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Land Use for Economic Development in Tough Financial Times

John R. Nolon
Elisabeth Haub School of Law at Pace University

Zoning and Land Use Planning

Jennie C. Nolon & John R. Nolon[*]

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I Tough Financial Times and Cities

The recession hit cities hard. Basic municipal staffs and services are being cut, debt is being restructured, capital projects delayed, and other cost cutting measures reported. The Congressional Budget Office reports that by November of last year there were 241,000 fewer municipal employees than there were three years earlier when the recession began.[1] In its most recent report from city finance officers, the National League of Cities states that city spending cutbacks since 2009 are the largest since the survey was first taken, over twenty-five years ago.[2] Despite this serious trend, municipalities have not defaulted in debt payment

[*]John R. Nolon is James D. Hopkins Professor of Law at Pace Law School where is serves as Counsel to the Land Use Law Center. He is also Visiting Professor at the Yale School of Forestry and Environmental Studies. Jennie C. Nolon is an attorney at the Land Use Law Center of Pace University School of Law and manages its urban growth programs, including the Mayors' Redevelopment Roundtable—the subject of a case study in this article.

[1]*Fiscal Stress Faced by Local Governments*, Congressional Budget Office, http://www.cbo.gov/ftpdocs/120xx/doc12005/12-09-Municipalities_Brief.pdf (last visited July 22, 2011).

[2]*City Fiscal Conditions in 2010*, National League of Cities (NLC) (Oct. 20, 2010), http://www.nlc.org/File%20Library/Find%20City%20Solutions/Research%20Innovation/Finance/city-fiscal-conditions-research-brief-rpt-oct10.pdf (last visited July 22, 2011). In this report, 87% of city finance officers indicated their cities were worse off financially than in 2009. Furthermore, according to finance officers, city revenues, as generated in property, sales, and income taxes, will decline -3.2% in inflation-adjusted dollars. To compensate, city officials are cutting back spending, with expenditures declining by -2.3%. These are the largest cutbacks in spending in the history of the survey and the fourth year in a row that revenue declined.

and there are few municipal bankruptcies.[3] There is evidence that the horizon is clearing in some parts of the country for cities.[4]

As states continue to reduce funding for local governments, property values and taxes remain low, and the job market remains flat, local elected officials in most cities will continue the hard work of budget balancing through cost cutting. These realities notwithstanding, this article suggests that these tough economic times present an opportunity for local officials and residents to work on future revenues by planning for increased urban economic development and to formalize that plan in local land use plans, incentives, and regulations. "[W]hen a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully."[5]

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[3] *Facts You Should Know: State and Local Bankruptcy, Municipal Bonds, State and Local Pensions,* ICMA, http://icma.org/en/icma/knowledge_network/documents/kn/Document/302445/Facts_You_Should_Know (last visited July 22, 2011). This fact sheet was issued by the International City/County Management Association, along with ten other organizations. Key findings include the following regarding municipal bonds:

- There are approximately 1.5 million municipal bonds outstanding, totaling $2.9 trillion.
- Seventy percent of outstanding municipal bonds are owned by individual investors.
- Nearly 12,000 municipal bond issuances are completed each year, predominantly by state and local governments for governmental infrastructure and capital needs purposes.
- Municipal securities are considered to be second only to Treasuries in risk level as a safe investment instrument.
- Since 1970, there have only been fifty-four defaults in the municipal sector—less than 1/3 of 1%, compared to a corporate default rate that exceeds 10%. In the largest municipal bankruptcy in recent times—Orange County, California, in 1994—the county paid its investors and did not default on its municipal bonds.

[4] *See e.g.*, Lynh Bui, Phoenix Budget Shortfall Only $59M After Last Year's $277M Gap, Az. Repub. Mar. 24, 2011, *available at* http://www.azcentral.com/community/phoenix/articles/2011/03/24/20110324phoenix-budget-shortfall-only-59m-after-earlier-277m-projection.html. According to the article, "Phoenix officials will need to close a $59 million budget deficit for the 2011–12 fiscal year, but they're calling it good news . . . It's a huge turnaround compared with the past year, when officials implemented a 2 percent food tax, raised millions in fees, and cut more than $63 million in programs and services to shore up a $277 million general-fund budget deficit for 2010–11. 'We have a completely better outlook,' [City Manager David] Cavazos told *The Arizona Republic* on Thursday after releasing details of his proposed budget for the coming year. 'It's a sigh of relief.' "

[5] Quote attributed to Samuel Johnson, BARTLEBY.COM, http://www.bartleby.com/73/369.html (last visited July 22, 2011).

There are clear reasons for cities to believe that good planning now will result in better economies and revenues later.

The importance of cities to viable regional economic growth and development, to preserving the environment, and to meeting emerging market needs is becoming clearer every year. It is well recognized that successful regional economic development is dependent upon the existence of successful cities as centers of commerce, transportation, culture, education, and medical services, among other important services. Developers are increasingly attracted to cities, which lead other municipalities in becoming development ready — that is by removing unnecessary obstacles to approving development projects. Development that occurs in existing urban centers, particularly compact, mixed use development near transit and other services and infrastructure is much more cost-efficient and environmentally sound than development at the urban fringe.

