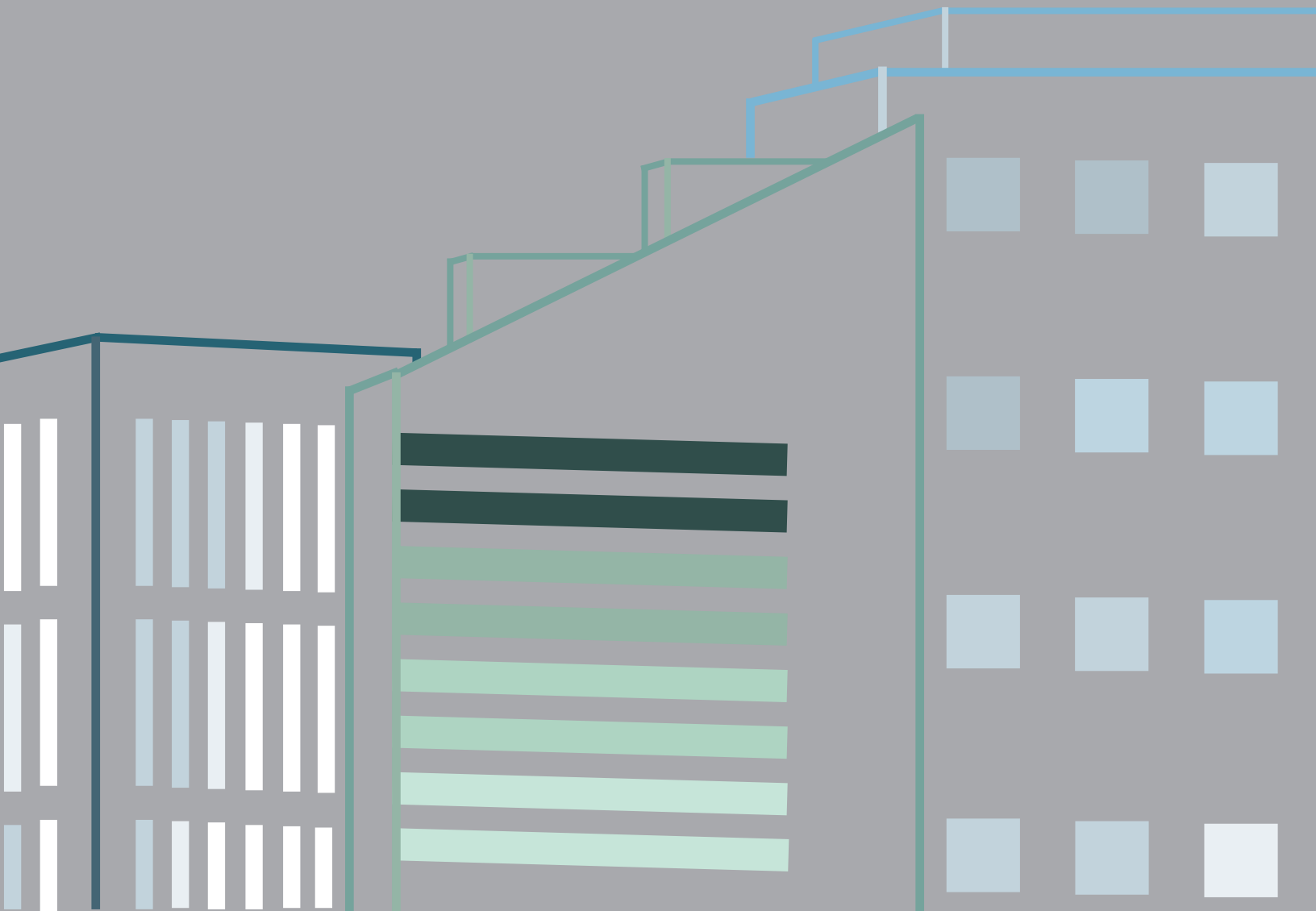


# Marrying Community Benefits and Development Practice

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**MICHIGAN STATE**  
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# Marrying Community Benefits & Development Practice

An Analysis of Communicative and Outcome-Based Planning Approaches to  
Providing Community Benefits in Michigan

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*Michigan State University*

*Center for Community and Economic Development*

*EDA University Center for Regional Economic Innovation*

Sam Butler, Doing Development Differently in Metro Detroit (D4)

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# CONTENTS

Introduction.....	3
Notes on Methodology .....	4
The Communicative Approach: Community Engagement Requirements.....	6
Case Study: Ann Arbor Citizen Participation Ordinance.....	7
Case Study: The Detroit Community Benefits Ordinance .....	8
Evaluating Community Engagement Requirements .....	9
Timing of Community Engagement.....	10
Role of City Staff & Topic of Discussion .....	10
Participating Stakeholders .....	11
The Outcome Approach - Incentive Zoning .....	12
Market Considerations.....	12
Case Study: Ann Arbor Premiums .....	13
Case Study: Grand Rapids Bonuses .....	14
Evaluating Incentive Zoning .....	15
Combining Both Approaches – A Potential Model .....	16
Flexibility .....	16
Accttractive Incentives .....	17
Communicative Approach and the DOZ.....	18
Conclusion & Reccomendations.....	19
Recommendations for Community Engagement Requirements .....	19
Recommendations for Incentive Zoning .....	20
Working in Tandem and Other Considerations.....	21
References.....	22

# INTRODUCTION

Over the past several decades, the question of how to develop cities more equitably has become a larger part of both planning literature and practice. With more and more regularity, planning theorists and professionals are considering the intersection between development and philosophically-heavy concepts such as equity, justice, and democracy.<sup>i</sup> Whereas the development of cities may have historically been driven by “pro-growth coalitions,”<sup>ii</sup> cities are now being increasingly influenced by loose confederacies of community-led coalitions, pushing to make city development a mechanism for larger social good.<sup>iii</sup>

Perhaps the trend has manifested most strikingly with the birth of the community benefits movement, which seeks to use specific development projects to benefit the stakeholders and communities around them – principally through negotiated community benefit agreements (CBAs). CBAs are legally binding contracts between a developer and a community, detailing ways that the developer will help local stakeholders and provide measures to enhance overall quality of life and social equity.

