



## **SARATOGA COUNTY PLANNING BOARD**

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September 22, 2016

John P. Franck, Commissioner of Accounts  
City of Saratoga Springs  
City Hall 474 Broadway  
Saratoga Springs, NY 12866

**RE: SCPB Referral Review#16-162-Text Zoning Amendment-Inclusionary Zoning**

A zoning amendment to require that in residential developments of 10 or more units 20% of the units (for sale or rent) be dedicated as affordable to households of moderate or low income with the provision of a density bonus of 20% to the developer.

Received from the City of Saratoga Springs City Council on August 26, 2016.

Reviewed by the Saratoga County Planning Board on September 15, 2016.

**Decision:** Incomplete Application

**Comments:**

**APPLICATION/NEED**

On August 5, 2016 a letter from Mr. Harry Moran, Director of Sustainable Saratoga (SS), was submitted to Mayor Yepsen requesting City Council acceptance for further review the application by SS for a zoning amendment titled "The Saratoga Places for All (SPA) Housing Ordinance." On August 16<sup>th</sup> the City Council did vote to refer the proposed zoning amendment to both the city and county planning boards for their respective reviews and recommendations. The referral was received by the Saratoga County Planning Board (SCPB) on Aug. 26 and reviewed at its monthly meeting of September 15<sup>th</sup>. We note that at the present time the proposed legislation has not yet been heard as part of a public hearing held by the City Council, nor has review and a lead agency determination been made under SEQRA. The SCPB agrees that as noted in Sustainable Saratoga's August 6 letter, the efforts made in both 2006 and 2016 to provide "a good housing program for Saratoga Springs" are laudable and desirable, deserving of a detailed community discussion and consideration. We find, however, and cite below, that material to assist in a complete review of the proposed legislation was not part of the referral submitted and ask that such material be provided (or counsel's determination that it is not required) for the SCPB to take final action at its October 20<sup>th</sup> meeting. Perhaps once the city council holds its public hearing there will

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be a clearer understanding of the material submitted to date and a further submission of supplemental (if necessary) material.

Just because a standard zoning ordinance exists there is no guarantee or surety provided (or implied) that there will be actual development of any property, much less in the manner prescribed or hoped for. If a municipality determines that it needs or desires to have a specific type of development, it can only zone to allow that use (or uses) and then allow market conditions to work – the question then becomes whether a developer will find it economically feasible to develop a certain property in the way that the zoning ordinance defines. That is why the city has again pursued a means by which a developer may be permitted to exceed standard zoning restrictions in exchange for meeting a community need, the provision of some type of affordable housing within a plan of development. Incentive zoning can be used to encourage developers to provide community amenities that cannot be required. It is notable that court decisions have recognized that affordable housing can only be built by providing incentives to private enterprise and that some municipalities have been mandated in some court decisions to use incentives and the elimination of costly regulatory requirements as means of setting aside an established percentage of all new housing units as affordable.

We recognize the need for the city council to look beyond standard zoning - to Incentive Zoning, as proposed then (2006) and now – for a means of implementing the development of some type of affordable housing within Saratoga Springs. In different sections of the draft ordinance and correspondence this has been noted as workforce housing, moderate-income, and low-income housing. Legislative action, therefore, has been spearheaded by an advocacy group, Sustainable Saratoga – Advocate. Educate. Act. Legislation has been proposed to guarantee more diverse housing opportunities. SS has reintroduced a 2006 study and the then-proposed ordinance which provide for a density bonus along with a mandate to include an amount of affordable housing. Anecdotally, commentary has referenced the city’s high cost of land for development, the resulting high cost of housing, and the need for housing that meets the needs of lower to middle-income households.

The amendment for inclusionary zoning proposes consideration of developments (for sale or rentals) of 10 or more dwelling units within which 20% of the units are dedicated for moderate-income households (or 10 % of rental units are dedicated toward low-income households). A developer “could” increase the density of a development project by “up to” 20% through this set aside provision. Without such legislated economic incentive and agreements a municipality is not able to require a builder/developer to provide public amenities as a condition of gaining his/her development approval. Zoning restrictions could not be exceeded. But, through such an amendment a developer can be offered a bonus in greater density above what the zoning otherwise permits and the community will benefit by obtaining an amenity it sees as necessary and desirable for its citizens.