Cities report success in attracting jobs in high tech light manufacturing and services, information technology, food processing, hospitality and entertainment, printing and publishing, retail and wholesale businesses, educational institutions and clusters, health care service and provision, medical and biotech research and manufacturing, and construction, including green development. There are synergies among these economic activities, with hospital and medical clusters attracting office and service space, retail, and some educational activities, such as training home health aides.

To the extent that new development can be placed in cities and that cities can be revitalized to become vital centers for regional economic development, numerous benefits are realized:

- Regional economic development is fostered through strong centers of culture, education, housing, government, and medical service;
- Fossil fuel use and CO_2 emissions are lowered;
- Energy is conserved;
- Agricultural lands are preserved;
- Natural resources are protected;
- Less construction material is utilized;
- Urban real property values are strengthened;
- Property and sales tax revenues increase;
- Municipalities are better able to support themselves financially;

- Service costs are less;
- Local jobs are created;
- Opportunities for achieving job and housing equity abound; and
- Tax bases for needed municipal services increase.

The U.S. Census Bureau projects that the nation's population will increase by 100 million—over one-third—by 2039. One hundred million people translates into forty million new households whose members will live, work, and shop in these buildings, traveling from one to the other and beyond, largely by car. Where the buildings that house and employ these additional people are located, how energy conserving they are, and how far these new Americans must travel from one to the other will greatly affect the emission of CO_2 and how vulnerable new development will be to sea level rise and natural disasters that accompany climate change. Many of these new Americans will be attuned to urban living; many of them are young households looking for residency in vibrant places, others are immigrants whose skills are needed in urban places, and a large number are aging couples and individuals among whom there is a growing market for urban places to retire.

The positive economic impact on urban real estate markets of these trends is borne out by a recent study by Public Interest Projects, Inc. of Ashville, N.C. This study looked at and compared property tax revenues on a per acre basis and concluded that "the urban form consumed less land, cost less to provide public infrastructure, and had a higher tax return." Mixed use development performed much better "than the strongest shopping mall in the country when it comes to generating property tax revenue . . . One mixed-use property generated $800,000 in property taxes per acre, compared to $21,732 per acre for the mall."[6] Market projections indicate that urban housing located in compact developments will increase in price more rapidly than single-family, suburban homes.[7]

These comparative results are pushing planning today

[6]Andre Shashaty, Cities Discover Economic Benefits of Sustainable Planning, Land Use, Sustainable Communities 18, at 21 (Jan./Feb. 2011) (referencing Sarasota's Smart Growth Dividend, Planning Magazine, at 26, (December 2010)).

[7]*See generally* CHRISTOPHER B. LEINBERGER, THE OPTION OF URBANISM: INVESTING IN A NEW AMERICAN DREAM (Island Press 2008), describing the re-emergence of walkable urban development as the "next American dream."

away from greenfield and single use commercial and residential development and toward compact, mixed use development that reduces sprawl, increases worker and shopper commuting options, and attracts "the kind of well-educated workers whom service businesses look for when deciding where to locate."[8]

II. Urban Economic Development and Comprehensive Planning

Local governments can afford to plan while they wait for their regional economies to recover. Strong planning visions and clear implementation plans can help and guide that recovery by giving employers and developers a 'clear' idea of the development that cities want and the tools they will employ to get it.[9] The economic development plan can be memorialized in a mayoral executive order, legislative resolution, or, optimally, by being added as a component of the city's comprehensive land use plan. As such, it then becomes the predicate for creating incentives, such as density bonuses in zoning ordinances or real property tax abatements, and reforming land use regulations to stimulate needed and feasible redevelopment and revitalization. Land use plans should contain the strategies and implementation tools they will use to accomplish their visions and these include how local land use regulations, processes, and protocols will be reformed — the subject covered in Part IV below.

A good local comprehensive land use plan — which should be revisited as change occurs — guides not only the physical development of the municipality, but also guides economic development, accommodating social, environmental, and regional concerns. The comprehensive plan is developed pursuant to state statutory authority, and state statutes vary widely in terms of directing the content to be covered in local plans. Many states use enabling legislation or administrative rules to authorize, encourage, or specifically require that economic development plans be included in a local comprehensive plan and coordinated with land use planning

[8] Andre Shashaty, Cities Discover Economic Benefits of Sustainable Planning, Land Use, Sustainable Communities 18, at 19 (Jan./Feb. 2011).

