

RESOLUTION ADDRESSING PLANNING BOARD RECOMMENDATIONS
REGARDING ORDINANCES 2011-16 and 2011-17

- WHEREAS, the West Windsor Township Council introduced Ordinances 2011-16 and 2011-17 to implement in part an Amendment to Settlement and Redeveloper's Agreement with InterCap Holdings that had been approved by Resolution 2011-R133 on July 11, 2011; and
- WHEREAS, Ordinance 2011-16 amends land use standards that would be applied to the 24.5 acre InterCap site by amending the Redevelopment Plan for Princeton Junction (hereinafter, "Redevelopment Plan"), which Council approved pursuant to statute and which is independent of the Township Master Plan, and its codifying sections in the Land Use code; and
- WHEREAS, Ordinance 2011-17 sets forth land use standards that would be applied to the 24.5 acre InterCap site only if the Redevelopment Plan was invalidated; and
- WHEREAS, on August 17, 2011 both of the aforesaid Ordinances were reviewed by the West Windsor Township Planning Board (hereafter, "the Board") pursuant to the Local Redevelopment and Housing Law and the Municipal Land Use Law. Such statutes provide that the Planning Boards report to the governing body on land use ordinances referred to it. The report must identify any provisions in the Ordinances inconsistent with the Master Plan and any other matters as the Board deems appropriate; and
- WHEREAS, the Board determined to retain separate consultants to assist it in this review. Such consultants prepare reports for the Board that were the subject of the August 17, 2011 Board meeting; and
- WHEREAS, on September 7, 2011, the Board adopted a Resolution of Referral and Recommendation; and
- WHEREAS, the Local Redevelopment and Housing Law, NJSA 40A:12A-7e, and Municipal Land Use Law, NJSA 40:55D-26, require the Township Council to review the report of the Board and provide that it may approve, disapprove, or change any recommendation by a vote of a majority of its fully authorized membership and shall record in its minutes the reasons for not following said recommendations; and

WHEREAS, Township Council has reviewed the Board's resolution, whose recommendations are quoted in full below. In response to such recommendations, the Township has negotiated further with InterCap as to the dispersal of the for sale affordable units; secured a court order protecting it from any further affordable housing obligation generated by development on the site that is required by future changes in the law; and prepared a fiscal impact report. Council otherwise disapproves such recommendations for the reasons set forth herein.

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

1. "Goal 1 in the Redevelopment Plan states that the Plan will result in development which is tax positive or tax neutral. The Planning Board continues to recommend 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. The revised proposed Ordinance 2011-16 does not address this concern which was detailed in the prior Resolution of the Board."

Response: The Township has distributed the fiscal impact study done by Tischler Bise on behalf of InterCap.

2. "Goal 3 of the Redevelopment 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 2011-16 requires a minimum 12.2% 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 requirements which may be imposed upon West Windsor Township pursuant to applicable regulation at the time of any future application for Site Plan approval but in no event less than 12.2 percent. 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 as a result of the development of District 1."

Response: The Resolution points out that the Redevelopment Plan requires compliance with COAH growth share requirements while the Ordinances specify a 12.2% set aside and do not provide that the developer satisfy any future affordable housing obligation that is imposed. The 12.2% set aside includes low- and very-low-income units as well as moderate-income units, as compared to the 5% set aside, with all the units being moderate-

income, in the original ordinances. The amendatory ordinances thus represent a substantial increase in the number of affordable units that will be provided. The number required is not inconsistent with the growth share requirement in the Redevelopment Plan, since the growth share methodology, as the Board recognizes in its resolution, has been invalidated. The Board also notes, and Council agrees, that the growth share will likely "be replaced by a 10% - 20% affordable housing share requirement," a range within which the new affordable housing requirement for the InterCap site falls.

As to the Board's recommendation that the District 1 developer be required to satisfy any future affordable housing obligation relating to that district, the court has entered an order providing that the 12.2% shall be treated as fully satisfying any future affordable housing obligation that is generated by development on the site, thus satisfying the concern expressed by the Board. The order also provides, consistent with the Planning Board recommendation, that the 12.2% obligation would continue to apply, as it would in any event, since the court order will be approving the affordable housing provisions in the agreement, including the 12.2% provision. This provision is part of a broader set of provisions that find the affordable housing provisions in the Settlement Agreement satisfactory and fair to the low- and moderate-income class and approve the Settlement Agreement, including the affordable housing provisions.

*Lastly, the 12.2% requirement is a robust one given the extraordinary costs associated with development on the InterCap site and other transit villages, including those related to acquisition of developed land, lost cash flow as existing space is decommissioned, site preparation, including in InterCap's case demolition of the 13 Class C office buildings and associated parking lots and drives, infrastructure costs both on- and off-site, provision in InterCap's case of right-of-way for a major regional road, Vaughn Drive, and the costs of public amenities and high quality architecture. A 2006 study entitled *Housing Diversity and Affordability in New Jersey's Transit Villages* is the most comprehensive study of transit villages undertaken, and it shows that of the 16 transit villages then in place, including those in urban centers, only one has a higher affordable housing percentage than the 12.2%, and in that case all of the units were federally subsidized. The average set aside in those transit villages was 4 to 5%, with the average set aside for family units being 1.4 to 1.7%. None of the units on the InterCap site will be age-restricted, and, as with West Windsor's affordable housing program generally, the propose affordable*

housing component in District 1 compares most favorably to those in other transit villages around the State.