In order for this legislation to be considered a completed draft for review we note that:

- It should be determined (documented in study and review) that the amenity to be received (affordable housing) is needed and useful.
  - Is there an analysis of the number of existing housing units that are classified as occupied by low-income and moderate-income (and workforce housing?) households?
  - Is there a definitive number of such units that need to be built over the next 10 or 20 years to fill the gap between existing affordable housing units and what is needed? Has it been

- determined in numbers what that latter need (the number of affordable housing units) is?
  - Has there been a citywide build-out analysis (presently or as an update of 2006 data) of lands in districts where residential development is permitted in order to determine the possible number of dwelling units that could be built, and
  - Under the provisions of the proposed ordinance, has that analysis determined the number of affordable housing units (by bonuses) that could then be built?
- The amenity must be effective in addressing an issue, meeting a need or solving a problem. Is the approval of/construction of affordable housing units through the use of density bonuses the only option being considered to address the issue?
- As determined by a financial analysis, the incentive must be sufficient to make it worthwhile for private enterprise to provide the housing type sought by the municipality. Has there been such an analysis by the city with all stakeholders?
- Therefore, we believe that the study that precedes this legislation must provide a cost-benefit analysis
  - Financial modeling data and development costs as input from architects, residential developers and builders (as noted by the chairman of the city's Inclusionary Zoning Ordinance Committee in 2005: "We just need to plug in the numbers," and "those numbers we can't pull out of the air. They have to be based on the hard science...").
- Concurrence needs to be obtained from stakeholders (municipal and private businesses) that the proposed legislation is favorable enough to serve as an inducement.
  - Developer can and will provide the community's desired but uneconomic amenity,
  - Developer will receive a definitive density bonus (not a subjective "up to" percent or a statement that density "could be increased" to...
  - No economic windfall received through the bonus
  - City land use board will provide for a full 20% density bonus
- The bonus in density must be carefully designed (and reviewed under SEQR and in accord with City Law section 81) to ensure that the municipality will not overload public services or adversely impact adjacent municipal services such as:
  - Water - supply
  - Sewer - capacity issues,
  - Street system - maintain flow of through traffic, no increase in need for signalization, signage, or on-street parking, and no intersection degradation in LOS ratings
  - Parking - potential for increased parking need, particularly in Transect Zones
    - Need for paid parking or garages?
  - Schools - Districts may be impacted, but have no land use decision-making ability
  - Fire and police protection - need for new or expanded locations? Limits to areas of service? Time for response?
  - Emergency services - same as above

The applicant has stated that the SEQR review conducted for the 2006 legislation is sufficient for consideration of the legislation proposed in 2016. For our record and

final review of the legislation we would like a determination from the city council (assuming lead agency status will be with the council) that it is satisfied with what is on record from 2006 and that there is no need to undertake a new review.

Additionally, we note that the referral submitted to SCPB is for the proposed amendment to the zoning ordinance. Does the city council believe that there should or should not have also been submitted for consideration (as part of that referral) an amendment to the 2015 Comprehensive Plan, or is only the zoning amendment being considered?

The "Purpose" section of the legislation makes repeated reference to workforce housing rather than the affordable housing (low-income, moderate-income) referenced in the materials supplementing the application/referral. It appears that the legislation carries over the terminology from 2006 committees and proposed legislation. Which housing type is it that the present amendment is addressing, if they are different in any manner?

In reference to the quantification questions raised above, for our clarification we ask that the applicant please identify what is being/should be quantified as the housing needs for the respective income levels. It is cited that the city has a goal of increasing the workforce housing stock – what is the present number of "workforce" housing units in the city and, then, what are the number of units available, occupied, needed? Also stated is that there is a "limited supply of workforce housing" but we ask where is this quantified?



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Michael Valentine, Senior Planner  
Authorized Agent for Saratoga County

**DISCLAIMER:** Recommendations made by the Saratoga County Planning Board on referrals and subdivisions are based upon the receipt and review of a "full statement of such proposed action" provided directly to SCPB by the municipal referring agency as stated under General Municipal Law section 239. A determination of action is rendered by the SCPB based upon the completeness and accuracy of information presented by its staff. The SCPB cannot be accountable for a decision rendered through incomplete or inaccurate information received as part of the complete statement.