[9] Eric Kelly, Community Planning: An Introduction to the Comprehensive Plan 340 (2d ed. 2010) ("[T]he economic development component of a comprehensive plan, reminds the community where it wants to go and even tells it how to get there.")

strategies.[10] The inclusion of such language in the state enabling legislation often reflects local, regional and statewide

[10]*See, e.g.,* N.J. Stat. Ann. § 40:55D-28 (b)(9) (West 2010) (authorizing as part of municipal comprehensive plan "[a]n economic plan element considering all aspects of economic development and sustained economic vitality); R.I. Gen. Laws § 45-22.2-6 (4) (West 2010) (requiring "the identification of economic development policies and strategies, either existing or proposed by the municipality, in coordination with the land use plan element"); N.H. Rev. Stat. Ann. § 674:2 (requiring "[a]n economic development section which proposes actions to suit the community's economic goals, given its economic strengths and weaknesses in the region"); 53 Pa. Stat. Ann. § 10301 (a)(4.1) (West 2010) (requiring "[a] statement of the interrelationships among the various plan components, which may include an estimate of the environmental, energy conservation, fiscal, economic development and social consequences on the municipality"); Ore. Admin. Rules § 660-08-015 (April 1987) ("Oregon's administrative rules focus on the preparation of an 'economic opportunities analysis' that is to: (1) review national and state and local trends for commercial and industrial uses that could reasonably be expected to locate or expand in the planning area; (2) identify the types of sites that are likely to be needed by such uses; (3) estimate the amount of serviceable land for such uses; and (4) designate additional serviceable land for such uses, if possible depending on public facility limitations.") (quoting Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change, 7–129, (Stuart Meck ed., 2002), *available at* http://www.planning.org/growingsmart/ guidebook/print/pdf/Introductory.pdf); Rules of the Ga. Dept. of Community Affairs § 110-3-2.04(5)(b)2.5 (June 11, 1992) ("call[ing] for analysis of the community's economic base, labor force, and local economic development resources," all of which "should result in a plan for economic development . . ."(quoting GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE, 7–129, (Stuart Meck ed., 2002), *available at* http://www.planning.org/growingsmart/ guidebook/print/pdf/Introductory.pdf); Wash. Rev. Code Ann. § 36.70A.070 (7) (West 2011) ("[e]ach comprehensive plan shall include a plan, scheme, or design for each of the following: An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, workforce, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection; *Comprehensive Planning / Growth Management*, Municipal Research and Services Center of Washington, http://www.mrsc.org/Subjects/Planning/compplan.aspx (last visited July 19, 2011) ("[i]mplementation of required parks and economic development elements is on hold until adequate state funding is available").

concerns with employment, labor, industry, and quality of life.

The importance of economic development planning cannot be underestimated. Without an articulated economic development plan, developers may become disinterested or apprehensive about investing in a particular community. Worse, a city may miss a significant opportunity to capture market opportunities and guide development in a manner desired by businesses and residents. Economic development components of local comprehensive plans can be drafted and adopted to create a collaborative vision for an urban community that builds upon the municipality's unique assets and needs. The economic development policy of a comprehensive plan is a core component around which other planning and action should be organized. One way of viewing the economic development component of a comprehensive plan is as a full and complete economic development policy and implementation plan for the city. In this respect, it begs the question as to what that policy should be, which depends, in turn, upon what is realistic in the current economic market, existing competition, and the economic assets of the community.

To create a truly successful and market-realistic economic development component, urban planners should supplement their economic development knowledge with up-to-date private sector knowledge on local, regional, and national markets, development trends, and available equity and debt financing, including the types of economic development projects that can attract financing. With adequate private sector input, a local government can create and implement a coordinated, market-realistic jobs and economic development component to its comprehensive plan. Often, much of the economic development data gathering and analysis that goes on in most cities and regions is done by private sector organizations: chambers of commerce, construction trade groups, and utility companies interested in the realities of the market and sensitive to opportunities for growth. Communities might also consider creating a special task force comprising "representatives of local economic development organizations, major employers, commercial and industrial

real estate brokers and developers, and others with similar knowledge."[11]

Business leaders and their associations provide excellent links to a variety of sources of market information. Developers hire market specialists to determine changes in demographics and economics and make decisions regarding where and what to build. Appraisers track changes in property values of various types and can spot sectors that are doing better than others. Commercial brokers rely on their economists to pitch buildings that they have listed for lease or sale; they approach companies that are likely to relocate in the locality as prospects because they believe their businesses will do well in the building that is for lease or sale. Some business associations help local, regional, and state governments market properties, locations, and municipalities to companies and employers in other parts of the country or in other countries and, to do this, they must have data that indicates the economic strengths of the place they are from, including the work force, market demand, supportive infrastructure, services, and other resources. All of this information, generally unavailable to local planners, can be captured and used in drafting an economic development component of a comprehensive plan. This information makes the component a solid basis for local economic development strategies.

Since cities are thinning out planning staffs and may not have historically engaged in this type of planning, these times are ideal for creating a public/private planning partnership that will invest the private sector in the work of cities as they might not have been in the past. Bringing this kind of sophistication in-house might lead to more precise targeting of city assets and implementation strategies on targeted sectors whose needs align with urban locations in the region: sectors such as medical service providers, food processors, training companies, utility headquarters, green products firms and services, and knowledge-based firms which need the younger, educated workforce seeking urban living or the semi-skilled laborers who already live there.[12]

In addition to the community's vision, the plan should

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[11]Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change, 7–130, (Stuart Meck ed., 2002), *available at* http://www.planning.org/growingsmart/ guidebook/print/pdf/Introductory.pdf.

