

## Incentive Zoning - German Brothers

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Sun 9/10/2023 5:06 PM

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Dear Town Officials:

I have been reviewing the video presentation by German Brothers re: their request involving "Incentive Zoning", as well as the pertinent NYS Town Law (TWN 261-b), the Uniform Docking and Mooring Law UDML (Ch 96 of Town Code), and the Town's Incentive Zoning local law (220-31).

My conclusion is that there were errors made in drafting the Incentive Zoning local law that are confusing the issue as follows:

There are several places in both NYS Town Law 261-b and in Town code 220-31 where "Incentive Zoning" is defined and talked about as a "system", as well as in the Town's definitions Ch 1-17 (see "zoning, incentive"). Incentive zoning does not replace or change the existing zoning district...it is more akin to an overlay. As the definition in our code states, "Those adjustments to the zoning district requirements listed in section 220-31". NYS Town Law does not instruct towns to create a totally new zoning district. It specifies that a town should designate which existing districts will allow incentive zoning. (TWN 261-b(3)(b))

Entirely changing the district zoning for one parcel in the middle of an established zoning district would be more likely disallowed "spot zoning", which is I'm sure why NYS worded TWN 261-b the way they did.

The Town for some reason took it one step beyond what NYS TWN 261-b allows and added IZ to the list of zoning districts in 220-10, as if it was a district itself. Further confusion was added when 220-31 was titled "Incentive Zoning District" rather than just "Incentive Zoning". Unlike any of the other enumerated real zoning districts in 220-10, IZ does not give any "permitted principal uses", "permissible uses" or "dimensional guidelines".

TWN 261-b(3)(b) states: "Zoning Districts in which Incentive Zoning may be awarded shall be designated in the zoning ordinance or local law." We did that when we said in 220-31(D), "Districts designated for incentives. The Town Board shall have the authority to designate incentives in all zoning districts of the Town of Canandaigua." Although it would appear that the Town may not have followed the additional steps in TWN 261-b that need to be taken to choose which zoning districts would allow Incentive Zoning, when the Town chose "all districts".

Further, TWN 261-b(3)(e.)(i) requires that the Incentive Zoning ordinance or local law list the "incentives or bonuses, which may be granted by the Town to the applicant;" We also did that in Ch 220-31 (E.) "Permitted incentives: The Town Board may grant the following specific incentives:" There are only 3 listed specific permitted incentives: 1. increase in dwelling unit density. 2. changes in lot area and dimension requirements. 3. Changes in use. There is nothing in the Town's code that permits exceeding the requirements of UDML, or the number of boat slips allowed, even if a change in use were permitted. The allocated number of slips allowed by UDML is tied to the tier assigned to the zoning district, in this case RLD.

In UDML (Ch 96-6 A.) it states that: "The maximum number of docking and mooring facilities allocated to an adjoining parcel shall be based on the tier assigned by the Town Board to the adjoining zoning district." and further, 96-6 A.(1) states: "In the absence of a tier assignment by the Town Board, (If you were to incorrectly construe that IZ was a zoning district unto itself, per mistakes made.) default tier classification shall be Tier 1." The subject parcel is adjoining the RLD zoning district, which is Tier 1, and will remain in the RLD even if incentive zoning designation is granted to the parcel.

My understanding is that with the 3 lots requested, each having approximately 250 feet of lake frontage, the maximum total number of boat slips allowed for the whole project under UDML would be 18 (or 3 times 5+1).

Regardless, exceeding the UDML is not one of the three specific permitted incentives listed in 220-31.

Respectfully,  
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