Most observers point to the “Staples Center” agreement, signed in 2001, as the first major CBA, and ever since, CBAs have been a commonly used tool across the country. However, the tool is not without its limitations. A CBA campaign’s success often depends on the cooperation from government officials and a lack of political support has created failed or co-opted CBA attempts in cities such as Chicago, Atlanta, and New York.<sup>iv</sup> One of the central weaknesses of the tool is its ad hoc nature - each campaign is different than the other. This can create an unpredictability that can scare potential developers, which in turn, is something many government officials are not willing to risk. This is especially true for post-industrial cities without the luxury of hot markets and high capitalization rates that are attractive enough to make developers willing to navigate an unpredictable process.

In lieu of (or supplementing) CBAs, governments can enact policies that insert community benefit provisions into standard zoning and planning practices. This solution can ameliorate the two weaknesses mentioned above – it can make community benefit-related processes more stable, transparent, and practicable, while also getting more buy-in from government officials.

However, if we are going to insert community benefit provisions into zoning and planning practice, we immediately come to the twin intellectual challenges of “*how do we know what a community benefit is?*” and “*how do we evaluate whether we are providing the right community benefits?*” The importance of the questions shouldn’t be overlooked. The answers can help public officials determine what is the best method of providing community benefits, and crystalize exactly what a municipality hopes to achieve with them. Luckily, recent planning theory have identified two main, albeit somewhat contradictory, methods of identifying the type of community benefits to pursue:

- The “communicative approach” stresses the importance of democratic process and collaborative planning to identify community needs and wishes. Inherently skeptical of technocratic infallibility, community benefits emerge from facilitated dialogue with community stakeholders.
- The “outcome approach” stresses establishing pre-set equity goals and metrics and employing planning processes to achieve them. Community benefits are identified by government officials, with or without community input.

Broadly speaking, these contrasting “bottom-up” and “top-down” approaches each have their individual strengths and weaknesses - in both implementation and outcome. This paper will seek to ground these two theoretical concepts into actual development practice by examining two commonly used planning tools - community engagement requirements and incentive zoning. It will then discuss how these policy tools fulfill the parameters of each theoretical approach in the context of social equity. Finally, by looking at the larger philosophical concepts, coupled with stakeholder interviews, I will provide some thoughts about how government officials and practitioners can best utilize these two approaches to provide sufficient community benefits.

#### *NOTES ON METHODOLOGY*

While there are other planning and economic development tools that can achieve some level of community benefits (i.e. linkage fees, dedicated TIF funds, development standards, community impact reports, participatory budgeting, etc.), they are not discussed here. If one were to imagine a spectrum between the “communicative” and “outcome” approaches, community engagement requirements and incentive zoning would be at the extreme poles of opposing sides. Their contrasting nature present good opportunity to discuss real life policy examples against theoretical concepts.

For the purposes of this paper, I will be using the term “community benefits” as an umbrella term to describe planning and development pursuits aimed at achieving some component of social equity or justice. And while a concise definition of community benefits would be nice, as the communicative approach warns, a hard definition may or may not be helpful. However, in an effort to set context for the reader, examples of community benefits can include measures intended to achieve any of the following (or more) in the development process:

- Providing additional affordable housing units, or units with deeper affordability
- Encouraging local, small, and/or entrepreneurs of color in commercial and retail spaces
- Hiring local residents, women, people of color, low-income individuals, or other individuals with barriers to employment
- Utilizing building techniques promoting greater environmental sustainability
- Providing space for community, arts, or general public use

A conspicuous omission from the list above might be the mitigation of construction hazards, traffic congestion, or pollution. It is the opinion of this paper that those direct negative externalities are often addressed through other aspects of the planning, review, and building inspection processes. They are dangers that are already recognized as part of the government’s responsibility to minimize and additionally, do not seek to achieve a greater social equity aim. Therefore, this paper does not consider the mitigation of such dangers to be community benefits.

Case studies are drawn from Detroit, Ann Arbor, Grand Rapids, and New Rochelle, NY and were primarily conducted through stakeholder interviews. Unless explicitly stated otherwise, the identities of interviewees are kept confidential. Interviewees were told their comments would be anonymous in an effort to encourage greater candor.

It is also worth noting that this paper only discusses community benefits related to the individual review and approval process of site-specific development projects, as opposed to say, the equity ramifications of larger land use master planning. There is much to say about the interaction between master planning and equity, however that is perhaps a discussion too rich for this humble paper.

# THE COMMUNICATIVE APPROACH: COMMUNITY ENGAGEMENT REQUIREMENTS

The communicative approach to planning emphasizes good process and collaborative decision making. It questions the purported expertise of planning professionals of the past - the same top-down expertise that used rational planning models to justify devastating urban renewal projects. As articulated by one of its leading proponents, Patsy Healey, the communicative approach stresses a Habermasian outlook toward communicative rationality and is highly suspicious of planners putting themselves in the role of “translator.” As Healey explains (2003),

*In conventional strategic planning exercises, [stakeholder feedback] is translated into, and filtered through, the technical language used by planning analysts and the administrators of planning systems. This will almost immediately reduce a person’s speech into a ‘point’, to join other points in a structured analytical framework through which the planners seek to ‘make sense’ of what is going on. The argumentative jumble is translated into the familiar ‘analysis’ work of spatial planning. (p. 247) <sup>v</sup>*

Healey (2003) argues for “inclusionary argumentation” which seeks to “probe the meaning of the different points raised and to test out in discussion their implications for the concerns of other people” (p. 247). In constructing a new theoretical approach, Healey outlines several components with which to evaluate a planning process including: where and how did discussion take place, how were different arguments “sorted out,” and how did stakeholders come to agreement on a strategy.

For Healey and other proponents of the communicative approach, focusing on good process will lead to socially just outcomes. And relatedly, any outcome that emerges from a bad process, isn’t likely to be socially just or equitable. An ideal process for Healey is one where all members of the community have a voice, or a “route to voice.” Defining the community can be tricky, but Healey (2003) gives us a two-part definition.

*The first is spatially based, all those in a place who share a concern and/or are affected by what happens there. The second is stake based, that is, all those who, directly, or indirectly, have an interest in or care about what the people in the first community are doing in a place... An inclusionary strategic planning exercise needs to attend to both, the political community oriented to acting on a set of problems, and the wider community of stakeholders. (p. 244)*

In order for the process to work, there needs to be a strong neutral facilitator. One whose presence is not to voice his/her own opinions, but to teach and tease out the opinion of others. The last piece to the process of inclusionary argumentation, is that after dialogue, the universe of stakeholders will reach agreement about what to do in the planning context.