[12]*See, e.g.*, *id*. at 336–37. The Pinellas County, Florida plan provides the following:

contain an inventory of existing and proposed locations and intensities of various land uses, including public facilities, commercial and industrial facilities, significant natural and environmental resources, and existing housing resources and future housing needs. Local economic development plans can be assembled from readily available demographic and market data, the private sector can help identify sectors that are recovering and amenable to city locations, and the assets listed that cities offer to their regions as cultural, educational, medical, housing, and entertainment centers. Frequently, cities have unused water and sewer capacity, which is an asset considering that suburban growth, particularly on greenfields, requires new and costly infrastructure.

Baltimore's comprehensive plan provides a good example to illustrate what cities can do through the planning process. It pledges to encourage economic growth and to streamline its regulatory system. The plan states that it "encourages economic growth in port- and defense-related industries as well as six burgeoning employment sectors identified by the Workforce Investment Board by better articulating the development process and ensuring development compat-

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"Refine and integrate current criteria for plan map amendment of industrial land by placement in the *Countywide Plan Rules*, including such considerations as:

- Contribution to the economy based on the number and type of jobs to be provided.
- Site characteristics including size, configuration, and physical characteristics and opportunity for consolidation.
- Locational characteristics in relationship to the use of and compatibility with adjoining properties.
- Transportation and infrastructure features as functions of access, availability, and capacity.
- The extent to which the property is part of a special redevelopment plan.
- Unique features such as water-dependent use, working waterfront, or transit-oriented use.
- Related comprehensive plan policies in relationship to key policies of the local and countywide plans.

Establish new/revised plan map categories and processes, including:

- Amend the Planned Redevelopment-Industrial category to allow for residential use based on specific criteria related to provision of target industry jobs.
- Create a new employment center overlay category to facilitate target industry location and expansion in key locations that provide for flexibility of both the types and intensity of use permitted.
- Establish a target industry bonus system that provides for an administrative process to accommodate target industry without requiring a plan map amendment.

ibility in all parts of the City."[13] The plan commits to foster economic development by ensuring that local residents are trained and equipped to fill the jobs anticipated in the plan. The Baltimore plan readjusts its residential land use "to account for the change in population, aging housing stock, the critical need for moderately priced, quality housing to attract and retain the middle class, the growing market for providing homes for Washington, DC commuters, the expanding market for condominiums, the opportunity to capture an increasing share of the expected 800,000 new residents who will settle in the region by 2020 and enhancing the wonderful mix of architecture, life styles and neighborhoods that make Baltimore a premier place to live."[14] The plan, in addition, contains strategies to "capture and encourage biotech job opportunities, create larger tracts of land for commercial or industrial development near transportation centers and connect residents to available employment. Currently the health, medical, financial and construction sectors are large and growing. Education and tourism continue to be strong."[15]

III. Leveraging Resources: Local Partnerships with Developers

In addition to adopting an economic development component in their comprehensive plans to provide clear signals to developers, cities can streamline development approvals, provide supportive infrastructure to sites, and help clean up and prepare sites for development. Through zoning, localities can provide bonus densities, waive certain land use restrictions, and provide expedited project reviews and approvals. Through proper area-wide master planning, developers that comply with plan provisions can enjoy shovel-ready, as-of-right rezoning and approvals of their developments.

Incentive zoning awards developers additional density or the waiver of certain zoning requirements, in exchange for benefits provided to the community. In good economic times, this technique allows communities to secure benefits from developers including workforce housing, street improvements (including street furniture, lighting, green appointments), or

[13] *Planning / Comprehensive Master Plan*, BALTIMORE, MARYLAND, www.baltimorecity.gov/Government/AgenciesDepartments/Planning/ComprehensiveMasterPlan.aspx (last visited July 22, 2011).

[14] *Id.*

[15] *Id.*

any other amenity needed to make the greater density desired in the area more livable. In more difficult markets, incentive zoning can be used to induce developers to build projects that otherwise would not be economically feasible. Incentives can be provided to developers of raw land or to those who propose the expansion of existing structures, the adaptive reuse of older buildings, or the redevelopment of brownfield sites and other distressed parcels in older, developed areas.

The incentives that may be offered to developers include adjustments to the density of development — for example, allowing more residential units or a greater building floor area ratio than is otherwise permitted under the zoning law. Incentives can also include adjustments to the height, open space, use, or other requirements of the underlying zoning law.

These incentives can be given in exchange for the developer's providing one or more community benefits, including open space or parks, affordable housing, day care or elder care, or any other specific physical, social, or cultural amenity of benefit to the residents of the community. Where the community benefit cannot feasibly or practically be provided directly by individual developers, the system can provide for developers to make cash payments to the locality. Such sums must be held in a trust fund to be used exclusively for the community benefits specified. All of the amenities secured though incentive zoning help create the types of services, environment, and infrastructure needed to create viable urban neighborhoods for economic development.

State legislation in most states enables local governments to set up and operate several different quasi-public bodies that can become intermediaries for needed public/private partnerships. Where localities have a clear economic development plan and strategy, they can attract and work with private developers through their established Industrial Development Agencies, Urban Renewal Agencies, Local Development Corporations, and Land Banks and, depending on state law, provide real property tax abatement and favorable project financing through tax exempt bonds, tax increment financing, and other techniques.