3. "The Redevelopment Plan Goal 2 provides for market rate housing units and affordable units to be integrated into any housing area. The proposed ordinance change dealing with the "clustering" of affordable housing units does not accommodate integration of affordable units. The term clustering is ambiguous in view of the stated goals and objectives of the redevelopment plan. As such, ordinance 2011-16 is inconsistent with the espoused "integration" goals of the plan. The Board recommends that Council eliminate the proposed additional language modifying Goal 2 of the redevelopment plan and retain the original language without modification to ensure consistency with the Plan as it relates to inclusionary housing goals and objectives."

Response: The Board notes that the Redevelopment Plan requires integration of the market and affordable units. The clustering provision in the two Ordinances is consistent with the language in the Redevelopment Plan in codified sections 200-257B(2)(a)[5] and 200-257C(2)(a) and (d) requiring integration of and dispersal of the affordable units. Limiting the affordable units in one building to no more than 35% of the total number of units in the building will prevent all-affordable buildings, a condition the integration requirement seeks to avoid, and ensures that affordable rental units will be located in several buildings. They will thus be dispersed through the project, albeit not evenly (i.e., one affordable unit every eight or nine market units, rather than concentrated in one location.

In addition, the clustering of rental affordable units within buildings is appropriate given the advisability of having a separate condominium association for those units in order for the owner of the rental units to have control over maintenance rather than maintenance responsibilities being ceded to a condominium board controlled by unit owners. Such a separate condominium association, which would be part of a broader master association that includes the ownership units and the retail space, would also avoid potential financing problems for homeowners were the rental units to be in the same condominium association as the ownership units. Clustering rental units in several buildings would facilitate creation of a separate association and make management of the affordable units, including their maintenance, more efficient. It is noteworthy that the Township affordable housing consultant, Piazza & Associates, which in other municipalities manages affordable units, supports the clustering provision for these reasons.

Lastly, as with the fiscal impact report and the court order protecting the Township from any additional affordable housing obligation generated by the project, the Township has responded to the Planning Board recommendation by negotiating an amendment to the ordinances providing that the 18 for sale affordable units will not be subject to the clustering provision and must be more evenly dispersed through the project. The Township Attorney has advised that the change in the ordinance text, limiting clustering to rental affordable units, is not substantial and may be voted upon by Council without the need for re-introduction.

4. “[W]ith respect to Ordinance 2011-16, the Board finds that, although not a consistency issue, the proposed changes with regard to the minimum required parking spaces presents a risk that the Board may not be able to insure that the site will be able to accommodate the peak demands for parking and that Council should follow the recommendations of the Board’s traffic consultant and require a minimum of 1.5 space per unit. The site plan process builds in some flexibility on the issue and the developer will be entitled to make the case for fewer spaces should it determine that the requirements result in excess capacity based on future traffic studies to be submitted as part of the site plan review process.”

Response: As the Board noted, the reduction in the parking ratio is not inconsistent with the Master Plan.

While the Board indicates that future traffic studies can be used as the basis for a reduction in the ratio, Council is satisfied that reducing the parking ratio from 1.5 spaces per unit to 1.4375 spaces per unit is reasonable. Several studies show that 1.15 to 1.2 parking spaces are provided in transit oriented development. The Institute of Traffic Engineers Parking Generation report, the most respected source of standards in this area, indicates that 1.2 spaces per unit are sufficient. John Madden has opined that 1.0 spaces per unit would be sufficient.

One of the most effective ways of limiting residential traffic in District 1 is to limit parking, as is done, for example, in Jersey City. That limitation will result in a self-selection process, whereby households needing more parking will look elsewhere for housing if parking is not available. Since on-street parking will be metered and the closest other parking is in commuter lots, occupants will have no choice but to limit the number of cars to the available number of parking spaces.

Lastly, while it has been noted during the public portion of the hearing on introduction of the ordinances that reducing the parking requirement generates a financial benefit to the developer, that benefit, given in recognition of the cost of providing the additional affordable units, is substantially less than the income lost when converting 58 units from market to affordable units. The benefit is a small fraction of that loss.

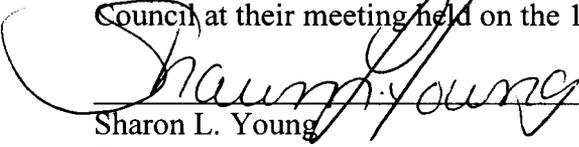
5. “[W]ith respect to proposed Ordinance 2011-17, the Board finds that the proposal of a new zone with characteristics, goals and objectives which are currently not included in the Township Master Plan is inconsistent with the Master Plan. The West Windsor Master Plan does not provide any basis or rationale for establishing the “PM-P District” contemplated by proposed Ordinance 2011-17.”

Response: Ordinance 2011-17 amends Ordinance 2011-04, which the Board did not indicate was inconsistent with the Master Plan, and gives the developer a reasonable assurance that the regulatory system supporting its project will not be eliminated in the unlikely case that the Redevelopment Plan and its codifying ordinance provisions are struck down as a result of litigation brought by a third party. The Housing Element and Fair Share Plan, which noted that the Council was in the process of creating a redevelopment plan, and the Land Use Element were adopted before the Redevelopment Plan was prepared. The Master Plan, therefore, could not be crafted in a way that would provide for the zone created by Ordinance 2011-17, and the Master Plan has not been updated since the Redevelopment Plan was adopted.

BE IT FURTHER RESOLVED that the Township Clerk record this Resolution in the minutes of the Council meeting in accordance with the Local Redevelopment and Housing Law and Municipal Land Use Law.

Adopted: September 19, 2011

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting held on the 19th day of September, 2011.


Sharon L. Young
Township Clerk
West Windsor Township