While most municipal planning and zoning processes have built-in mechanisms for democratic representation and public input (e.g. a public hearing before granting a zoning variance), often times they can fail to surmount the common hurdles Healey identifies. For instance, zoning hearing can seem opaque and inaccessible to average community stakeholders. Assuming a stakeholder is made aware of the public hearing in the first place, a brief public comment period probably cannot accurately reflect the depth of



feeling a stakeholder might have toward a project. There also isn't an opportunity for collaborative discussion and consensus building among many stakeholders.

Community members might not have time to accurately assess a potential project before a public hearing, and that hearing might not allow enough time to fully discuss stakeholders' thoughts about how to improve the project. Planning Commissioners might not fully be aware of community feeling when they are being asked to make a decision. This process still relies on the "translation" of "points" by planning professionals.

Using the hypothetical example of large project seeking rezoning, this need to translate the "points" made by stakeholders places a tremendous social pressure on the planning analysts and/or whatever adjudicating planning body is involved. This social pressure may cause the adjudicating body to ask the developer to change part of the design or to conduct additional community engagement. This creates an inherent unpredictability relatively late in the development process, which breeds inefficiency and tension for both developers and community stakeholders alike.

In an effort to relieve this tension, some cities employ a community engagement requirement before a project is approved by the public body. Such policies often require a meeting (or several) with community members, stakeholders, or designated representatives. The meeting is intended to uncover community concerns with the project and identify ways the project can enhance local quality of life.

Two examples of these policies in Michigan are Ann Arbor's Citizen Participation Ordinance and Detroit's Community Benefits Ordinance. These are discussed in more detail below.

## CASE STUDY: ANN ARBOR CITIZEN PARTICIPATION ORDINANCE

The Ann Arbor Citizen Participation Ordinance (CPO) requires any developer seeking a petition to host a community meeting before submitting the petition. The ordinance applies to any rezoning request or a major project that is larger than certain thresholds tied to the project's scale. The developer must include a summary of the community meeting, including a list of attendees and identified community concerns, with the petition. The summary allows the developer to address any community concerns before the official public hearing, and gives public officials foreknowledge about how stakeholders might feel about the project.

The Ann Arbor CPO also requires that the developer meet with planning staff to go over how to properly host a meeting, and ensure a democratic process. The developer is given City-approved guidelines about how to host a community meeting and how to meet the ordinance's public notice requirements.

Based on interviews with several developers, it seems the Ann Arbor CPO doesn't seem overly burdensome. This is partly due to the fact that the policy is well-established and developers feel that they are well-versed in the requirements. All of the developers stipulated that the engagement would have happened anyway even without the ordinance. In fact, they had trouble remembering which exact public meeting qualified as the official CPO meeting (Developers A, B, and C, personal communication, March-April, 2019).

Importantly, Ann Arbor City staff do not lead and often do not attend, the CPO meetings. While this is a measure to assist with staff time and City expenses (Brett Lenart, personal communication, February 27, 2019), it has advantages and disadvantages. On the plus side, it provides community stakeholders with an

opportunity to directly interact with the developer. However, as Developer B said, the absence of City planning staff at meetings can sometimes hinder the discussion (personal communication April 17, 2019). He pointed to an instance when community members doubted the developer's answers to questions and wanted direct confirmation from City staff.

According to Ann Arbor Planning Manager, Brett Lenart, the CPO has created a small cottage of industry of consultants that are brought in to manage the public meeting process (personal communication, February 27, 2019). None of the developers interviewed used consultants themselves, but all confirmed that they are sometimes used by others. Whether the public meeting is facilitated directly by the developer or a paid consultant, neither have direct accountability to the public, so it is up to meeting participants to ensure their voice is heard during discussion. Direct dialogue can be effective in transmitting community wishes, as long as community members are well organized, which generally speaking, will almost always benefit higher-income communities more than low-income ones.

Interviews revealed that most of the issues raised by community stakeholders were related to the physical design of the site. In one instance, the most substantive change that resulted from a CPO public meeting was the flipping of some residential units from one side of the building to the other - so as to not negatively affect a neighbor's view (Developer C, personal communication, April 1, 2019). In another instance, neighbors advocated to alter the orientation of the site design so a parking lot wouldn't be near their property line (Ann Arbor Resident, personal communication, April 16, 2019).

## CASE STUDY: THE DETROIT COMMUNITY BENEFITS ORDINANCE

The Detroit Community Benefits Ordinance (CBO) is a complex law that affects properties whose total development cost is greater than \$75 million and receive a total government subsidy greater than \$1 million.

Once the trigger thresholds are met, the developer must meet multiple times with a nine-member Neighborhood Advisory Council (NAC). All nine members must live within an "impact area" designated by the City Planning and Development Department. Two of the nine members are elected by community members, two are appointed by the at-large Councilwomen, one is appointed by the District Councilperson, and four are appointed by the Planning and Development Department.

Meetings are then held between the developer and the NAC, facilitated by City staff. Whereas Ann Arbor City staff are left out of the conversation with the developer, the strong role played by Detroit City staff shapes much of the discussion. While NAC members can meet amongst themselves separately, the City remains the main mediator of discussion. In practice, this poses considerable challenges to the democratic accountability of the process, only lifting up issues and concerns that City staff deem appropriate or feasible. This is especially problematic when considering that the NAC is only advisory and the actual development agreement remains solely between the developer and the City, putting further distance between community preferences and the final development agreement.

As the Detroit CBO has been rolled out, the City's interpretation of "appropriate" topics for community benefits has varied from project to project. Sometimes the City is only interested in addressing externalities directly resulting from the project (e.g. traffic, construction mitigation), and in other times, City staff has allowed discussion for items identified by community stakeholders that are not directly a result of the project (e.g. The Ford Motor Company agreed to support the creation of a bird habitat north of its property).