Industrial Development Agencies could be engaged in implementation of comprehensive plan components to offer (depending upon state law) economic development incentives such as tax abatement, sales and use tax waiver, mortgage recording tax waiver, payment-in-lieu-of-tax agreements,

and tax-exempt bonds to provide financing for projects that further local economic development plans and provide jobs. Such financing can be used to purchase land, provide supportive infrastructure, pay construction costs, and otherwise finance developments.

Urban renewal agencies (URAs), first created to take advantage of federal funding that is no longer available, still have power in most states to identify renewal areas, adopt specific renewal area plans, acquire land through the power of eminent domain, and select qualified and eligible developers to whom they can convey land at negotiated prices. URAs too may provide property, sales, and mortgage tax abatement under some state laws.

A variety of local development corporations may be set up under state law, including Economic Development Corporations that have important but more limited powers to help with individual projects. Recently, state legislatures have been adopting statutes that provide for the creation of local or regional land banks that can take title to in-rem, foreclosed, and other distressed properties, assemble parcels for redevelop, and partner with developers to redevelop these properties, often providing low cost land and leveraging local, state, and federal financing to help.

IV. Implementation Using Land Use Regulations

In Baltimore, following the adoption of the new comprehensive plan discussed in Part II above, the Mayor, City Council, and Planning Commission committed to rewriting the zoning code in its entirety, in order to streamline zoning and development procedures, achieve consistency of zoning with existing land use, and utilize state-of-the-art rezoning and land use approval technology. In amending zoning codes, cities have a number of techniques available to them, in addition to the incentive zoning discussed above. They can create new zoning districts providing for compact/mixed use development, floating zones, special use permits, transit oriented development, neighborhood sustainability standards, waterfront zoning, green infrastructure and urban design standards, and the transfer of development rights.

The current energy-conscious economy values proximity and clustering. Balancing "jobs, homes, shops and recreation . . . increases business opportunities, helps create a sense of

place, and can draw in talented workers."[16] When housing is a part of the mix, the additional households accommodated can spur demand for business that provides nightlife, services, and shopping.[17] "Creating places with round the clock activity, as opposed to a nine to five atmosphere, allows businesses to spread out their peaks in services."[18] When firms are clustered in cities they enjoy economic benefits from the interaction among employees, related businesses, and their competitors. This provides companies "access to ideas, suppliers and resources. The traditional office park model, with buildings surrounded by parking and landscaping is inward focused and does not easily create opportunities for spontaneous interaction. Many firms are finding that job sites integrated with other uses like restaurants, shops and homes provide employees with choices and amenities rarely found in office parks. The desirability for office space in mixed-use settings with access to transportation choices has been reflected in higher occupancy rates, property values and lease premiums."[19]

In some cities, zoning has not been changed for many years. This may be a barrier to economic development that relies upon mixed land uses and some density to meet market conditions. Today's real estate projections indicate that U.S. population will grow significantly and that many of the new households will desire housing and jobs in dynamic downtown neighborhoods, where they can walk to shop, recreate, and work. Already this trend is obvious; prior to the recession urban land prices in regions with viable markets were outpacing suburban land prices and, during the recession, urban prices held value or loss less compared with suburban land. To create viable urban neighborhoods where new households want to live requires compact, mixed-use zoning.

Compact/mixed-use development increases development densities and mixes land uses to promote the ability to work, shop, and live in one neighborhood and provides economical opportunities for redevelopment of existing properties. It encourages building reuse and rehabilitation of existing infrastructure, conserves land, integrates uses, and fosters a

[16] Int'l Econ. Dev. Council, Economic Development and Smart Growth 6 (2006), page 6.

[17] *See id.*

[18] *Id.*

[19] *Id.*

sense of place. It creates walkable districts mixing commercial, civic, cultural, educational and recreational activities with open space and housing for diverse communities.

By linking commercial development in the district to the provision of rental and affordable housing opportunities, this type of zoning supports the construction and rehabilitation of housing to meet the needs of people of all abilities, income levels, and household types. It coordinates the provision of housing with the location of jobs, transit, and services and fosters the development of housing, particularly multifamily, that is compatible with a community's character and vision.

By providing for increased intensities of development and encouraging the creation of new jobs in the urban center, compact, mixed-use zoning attracts businesses with good jobs to locations near housing, infrastructure, water, and transportation options and supports the growth of new and existing local businesses. This type of zoning strengthens the growth of local businesses, in addition to supporting economic development in industry clusters, which are consistent with regional and local character

Overlay Zoning

An overlay district is created by the local legislature by identifying a development area and adopting new provisions that apply in that area in addition to the provisions of the existing zoning ordinance which remain in place. The provisions of an overlay district can be more permissive than those contained in the underlying zoning district; they can impose restrictions, but also may provide zoning incentives and waivers to encourage certain types and styles of development.

