members recognizes the merit of the Board Planner's recommendation that such use will enhance the architectural and aesthetic appearance of the development.

Response: The Planning Board has concurred with the merits of allowing a single story retail structure near the Kiosk and the terms of Ordinance 2011-05 adopting a different standard than the Redevelopment Plan.. As noted, in the Planning Board hearings, this structure is intended to accommodate another 30,000 square feet of retail in the event certain occupancy standards are met within the original 70,000 square feet of retail space.

e. Goal 13 of the Re-development Plan prohibits residential market units with more than two bedrooms. The proposed implementing Ordinance provides for an "average" of two bedrooms. The Planning Board recommends that the implementing Ordinance be modified to require that all market rate units contain a maximum of two bedrooms in order to avoid an unintended parking and traffic impact which may be posed by units with 3 or more bedrooms and in order to provide certainty as to the types of housing units which will be developed within the District.

Response: Section 1G of Ordinance 2011-05 states that the residential units will have an average of two bedrooms. The Council believes that the "averaging"

of two bedrooms allows for diversity of residential units and is a sound approach. It is expected that many of the units would be one bedroom while others will exceed two bedrooms as long as the average is two bedrooms. Another issue that was discussed at the Planning Board hearings was the concern that “bedroom” be defined to avoid the redeveloper from using a den, study or an office as an additional bedroom. Planning Board counsel Jerry Muller addressed that concern on page 3 of his January 11, 2011 transmittal memorandum, stating that the Township will use such mechanisms as deed restrictions or provisions in the Homeowners’ Association documents to ensure compliance with the two bedroom average.

f. The Board recognizes that one of the overall goals of the Re-development Plan was to provide appropriate retail in the proposed transit village. The Board recognizes that the proposed implementing Ordinance and settlement agreement provide for a minimum of 70,000 square feet of retail space with a maximum of 147,500 square feet of retail space. The Board recommends modification of the implementing Ordinance to ensure the development of significantly more retail space in order to further promote satisfaction of the Re-development Plan goals and the future success of the Promenade/Shared Use road.

Response: The developer originally intended to have 350,000 square feet of commercial office space on the site. The Council rejected that position and ultimately a maximum of 147,000 square feet of retail space is currently allowable in Ordinance 2011-05, with only small offices (e.g. professional offices) allowed. Although Council joins the Board in hoping for more retail space, this amount appears to permit a proper balance to proceed with the Town Center concept.

g. The Board recognizes that the proposed implementing Ordinance and Re-development Plan currently provides for a shared road concept which has been referred to often as the Promenade. Based on the recommendations of the Board’s Traffic Engineer and in view of the Board’s concerns regarding traffic, the Planning Board recommends that the implementing Ordinance be modified to permit and require a more typical Main Street concept with a dedicated cart way, and pedestrian and bicycle paths. The Board does not believe that it is ultimately necessary to establish such separation with curbing and suggests that the modified goals may be achieved through creative development techniques including traffic calming devices and other physical separation. The Board also recommends that the shared use road concept be optional.

Response: There appears to be a misconception about the nature of the Promenade. There will be no auto traffic on the Promenade. Further, the dedicated cartway is separated from the pedestrian paths by bollards, parking spaces and other improvements. (See page 13 of the Pattern Book.)

Finally, the shared use road concept has already been reviewed by the Bicycle and Pedestrian Task Force and found to be acceptable.

h. The Board recognizes that the proposed implementing Ordinance and Re-development Plan currently provides for sign regulation which is not in accordance with existing sign regulation applicable throughout the Township. The Board recommends that the proposed Ordinance be modified to require compliance with the existing Township sign regulation which is currently applicable to signage throughout the Township and as modified from time to time by the Township Council.

Response: There is no inconsistency between the signage standards set forth in Ordinance 2011-05 and the Redevelopment Plan. Attached to this Resolution are pages 68 and 69 of the Redevelopment Plan identifying the types of signage permitted in all redevelopment districts, including the Intercap site. These standards were incorporated in Ordinance 2011-05.

BE IT FURTHER RESOLVED that the Township Clerk record this Resolution in the minutes of the Council meeting in accordance with *N.J.S.A. 40:55D-26*.

Adopted: March 7, 2011

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting held on the 7th day of March 2011

Sharon Young
Township Clerk
West Windsor Township