The City's role in both meeting facilitation and NAC selection seems to dull the democratic link between community stakeholders and the developers. This is a common side effect with community benefit processes that are led by municipal governments, and has been well documented by observers of past community benefit efforts around the country (PFW, 2016).<sup>vi</sup> Based on previous research conducted by the University of Michigan in conjunction with D4 (2018), a neutral third-party facilitator would benefit the CBO process.<sup>vii</sup>

Furthermore, the Detroit CBO process raises questions of accountability and the legitimacy of the nine member NAC to represent the entire community. Based on focus group interviews previously conducted by D4 and the University of Michigan (2018), many residents near existing CBO projects were not aware that the CBO process was taking place, nor importantly, how to contact the NAC members representing them. Admittedly, this is a common problem for any community engagement endeavor, and it is virtually impossible to ensure that 100% of community members are aware of a particular public process. However, the separation between NAC members and the rest of the community they are tasked to represent adds another layer of inaccessibility.

The existing CBO does not make any requirements of NAC members to engage the community around them, nor provides any resources with which to do so. Each NAC has approached it differently, some doing it better than others. One successful example was the Ford Michigan Central Station NAC, which surveyed local residents and hosted numerous dialogue sessions with members and the community. It is worth noting that this NAC was led by a former City Councilwoman who currently leads a nonprofit dedicated to civic participation. The Michigan Central Station community benefits process perhaps exhibited a perfect storm of a highly capable NAC coupled with a developer looking for long-term financial returns and an immediate public relations splash. Not all developers have been so eager to include a wide variety of community benefits.

As Healey (2003) notes, the role of the planning professional (whom she assumes is facilitating the public dialogue) is not to translate, but to educate and probe. Education of both planning concepts and differing perspectives is critical to the success of communicative approaches. Sadly, this is where the Detroit CBO probably falls short. Since the CBO engagement meetings happen relatively late in the process, after the project's financing and site design have already begun to take shape, NAC members must confront complex technical knowledge if they are to achieve the community benefits they wish. Asking community members to comment on complex financing or design systems, without dedicating proper time to explain those systems, relegates the engagement process to tokenism. It becomes a charade with planning experts and other public officials making the real decisions, based on their own preferences and technical knowledge.

## EVALUATING COMMUNITY ENGAGEMENT REQUIREMENTS

Using Patsy Healey's structure to evaluate planning processes, we can compare the Ann Arbor CPO and Detroit CBO to better understand how each policy could be improved, and how communicative approaches can be implemented in other Michigan communities.

While both the Ann Arbor CPO and the Detroit CBO identify community benefits from dialogue with community stakeholders, they differ greatly in three main points: a) The timing of community engagement, b) The role of the City in facilitating the conversation, which in turn, greatly impacts the topic of discussion, and c) The types of stakeholders allowed to participate in meetings

### *TIMING OF COMMUNITY ENGAGEMENT*

The Ann Arbor CPO clearly delineates when engagement is to take place related to the rest of the development process. Furthermore, it is designated to take place early in the development process before the developer has his/her site plan and financing finalized. Such early engagement increases the chances that the developer can incorporate community input, without having to succumb to undue external political pressure. As the developers stated themselves, they did not think the Ann Arbor CPO requirements were particularly onerous and easy to incorporate into their already-planned community engagement (Developers A, B, and C, personal communication, March-April, 2019).

The Detroit CBO has no such delineated place in the development process. Engagement with the NAC must simply take place before the final development agreement is executed with the City. Projects have gone through the CBO engagement process at various stages of the development process, some early and some late in the review/approval process. Without a clear timeline, developers have been confused and frustrated that the NAC engagement is not better aligned with other public approval processes like the Brownfield Tax Authority, or the Historic District Commission.<sup>viii</sup> This creates inefficiency for the developer and hinders the ability of the community to effectively mobilize to make their voices heard. For instance, there is not an official role for NAC input to be considered by the Community Advisory Committee of the Brownfield Authority, a body dedicated to channeling citizen's views on brownfield projects. Such patchwork processes and diffuse arenas for community input only make it more difficult for community stakeholders to reach consensus across multiple stakeholders; And reinforces the role of planning officials to translate and "make sense" of the various points raised.

### *ROLE OF CITY STAFF & TOPIC OF DISCUSSION*

The Ann Arbor CPO and the Detroit CBO provide very different examples of how City government can be involved in a required community engagement process. While the Ann Arbor CPO does allow for citizens to have a direct conversation with the developer, most of that conversation becomes centered on the physical design of the site. More study is needed to determine whether such focus on physical design accurately reflects the concerns of the community, or if the conversation is steered there by the developer/facilitator.

Without passing judgement on the importance of community comments related to site design, it is fair to say that comments have not been geared toward larger social aims toward equity. It is undeniable that the outcomes of the Detroit CBO have yielded more community benefits not related to physical site design, and could, arguably, have greater impact toward social equity.

However, in the Detroit CBO process, the City staff is not acting like a neutral facilitator, but instead is more of a mediator on behalf of the developer.<sup>ix</sup> City staff are not trying to build consensus between the community and developer, understanding all perspectives and valuing all equally, as Healey would advocate for. City staff is mostly working to manage community comments, distilling them for later translation. While some outcomes have been admirable, the Detroit CBO does not meet many of Healey's criteria for effective "inclusionary argumentation."

Lastly, the presence of the Ann Arbor CPO does not guarantee that a project will always avoid community push back later on. In one instance, a project held its CPO meeting with little or no negative feedback from community members. But then afterward, the site plan significantly changed before going to the Planning Commission, which then approved the project. Due to Ann Arbor planning processes, the project then had to be approved by City Council, which denied the project due to considerable community pressure, unhappy with the site changes after the original CPO meeting. While this is a case where

democratic accountability successfully represented community interests, it creates a lot of stress on the developer and unpredictability in the process. Such stress can perhaps be avoided with a provision that requires further community engagement if the site design is deemed to have significantly changed.

#### *PARTICIPATING STAKEHOLDERS*

As Brett Lenart points out, the Ann Arbor CPO largely engages “those that want to be engaged” (personal communication, February 27, 2019). However, the Detroit CBO creates a closed representative body, keeping some out of the process. While the Detroit CBO ensures some level of participation from at least nine residents living within close proximity to the project, it fails to directly engage other residents as well as the second criteria of community stakeholder as defined by Healey (i.e. those with a vested interest, but who don’t live nearby). The Ann Arbor CPO cannot guarantee participation by local residents, though it tries to encourage their participation through noticing requirements. It also doesn’t necessarily disallow other stakeholders from participating. As Developer B said, “there are three kinds of people who come to these meetings – those that genuinely want to offer constructive criticism, those who just want to jeer you, and those who have a particular agenda, who may or may not live nearby (personal communication, April 17, 2019)

Both the Ann Arbor CPO and Detroit CBO try to notify local residents that meetings are taking place, which will always have imperfect results. The Detroit CBO process has a dedicated webpage on the City website, and, issues related to the digital divide notwithstanding, provides a nice resource for community members to look up when meetings will next occur.<sup>x</sup>

City staff from both Ann Arbor and Detroit attempt to collect the contact information for meeting attendees (including regular CBO meeting attendees beyond the NAC). This provides government officials with an ability to get in touch with attendees if needed, in case more information is deemed helpful.