Economic development districts can be designated as overlay districts, which follow, for example, a major transportation corridor and encompass parts of several underlying zoning districts. Zoning incentives can be provided to developers to build in these districts. (See material *infra* on incentive zoning.) In exchange for these incentives, developers can be required to provide needed public services and amenities. Local governments have the authority to increase the number of housing units permitted, or the gross square feet of commercial building allowed, in exchange for the provision of community benefits, such as parks, playgrounds, water, sewerage, and transportation facilities, or even affordable housing and day care. These measures articulate a clear municipal policy that the development district is the appropriate place for higher density development. This policy

can be supported further by the local capital budget, which can target development districts for additional or improved infrastructure to service the new development.

An overlay law can be used, for example, to accomplish the redevelopment or rehabilitation of deteriorated buildings and neighborhoods. Within a designated redevelopment overlay district, developers can be given a variety of incentives to redevelop contaminated or substandard properties, to rehabilitate substandard structures, or to provide needed community facilities or affordable housing. This type of revitalization may be critical to making urban neighborhoods amenable for economic development and population growth.

Floating Zoning

The floating zone technique involves the addition of a new zoning district to the zoning law, but postpones mapping sites for that use until some future date. The zone can be affixed to individual parcels upon the application of the parcel owner or the initiative of the local legislative body or planning board. This technique can be used to allow compact, mixed-use development, for example, on sites of certain sizes and in certain locations, as a method of promoting economic development. This technique is an alternative to simply rezoning parcels for such uses and is used to allow the community some flexibility in determining where opportunities are for such development. Floating zoning also avoids any immediate increase in the value of land that might be rezoned for greater density and allows the city, parcel owners, and developer to negotiate the final zoning for eligible sites and to capture the increased land value as benefits for the neighborhood and community. Local officials may be unclear as to where such uses should best be accommodated and where developers would prefer to locate them to insure that they are successful economically.

Floating zones allow developers needed flexibility in locating sites and determining how new land uses can be designed and buffered to fit into their surroundings. In some communities where affordable housing is desired, for example, a multi-family district may be created by the legislature but not located on the zoning map. This allows developers the maximum flexibility to scout out sites and design developments that mix housing types, tenures, and costs to accomplish the municipality's objective of producing affordable housing while requiring the project to fit properly into the neighborhood. Similarly, a community may want to create a

compact, mixed-use development zone but may not want to limit its location, in order to give developers ample opportunity to find a site best suited to current market needs.

The first case upholding the authority of local governments to adopt floating zones as part of the municipal authority to divide the community into zoning districts was decided by the New York State Court of Appeals in *Rogers v. Tarrytown*.[20] Sustaining the floating zone, the court held that courts must defer to legislative judgment when "the validity of the legislative classification for zoning purposes [is] fairly debatable" and that the burden of showing that an ordinance is not justified under the police power of the state rests with the person attacking the ordinance. Applying that test to the facts of the case, the court upheld the purposes behind the creation of the new district as following "sound zoning principles" and as being in accordance with a comprehensive plan. Those purposes included providing housing for young families in the area, attracting businesses, and protecting the local tax base. Then, addressing the validity of floating zoning as the method chosen by the village to achieve those goals, the court held that the village's requirement for "separate legislative authorization for each project present[ed] no obstacle or drawback" and that the board of trustees' choice of this procedure was "neither arbitrary nor unreasonable."

The court also noted that the board had not improperly divested itself of its legislative power. It reasoned that even if a property owner met physical standards required for the district, the board could, in the exercise of reasonable discretion, refuse to rezone the property. The court dismissed the allegation of illegal spot zoning, stating that if "an ordinance is enacted in accordance with a comprehensive zoning plan, it is not 'spot zoning,' even though it (1) singles out and affects but one small plot . . . or (2) creates in the center of a large zone small areas or districts devoted to a different use."[21]

Special Use Permits

Projects such as compact/mixed use development can be permitted by adding the use as a specially permitted use that is allowed in designated zoning districts. Special use permits are a declaration by the local legislature that the

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[20] *See, e.g.,* Rodgers v. Tarrytown, 96 N.E.2d 731 (1951).

[21] *Id.*

use permitted is a valid use in the district affected, so long as it meets certain conditions contained in the code regarding the special use. Any of the economic development projects discussed in the material above can be made legal by using a special use approach as opposed to a rezoning, floating zone, overlay zone, or the use of incentive zoning.

Transit Oriented Development

One of the best places to mix land uses at greater densities is in proximity to transit stations, including train and bus services. Transit-oriented development (TOD) land use plans and zoning encourage mixed-use/compact development in transit station areas, or transit neighborhoods. They locate housing and jobs near transit stops and significantly reduce the number and distance of vehicle trips.

Mixed-use/compact developments in transit areas can be made lively, amenable, and healthy places for new American households, the newly retired, immigrant families, and small household millennials to live. To the extent that these folks are attracted to a place, employers and businesses are likely to follow, or to be attracted in concert with them. Encouraging land use patterns that house and employ more Americans in urban areas will cause a significant reduction in vehicle miles travelled while placing households in smaller, more energy efficient homes and offices, further reducing energy consumption, household expenditures, fossil fuel consumption, and CO_2 emissions.

