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Affordable housing: Is zoning the enemy or the solution? by Daniel Calano

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Recently, a local municipality has been considering a vote that would allow affordable housing projects to circumvent key parts of long established zoning. Circumvent is a polite word, since in this particular proposal the planning board, board of appeals, planning department, historic commission could comment, but essentially be precluded from the actual permit process.

No one would disagree that affordable housing is needed, at most economic levels, from low-income populations to middle class families. Many solutions to this important issue have been tried, with the majority solution providing housing at market rate coupled with a percentage of affordable houses. While this “incentive” has been effective, it also fosters a growing glut of new high-end apartments and condominiums, which are now also causing their own environmental, traffic and general congestion problems. But that is a different story.

Many say that zoning is in the way of affordable housing. This can certainly be true, particularly when “large lot” zones, usually more expensive, become the majority of residential options. On the other hand, most zoning ordinances also include multi-family zones, higher density zones, mixed use zones and so on. Most communities also have a planning board permit process, backed up by a board of appeals, using special permits and variances as well as other options. Planned overlays on existing zones have also been useful, particularly when carefully considered and voted on by the community. In other words, there is much flexibility already built into the system. So, is zoning the enemy or the solution?

It is complicated. Here are some of the facts. Zoning is by definition land use “discriminatory.” Established mostly in the 1900s in the United States, it was in fact meant to separate single family residential from multi-family residential, from commercial, from industrial, in order to cure the ills of newly industrialized America. It was meant to protect the health, safety and welfare of citizens. It was meant to provide certainty as to where those uses could occur. It was meant to be coupled with thoughtful planning which evolved into implementation. Yes, and some would say it was meant to

maintain value of property. That is also true.

Zoning does stand in the way of certain uses, and this is an enemy to certain land users. It becomes discriminatory by its very nature, not allowing all uses to exist in all places. But it has also been a solution, assuming it is tied to thoughtful planning.

Zoning is important to all of us in real estate, but also to all of us as citizens. It creates a process for real estate to actually work. It provides different areas for people to settle, whether in multi-family, single family, mixed use, rural or urban and so on. It provides consistency to the development process, but it also provides for flexibility. As noted, typically there are similar processes for levels of planning, followed by levels of permitting, with levels of appeal. There are “as of right” permits, conditioned permits, grandfathered permits, special permits, and variances. Land can be re-zoned. Incentives such as opportunity zones can be utilized. But it does not and cannot provide the funds for everyone to make their preferred choice.

Affordable housing needs funding and incentives. It is not all about zoning and the permit process. It needs municipal commitment to incentives, potential subsidy, tax incentives, and so on. Often it needs municipalities to prepare/sell land, provide infrastructure, improve neighborhoods.

Zoning has evolved over decades with improvements along the way. To virtually bypass the process would be chaotic and might actually deter responsible developers from creating affordable housing. Zoning can be a potential solution, but it can't do it all; but, neither is zoning the enemy.

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