## THE OUTCOME APPROACH - INCENTIVE ZONING

Susan Fainstein is one of the leading critics of a strictly communicative approach to planning. As outlined in her book, “The Just City” (2010), she does not necessarily think that a good process will always lead to just outcomes.”<sup>xi</sup> Put succinctly, Fainstein asks, “Does it matter if the process is problematic, if the outcomes are “just?””<sup>xii</sup> While Fainstein thinks process is important, she would argue that process should not usurp outcome in its importance.

In her book (2010), Fainstein outlines three criteria to evaluate the outcomes of planning and economic development policies: Equity, Democracy, and Diversity.

Fainstein is critical of communicative approaches that assume rational discourse will emerge as a group’s final decision, especially in the face of economic inequity. For instance, she is skeptical that an enclave of white middle class homeowners will likely prioritize affordable housing in a group meeting, and therefore, such measures require intervention from the public sector. Incentive zoning, as it used across the country, is one example of such public intervention. It is an example of the public sector identifying a community benefit, and implementing policies if make it manifest, with or without community input.

Incentive zoning is a widely utilized tool across the country used to encourage pre-identified measures deemed to be in the general public interest. In exchange for providing community benefits, the developer receives some combination of regulatory relief or additional financial incentives. While incentive zoning is commonly used as a mechanism for affordable housing, it is by no means regulated to that single purpose. It can be used to encourage a wide range of community benefits such as targeted hiring, green building, or providing community arts space, etc. A notable case study is the incentive zoning scheme of New Rochelle, NY, which is discussed later. Incentive zoning is also explicitly used in two Michigan cities: Grand Rapids and Ann Arbor.

### *MARKET CONSIDERATIONS*

The most assured way to provide community benefits such as affordable housing and local hiring would be for a government to require them outright. However, due to federal Nollan/Dolan precedent at the Supreme Court, and other legal restrictions, such outright requirements are usually considered illegal. Therefore, incentive zoning provides a way for public officials to encourage community benefits while also providing an attractive carrot for further investment.

When compared to community engagement requirements, incentive zoning of course lacks the direct community input, thereby streamlining the process in comparison. The process is implemented by planning staff during the approval process, based on previously enacted policy. For the most part, developers would probably prefer to deal with incentive zoning than community engagement requirements because the administrative approval is more likely to be faster and the outcomes more easily predicted.

While incentive zoning can cover an entire city, it is most often used in specific areas through zoning overlays. This precise scale can account for multiple sub-markets within a city and be individually tailored to the geography. However, in order to be an effective vehicle for community benefits, the incentives offered need to be in line with market realities. The market needs to have latent demand, which is why downtowns and central business districts are often the targets of incentive zoning schemes.

## CASE STUDY: ANN ARBOR PREMIUMS

The Ann Arbor Density Premiums increase the “allowable Floor Area to exceed the normal maximum Floor Area Ratio” in the two downtown zoning districts (D1, D2), provided that the properties are outside of a historic district and 110-year flood plain (City of Ann Arbor, 2018).<sup>xiii</sup> Developers can increase the allowed Floor Area Ratio (FAR) if they provide community benefits in one of six categories:

- Residential Units
- Green Building
- Historic Preservation
- Affordable Housing
- Pedestrian Amenity<sup>1</sup>
- Public Parking

Placing an emphasis on energy efficiency, in order to qualify for a premium, all buildings must achieve a minimum of 2 points under the LEED Energy & Atmosphere Credit. All conditions, uses, or amenities that were used to acquire the premium must remain for the entire life of the structure. This seems to have particular significance for the affordable housing units, which must remain permanently affordable.

However, conspicuously, the affordable housing premium does not have a required Area Median Income level. Instead the satisfaction of the affordable housing premium will “be determined by the Office of Community Development” (City of Ann Arbor, 2018). Further research is needed to determine at what level affordability is provided through the premiums, and whether the absence of a pre-determined AMI requirement decreases transparency or predictability in the process.

In 2015, the Ann Arbor Planning and Development Services Department hired ENP & Associates to conduct an evaluation of its premium policies. ENP’s report found that since the policy was enacted in 2009, no building had taken advantage of the Affordable Housing, Pedestrian Amenity, and Public Parking premiums. Only one building had used the Green Building premium to achieve LEED Silver status, and one building had acquired the premium for preserving a historic façade (ENP, 2015).<sup>xiv</sup>

Every single building using premiums had taken advantage of the Residential Units Premium, which awards additional .75 square feet for every 1 square foot of residential use. While extensive use of the premium infers that Ann Arbor is meeting its goal of providing “incentive for residential development in and in close proximity to the City’s downtown” (City of Ann Arbor, 2018), it has served to meet little other community benefit gains. It has largely been used to create “luxury student housing” (Brett Lenart, personal communication, February 27, 2019).

ENP’s research revealed that no building had taken advantage of the affordable housing premium, partly because developers were afraid that it might scare off students from wealthy families, their primary target audience, from living in the building (Megan Mason Minock, personal communication, April 18, 2019). This reveals one of the flaws of incentive zoning – it is only effective if the incentive is significant enough to entice the developer given other market forces.

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<sup>1</sup> The Pedestrian Amenity Premium is available in the D1 and D2 zoning districts as well as the Campus Business (C1) and Campus Business/Residential (C1A/R) Districts

## CASE STUDY: GRAND RAPIDS BONUSSES

The Grand Rapids Residential Bonuses seeks to encourage housing that can “accommodate all residents regardless of income, special need or place in life cycle.”<sup>xv</sup> Bonuses are available for two-family and multiple-family developments in the form of reduced lot areas, allowing greater density of units. Residential Bonuses are available for “Accessible Housing,” “Mixed-Income Residential,” and a new “Affordable Housing” category passed in March 2019 (Suzanne Schultz, personal communication, August 27, 2019).