A recent study by the Dallas Area Rapid Transit (DART) analyzed "the fiscal impacts of transit-oriented development associated with development of the DART light rail system. The analysis considered development near existing and planned light rail stations and found that the total value of projects attributable to the presence of a DART rail station since 1999 is $4.26 billion." The study also found that "[I]ncreased taxable property values associated with the rail stations have the potential to generate ongoing annual tax revenues totaling $16.8 million for DART member cities and over $46 million for area school districts. Based on a fiscal planning model, the retail component of transit-oriented development projects in the DART service area will generate over $660 million in annual taxable retail sales, boosting lo-

cal municipal revenues by $6.6 million annually, the agency believes."[22]

Waterfront Zoning

Economic development has been drawn to river, lake, and beach fronts notably with industries dependent upon waterborne freight. Recent trends have seen pedestrians, shoppers, diners, and workers drawn to new and revitalized waterfronts. For these trends to work locally, there must be a market for these economic uses and local planning and zoning must accommodate and encourage them.

Local waterfront management is a process by which a municipality uses applicable local, state, and federal authority to manage and protect its waterfront resources. It does this by adopting a local waterfront management plan, which has significance under local, state, and federal law. A local waterfront management plan can be viewed as an addition to a municipality's comprehensive plan, applicable to coastal areas. It can contain explicit provisions for furthering new economic development activities consistent with waterfront planning principles.

Transfer of Development Rights

To achieve economic development objectives, it may be necessary to give owners of certain properties additional density. To soften this effect, densities can be lowered in other more environmentally constrained areas. One technique of accomplishing this objective is through the Transfer of Development Rights (TDR). Transfer of development rights is the process by which development rights are transferred from one lot, parcel, or area of land in a sending district to another lot, parcel, or area of land in one or more receiving districts. Many states allow local governments great flexibility in designing a TDR program; they can establish conditions that they deem necessary and appropriate to achieve the purposes of the TDR program. TDR can be used not only to encourage development in economic development districts but also to compensate for discouraging or disallowing it in environmentally sensitive areas.

V. Conclusion: Toward State/Local Partnerships — A Case Study of Success

Cities need partners in the difficult process of planning and strategizing to confront and surmount tough economic

[22] Andre Shashaty, Cities Discover Economic Benefits of Sustainable Planning, Land Use, Sustainable Communities 18, at 19 (Jan./Feb. 2011).

times. This article has demonstrated the critical role that the private sector must play in this process: helping to make local comprehensive plans market realistic and using the incentives and regulations that cities formulate as leverage and guidelines as to what and where to develop. State governments are crucial partners, as well, and must be brought to the table.[23] States cannot succeed in confronting their budget difficulties and promoting their economic development plans without the cooperation of cities. The familiar press report of the governor or delegation of state legislators' trip to China or Brazil to attract employers to the state fails to explain that there will be no sites available for these companies if local land use plans and regulations don't accommodate them. Nor will employers be drawn to a region without strong identities forged by central cities. Cities are now recognized as the centers of economic regions and key to successful marketing development opportunities. Their tax-exempt hospitals, colleges, and arts institutions are essential to viable regions. They supply housing for needed workers in the region and have available infrastructure to support types of development that surrounding communities may not accept but need to provide a full range of economic activity in the region.

States can help in many ways. Their transportation, water, and sewer grant programs can prioritize city centers; they can provide planning grants and sample plan and regulatory language and other technical assistance. Their economic development offices can help market opportunities in cities for new development. State agencies can locate their offices in cities thereby jump-starting redevelopment there and capture their employees' daytime spending on behalf of cities. State legislatures can adopt aggressive land banking statutes, require smart growth spending by state agencies, and provide greater zoning and land use powers to urban municipalities.

The authors of this article have worked for three years

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[23]That this can happen and how effective it can be is illustrated by the support recently provided to an alliance of six cities in Virginia whose collaboration inspired the Lt. Governor to attend a meeting of the alliance and present it with a $200.000 check, matched by the private sector, to support its unique idea of putting competition aside and working together for economic progress. *See,* Tiffany Holland, *Alliance Aims to Promote Economic Development, Job Creation,* GODANRIVER.COM (March 16, 2011), *available at:* http://www2.godanriver.com/news/2011/mar/16/alliance-aims-promote-economic-development-job-cre-ar-910092/ (last visited June 1, 2011).

with a consortium of ten cities in the lower Hudson Valley in New York State: cities with gritty neighborhoods, high poverty rates, and their share of distressed buildings and neighborhoods, but places with great economic potential. Together these ten cities contain 500,000 people and have professionals—lawyers, planners, economic development officers—who work on their planning, land use, and economic development strategies. The consortium is called the Mayors Redevelopment Roundtable. It was convened in 2008 by the Land Use Law Center of Pace University School of Law with the idea that the cities would benefit from identifying common issues and from working together on their solution — combining resources, knowledge, and energies in the effort. The Center and the mayors have been assisted by many other professional groups, agencies, and organizations that have readily volunteered their time and expertise as needed in the problem solving process.