Whereas many affordable housing incentives around the country are offered in downtown areas, Grand Rapids Residential bonuses are offered in low-density and medium-density residential districts as well as mixed-use commercial areas.<sup>2</sup> The Affordable Housing bonus is tiered, allowing two bonuses depending on the extent to which a developer provides affordability:

- Developers can have the minimum lot area per dwelling reduced to up to 500 sq. ft. for providing 20% of the units priced between 60% and 79% AMI for 30 years
- Developers can have the minimum lot area per dwelling reduced to up to 1000 sq. ft. (and/or adding an additional story above maximum allowed height in commercial districts) for providing 20% of the units priced at- or below- 30% AMI for 30 years.

In order to qualify for a Mixed-Income Bonus, multiple-family properties must be located within 300 feet of a transit line, be at least 20 units in scale, and between 15-30% of the units be below 60% AMI if rental, or below 80% AMI of owner-occupied. In both cases, the units must remain affordable for at least 15 years. Whether the development is a two-family or multi-family property, all units must be comparable in size and amenities, and the property owner must agree to submit annual compliance reports to the City (City of Grand Rapids, n.d.).

Similar to the Ann Arbor affordable housing premium, no developer has really used the Mixed-Income Bonus in Grand Rapids (Suzanne Schultz, personal communication, June 5, 2019). This ineffectiveness is part of the reason why community leaders, developers, and government officials started meeting in 2015 to discuss viable affordable housing solutions, called the Great Housing Strategies. According to the Housing Now! website, these strategies evolved into 11 Housing Now! recommendations that were submitted to City Commission in November 2017. Recommendation #6 was to create a separate Affordable Housing Bonus.<sup>xvi</sup> Since it was just passed in the spring, it is too soon to gauge the effectiveness of this Affordable Housing Bonus.

Grand Rapids also offers height and density bonuses in various overlay districts for a variety of community benefits. Such spatial tailoring of incentives and community benefits offers even more nuanced adaptability to market conditions. There are also additional bonuses for “Urban Open Space,” “Transit Station,” and “Micro-unit” benefit categories within mixed-use commercial areas. The Downtown Height Overlay Districts offer height bonuses for the provision of mixed-income residential units, green elements, and even public art. The Grand River Overlay District offers height bonuses for the provision for a wider variety of community benefits with a decidedly environmental bend. These community benefits include:

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<sup>2</sup> It is worth noting that there are separate housing incentives in the Grand Rapids Downtown Height Overlay District.



public access easement, multi-use trail, river view outlook, public amenity, public art, green elements, wetland habitat, and ground floor retail.

## EVALUATING INCENTIVE ZONING

Evaluating incentive zoning can and should be largely tied to the direct outcomes of the policy. Was it effective in encouraging the desired use? Since incentive zoning seeks to promote social equity through a “carrot” rather than “stick,” it is important that the incentive is attractive enough. Both Ann Arbor and Grand Rapids have had trouble using incentive zoning to encourage affordable housing. As D4 has previously pointed out (2018), this result is not dissimilar from other incentive zoning schemes around the country focusing on affordable housing.

Clearly, the affordable housing incentives in Ann Arbor and Grand Rapids may not be correctly calibrated to the market. Ann Arbor’s challenge of balancing affordable student housing with affordable housing for non-students certainly presents unique challenges. And Grand Rapids has recently made efforts to revamp its housing incentives after recognizing their previous ineffectiveness.

However, Grand Rapids’ sensitivity to deep affordability (offering the highest bonus for 30% AMI or below) and requiring transit access for Mixed-Income housing would meet several of Fainstein’s criteria for equity. As mentioned above, Fainstein (2010) offers three criteria with which to evaluate the outcomes of planning and economic development endeavors. Of the three, she provides the most concrete policy examples for equity. For Fainstein, equity outcomes include: creating permanently affordable housing, new developments providing public space, and consideration for low-income reliance on public transit, among other things. Given this lens, the Grand Rapids bonuses stack up well, though one wonders how the 15-year and 30-year affordability windows of the bonuses will affect long term affordability. It is also worth noting that the Downtown Height Overlay has a higher AMI requirement (120% AMI) in a high-density area, precisely where more units with deeper affordability may be needed.

Finally, neither Ann Arbor nor Grand Rapids offer incentive zoning tied to targeted hiring, something that Fainstein recommends for major projects. Though the number of local jobs produced is tied to other tax abatements offered at the local and State levels.

## COMBINING BOTH APPROACHES – A POTENTIAL MODEL

In December 2015, the City of New Rochelle, New York completed its Downtown Plan and created the Downtown Overlay Zone (DOZ). The DOZ encompasses 279 acres and allows 12 million sq. ft. of new construction and 6,370 new residential units. The DOZ creates design standards and establishes rates for impact fees, encouraging early investment by increasing impact fees as time goes on. As explained in a previous D4 report (2018):

*In the DOZ, structures are designated into one of three Development Standard levels depending on their scale. Based on this designation, and the district in which they are located, these developments are then eligible for a certain amount of Community Benefit Bonuses... A menu of community benefits is provided inside of the DOZ, which can be applied at the developer's discretion. (p. 18)*

While many other cities have incentive zoning schemes, the DOZ is noteworthy because of the wide variety of community benefits it offers, organized by a simple menu of options. There are provisions for the following community benefit categories:

- Historic Preservation
- Arts and Cultural Space
- Community Facility
- Transit and Parking
- Green [*green building and infrastructure*]
- Pedestrian Passage
- Open Space
- Housing [*affordable housing*]
- Community Benefits Fund

According to New Rochelle Director of Planning and Sustainability, Kevin Kain, the DOZ has been successful in attracting investment. Since its enactment, 22 projects have been approved, 11 of which have broken ground, and 1 has been completed. In its first three years, it met its ten-year goal for residential unit attraction (Kevin Kain, personal communication, May 2, 2019). Part of New Rochelle's success has been its prioritization of predictability in the process. As New Rochelle Development Commissioner Luiz Aragon said in Next City Magazine:

*“When a developer comes to New Rochelle, we want them to know exactly how much it's going to cost them to do the development, and how long it's going to take for them to get the necessary [individual] approvals and get it done.”<sup>xvii</sup>*

In addition to predictability, New Rochelle's success can be attributed to two other factors – its flexibility and attractiveness of incentives.

### *FLEXIBILITY*

A strength of the DOZ is that it allows for multiple levels at which developers can choose to fulfill the community benefit. For most of the benefit categories listed above, there is a bonus of 25%, 50%, or 100%

of the benefit allowed, as determined by a variety of public entities.<sup>xviii</sup> Once the various public entities decide on the extent to which a developer has provided a benefit, they award the developer with additional height allowances.

This ability to fulfill only a portion of the benefit requirements, is in contrast to more binary requirements (i.e. the developer either did or did not meet the criteria) like the ones seen in Grand Rapids. The Grand Rapids bonuses are by right, as long as the developer fulfills all of the prescriptive requirements outlined in the zoning code. While binary requirements may serve to quicken the approval process, it reduces the number of projects that can provide the benefit. New Rochelle's flexibility allows more developers to participate in the program and therefore, may achieve a greater amount of aggregate community benefits. However, more research is needed to determine whether New Rochelle's lack of binary requirements and need to involve multiple public entities, (i.e. Planning Review Board, Historic Landmarks Board, etc.), is considered a hindrance to developers. Though the New Rochelle Planning Department says that it is committed to approving projects within 60-90 days, which is impressive (Kevin Kain, personal communication, May 2, 2019).

Allowing even more flexibility in the DOZ, if the developer chooses, he/she may give to a general Community Benefits Fund, with bonuses being awarded according to a preset formula. The Community Benefits Fund is a general fund that helps with improvements around the downtown. In the words of New Rochelle Development Commissioner Luiz Aragon, "The developers can pay for the additional bonus floors in the form of community benefits, cash, or both."<sup>xix</sup>

However, that is not the only fund that New Rochelle uses to achieve community benefits. The Community Benefits Fund merely supplements other policies employed, such as the New Rochelle's Affordable Housing Ordinance. The Affordable Housing Ordinance requires developers to reserve 10% of square footage of residential units to be offered at 80% AMI. Instead of providing the units, developers can instead make a contribution to its Affordable Housing Fund (Kevin Kain, personal communication, May 2, 2019).

#### *ATTRACTIVE INCENTIVES*

Beyond the height bonuses, the DOZ has attracted early investment through its Fair Share Mitigation Fee. As the downtown grows, The Fair Share Mitigation Fee compensates for the resultant stress placed on surrounding infrastructure and school system. The Fee goes toward these increasing expenses encountered by the City and is structured to increase every year to account for growing development. This created an incentive for developers to get in early. The Fee is clearly outlined in the DOZ guidelines and offers a predictable equation that developers can work into their pro forma during the design phase.

In addition to height bonuses and an early opt-in incentive, the DOZ also offers developers an opportunity to bypass a time-consuming state environmental regulation. According to the New York State Environmental Quality Review Act (SEQR), governments must submit a report of how their project will impact the surrounding community. As the State of New York puts it,

*"New York's State Environmental Quality Review Act (SEQR) requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making. This means these agencies must assess the environmental significance of all actions they have discretion to approve, fund or directly undertake."*<sup>xx</sup>

When the initial analysis is complete, governments then must issue an environmental impact statement, with mitigation recommendations if necessary. This is frequently done on a project by project basis, which can slow the approval process. As part of the Downtown Plan, New Rochelle created a Theoretical Development Scenario (TDS) which outlined how much development would be allowed in the DOZ over the next ten years. The City then used the TDS to complete its SEQR analysis and issue a Generic Impact Statement for all 279 acres of the DOZ, making the entire downtown “shovel-ready” (City of New Rochelle, n.d.).

#### *COMMUNICATIVE APPROACH AND THE DOZ*

While the DOZ certainly has elements to make it a model incentive zoning scheme, it merits special discussion here because it potentially offers guidance on how to combine the communicative approach with an outcome-based approach to identifying and generating community benefits.

When New Rochelle was creating its Downtown Plan, it worked with Master Developer, RDRXR and engagement consultant, CSPM Group, to launch a series of engagements they called “crowdsourced placemaking.” The engagement combined regular community meetings with informal engagements such as appearing at happy hours, hosting a table at the local farmers market, and visiting schools.<sup>xxi</sup> The engagement team also hosted a website where community members could nominate ideas and vote on which they liked best.

It is from this list of generated community ideas that the DOZ community benefit categories were drawn (Kevin Kain, personal communication, May 2, 2019). Asking community stakeholders to brainstorm and prioritize the types of community benefits they want in their community takes advantage of stakeholders’ innate knowledge of their community and innate values. While the ideas were still categorized by government officials, and thereby running into the same “translation” problem that Healey identifies, (not to mention other issues related to the digital divide), the electronic voting collected significant feedback from community members without needing them to understand complicated design or tax incentive policy.

## CONCLUSION & RECCOMENDATIONS

As city leaders become more aware of the social ramifications of development, there is a growing concern for how to create a more equitable city, one embodying the tenants of social, economic, and environmental justice while also ensuring a high quality of life for all. This paper has bundled these concepts under the banner of “community benefits.” While community benefit agreements have had examples of both success and failure, inserting community benefit provisions into the zoning code, planning processes, and other development practice can potentially yield bigger impact with more widespread and longer running results.

But if public officials, urban planners, and economic developers are going to seek to provide these community benefits through development practice, then they are immediately faced with the question of “how do we know what kind of benefits to provide?”

We have analyzed two different approaches to this question, as represented by the arguments of Patsy Healey and Susan Fainstein. The bottom-up “communicative” and top-down “outcome” approaches are often pitted against each other and painted as fundamentally mutually exclusive. However as New Rochelle’s model shows, these concepts can, in fact, work in tandem. By rooting real development policy in theoretical concepts, I have striven to elucidate how these planning and zoning tools can more effectively achieve community benefits.

Though deep-seated philosophical arguments alone do not help an overworked government official or community leader trying to revitalize his/her city. The realities and economics of the real world dictate that leaders in Michigan communities must balance market competitiveness with desires to foster equitable and just development. Equitable development policies are only effective if there is actually development taking place.