In June of 2011, after three years of collaboration, all ten mayors signed a Memorandum of Understanding (MOU) pledging to work together to create a demonstration project for regionalism and urban economic development.[24] With the assistance of the Center and two major business associations, the cities have agreed through the MOU to create and implement strategies that demonstrate the critical importance of cities to the larger region and the many economic, energy efficiency, sustainability, environmental, and equitable advantages of promoting city revitalization as a key component of state economic policy. The MOU demonstrates the mayors' pledge to work together to ensure that their cities are vibrant centers of regional economic development, guided by market-realistic data and advice memorialized in coordinated comprehensive plans that are implemented wisely and cost-effectively. Our cities are prepared to be development-ready and exemplary engines for centered growth and development.

On June 8, 2011, the Roundtable met with New York State Lt. Governor Robert Duffy in his capacity as coordinator of

[24] The MOU notes that the Roundtable is a partnership of the mayors of ten cities in the lower Hudson Valley region who have been working together for three years, organized and assisted by the Land Use Law Center of Pace Law School, on shared revitalization strategies. The initiatives under the MOU are to be assisted by the Westchester County Association and the Hudson Valley Economic Development Corporation (two regional private sector economic development groups as signatories), and include the key development, planning, and legal staff of the ten cities.

economic development policy and regional economic development councils for Governor Andrew Cuomo. The mayors explained to the Lt. Governor the organization and work of the Roundtable and noted some positive examples of progress among the member cities regarding transit oriented development, sustainable buildings, energy code enforcement and enhancement, development readiness, and distressed property remediation. They also explained the positive planning principles, economic development advantages, and environmental gains by ensuring that population growth and economic development be emphasized in urban centers where the public and private sector has invested significantly in infrastructure and buildings. Finally, they explained the MOU and the interest of all ten mayors in working closely with the state. In response, the Lt. Governor expressed the state's support for the Roundtable efforts, and noted the uniqueness of such a coordinated, self-motivated economic development effort, and the need for similar models throughout the State.

We conclude this article with material taken from the MOU as an example of what cities can do collaboratively to promote economic development and to form partnerships with their states. After stating in a whereas clause of the MOU that "the mayors have identified urban economic development as a key priority for the coming years and have pledged to work together with one another, the private sector, and State and federal agencies to develop an integrated urban economic development plan that will take advantage of their individual and collective assets", the mayors, the Land Use Law Center, and the partnering business associations agreed that they will:

- Work aggressively and cooperatively to create a regional urban economic development strategy that demonstrates the critical importance of cities to the larger region and the many economic, energy efficiency, sustainability, environmental, and equitable advantages of promoting city revitalization as a key component of State economic policy;
- Coordinate with each other to secure data for the creation of regional and city-specific economic development plans, identify business and industry sectors that are interested in city and nearby locations, and develop strategies to attract businesses based upon unique aspects of each city;
- Cooperate with the private sector to obtain assistance

in determining whether public plans are market realistic;

- Demonstrate how cities can adopt and implement formal economic development plans and strategies that are comprehensive and collaborative and that provide the vision needed to integrate State and local efforts to promote regional economic development;
- Develop formal economic development plans and engage in a coordinated comprehensive planning effort by working to adopt these plans as components of each city's local comprehensive plan;
- Update zoning codes to adopt innovative land use techniques, incentives, and development readiness standards that allow the private sector to take advantage of cost-effective, transit oriented, energy conserving, and sustainable mixed-use neighborhoods;
- Implement innovative ideas such as enhancing the energy conservation code, creating energy conservation districts, promoting combined heat and power and district energy systems, facilitating the location of renewable energy resources, promoting workforce housing and transit oriented development, adopting development readiness standards, progressively using the State's environmental impact review requirements, and leveraging existing local, State, and federal financial incentives to promote sustainable economic development in the region;
- Seek financial and technical assistance from the State and private sector in completing the first step of a unified economic development agenda, which is to collect the data that affects the cities' common economic futures, identify employers seeking urban locations, develop sophisticated and linked local plans that create a unifying vision, and develop implementation plans that use the full extent of the cities' legal powers and individual economic advantages, and the leverage of other State financial and technical resources to demonstrate concretely how a regional urban economic development plan can be created and become effective; and
- Market the economic assets and advantages of each city as part of a regional economic development strategy that unites the Parties and the private sector in a common effort to attract jobs, increase the local, regional, and State tax base, and create a sustainable pattern of land development.

This case study envisions a strategic partnership between ten cities, already working closely together, and the agencies of state government whose job it is to promote economic growth, energy efficiency, housing, and infrastructure and to protect the environment and the state's natural resources. The cities of the lower Hudson Valley are poised to take effective and collaborative action to demonstrate success. The State has recently taken several positive actions that support and leverage this success. The New York State Governor's new regional economic development council strategy and the administration's emphasis on local government cooperation and efficiency offer an unparalleled opportunity to create a state/urban cities partnership. The aim of the Mayors Redevelopment Roundtable is to leverage state-wide initiatives with the plenary power of local governments to regulate land development and building. Through the economic development and planning initiatives outlined in the MOU, a consortium of local governments has set out to partner with its state administration to demonstrate how to bolster and support regional economic development by rejuvenating the urban core.