I have weaved in market considerations through the entirety of this paper, analyzing how changes to the zoning and approval process would affect developers. Inserting community benefit considerations into the development process is often thought to drive away investment and development. While this may sometimes be the case, it is not always necessarily true. Developers of course are interested in profit, but they are not against community benefits per se, as long as provisions are not seen as confusing, time-exhaustive, and costly. Therefore, the more we can make community benefit processes efficient, predictable, and transparent, and thereby reducing costs to developers, the more likely we are to achieve equitable and just development.

With the lens of balancing community benefits with market competitiveness, some conclusions begin to emerge around how to effectively utilize both community engagement requirements and incentive zoning schemes:

### *RECOMMENDATIONS FOR COMMUNITY ENGAGEMENT REQUIREMENTS*

- Early Action - Community engagement ordinances should stipulate that community engagement happens as early as possible in the development process. Requiring community engagement before submitting application for rezoning or entering site review, as done in Ann Arbor, seems adequate. The benefit of such early dialogue is a two-way street that helps both developers and community

stakeholders alike. Community members can help shape the project before it is solidified and developers can more readily incorporate comments, and avoid surprise pushback later.

- **Community Expertise** – Required community engagement should take advantage of community stakeholders’ innate expertise – knowledge of their own community and current needs, an ability to identify future land use priorities, and establishing values to drive future growth. It is disingenuous to expect community members to comment on technical items like incentives or tax policy, without in-depth explanation. Input on complex financing or design schemes should be sought only if appropriate time is allotted for explanation, so community stakeholders understand the full ramification of their comments. (Though complex technical details should always be available to stakeholders if requested).
- **Open Dialogue** – Required community engagement should be open to the public, with opportunities for the public to speak, including local residents as well as other stakeholders (i.e. business owners, organized labor, etc.).
- **Documented Meetings** – In addition to written notes, required community meetings should, when feasible, be documented via video as well. This can help planning officials understand the context of certain comments later on. Contact information for participants should also be collected allowing officials to contact them with questions, if necessary.
- **Significant Changes** – If the design of a project significantly changes after the original required community engagement, developers should be required to host a second round of engagement. Planning officials can deem whether a change is “significant” enough to merit further engagement.
- **Neutral facilitator** – Required community engagement meetings should be led by a neutral facilitator, whose role is to explicate the perspectives of both the community and developer alike during conversation. Dialogue should focus on reaching consensus, and when consensus might not be achievable, focus on prioritization and ranking. The facilitator should be trained and adhere to sets of guidelines previously established by City officials. The neutral facilitator can be an outside consultant or City staff. While the Detroit CBO example shows that City staff leading meetings can be problematic, it is possible, in theory, for City staff to lead meetings as long they committed to being “neutral” and are careful not to taint discussion with their own bias.

#### *RECOMMENDATIONS FOR INCENTIVE ZONING*

- **Wide Menu** - Incentive zoning schemes should have a wide, clearly defined menu incentivizing a variety of community benefits.
- **Tiered Awards** - Incentive zoning schemes should have multiple tiers of bonus available. Similar to the New Rochelle DOZ and Grand Rapids Affordable Housing Bonus, developers should be able to receive a full or partial bonus, depending on the degree to which the benefit is provided.
- **Effective incentives** - Incentive zoning, obviously, needs to offer things that are attractive given market conditions. Incentive zoning is most frequently tied to height or density bonuses, but this might not be a large enough carrot for many Michigan communities. Michigan communities will likely have to consider offering incentives that provide a combination of regulatory relief, fast-track approval, or extra tax abatements. Government officials should periodically evaluate the success of incentive zoning policies as time goes on.
- **Spatially Tailored** – Incentive zoning schemes should be adaptable and tailored to various sub-markets within a municipality. Following Grand Rapids’ example, government officials should consider the use of zoning overlays to implement incentives, allowing different incentives and community benefits as needed in different areas. Incentive zoning is most effective when placed in a district with healthy market activity, which is why most incentive zoning overlays are located within central business districts, or other areas with healthy market activity. However, this can

potentially leave out neighborhoods and/or underserved areas, which possibly have the greatest need for community benefits. Therefore, in addition to downtown districts, Michigan communities should consider creating incentive zoning overlays in low-income and/or underserved areas that coincide with boundaries targeted for investment through additional philanthropic or public resources. As an example, Michigan communities should consider creating incentive zoning overlays that coincide with the new federally created Opportunity Zones.

#### *WORKING IN TANDEM AND OTHER CONSIDERATIONS*

As New Rochelle's model shows, it is possible to employ both a communicative and outcome-based approach to providing community benefits. As officials design incentive zoning schemes, they can host widespread community engagement to seek input on the types of benefits to be encouraged. Such engagement can also draw on previously conducted master plan activities and community needs assessments. Engagement should provide opportunities for community members to nominate their own proposed community benefit categories to be incentivized, and then seek to reach a consensus, or at least prioritization, on the final selection.

Beyond designing the community benefit categories to be encouraged, incentive zoning can also specifically be tied to ongoing community engagement requirements. This can potentially happen in two ways: Firstly, an incentive zoning scheme can be designed to have a community benefit category reserved for somewhat miscellaneous items determined during the required community engagement. For instance, if community members identify the need for a grocery store during initial engagement, then the developer may be awarded with additional incentives for signing a grocery store tenant.

The downside of this approach is that it would require administrative judgement about whether or not a particular use constituted an adequate fulfillment of the community wish expressed during the public meeting, running the risk of slowing the process. Video documentation of the public comments could help officials make this determination. Another challenge would be in identifying which community wishes deserve to be incentivized. Would all community comments be eligible? Only comments that received unanimous support? Only community wishes that were ranked as say, being in the top three? Obviously, the structure of the engagement meeting would have to be carefully considered when designing this incentive.

If implemented as described above, a tiered bonus structure should be in place in order to account for varying levels of difficulty in providing a benefit. As a hypothetical example, if community members expressed initial desire for both a local grocery store and for the window trim to be painted blue, the two measures should receive different levels of bonus. This is because providing a full-service grocery store is more costly than simply painting the window trim a certain color.

A simpler, albeit less direct way of tying incentive zoning to community engagement requirements is utilization of a potential community benefit fund. As done in New Rochelle, Michigan communities should create a community benefits category where developers can receive a bonus if they contribute money to the community benefit fund. This fund can be reserved for items identified during initial public meeting(s) and/or a separate participatory budgeting process. Administration of the fund can be overseen by either the municipal government or a local non-profit.

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