

Protecting Community Character Through Zoning Administration and Enforcement



Southern Tier West 2021 Spring Training Workshop

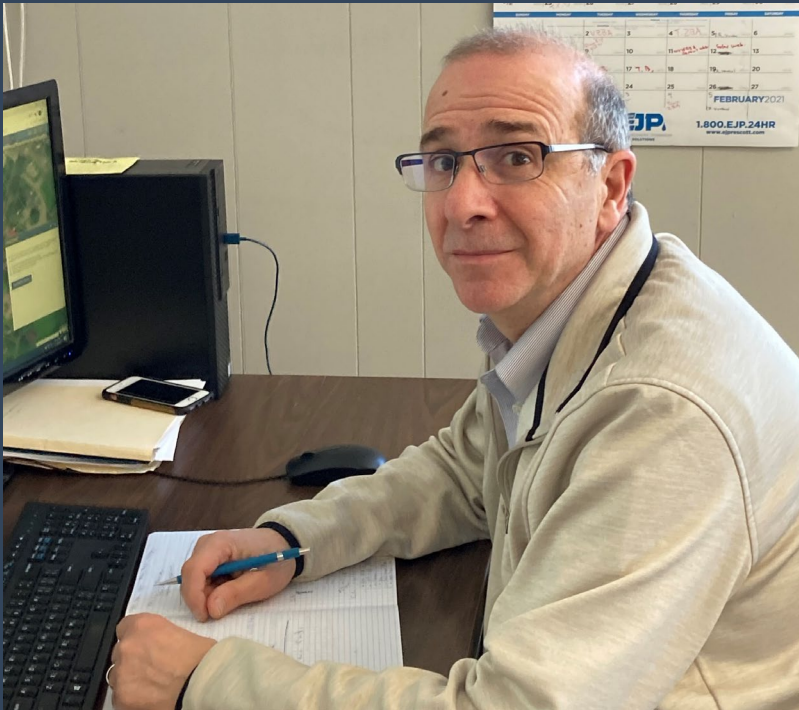
March 10, 2021

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Who We Are



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Who Are You?

- **Who is participating today?**
 - Planning Board members
 - Zoning Board of Appeals members
 - Municipal Board Members
 - Planning Consultants
- **Does your community have the following:**
 - Architectural Design Standards?
 - Difficulty enforcing your Sign Regulations?
 - Interest from solar farm developers?
- **What are your Hot-topic zoning challenges?**





Protecting Community Character Through Zoning

- Comprehensive Plan
- Zoning
- SEQR
- Enforcement
- Case Study
- Q&A - through Zoom Chat function

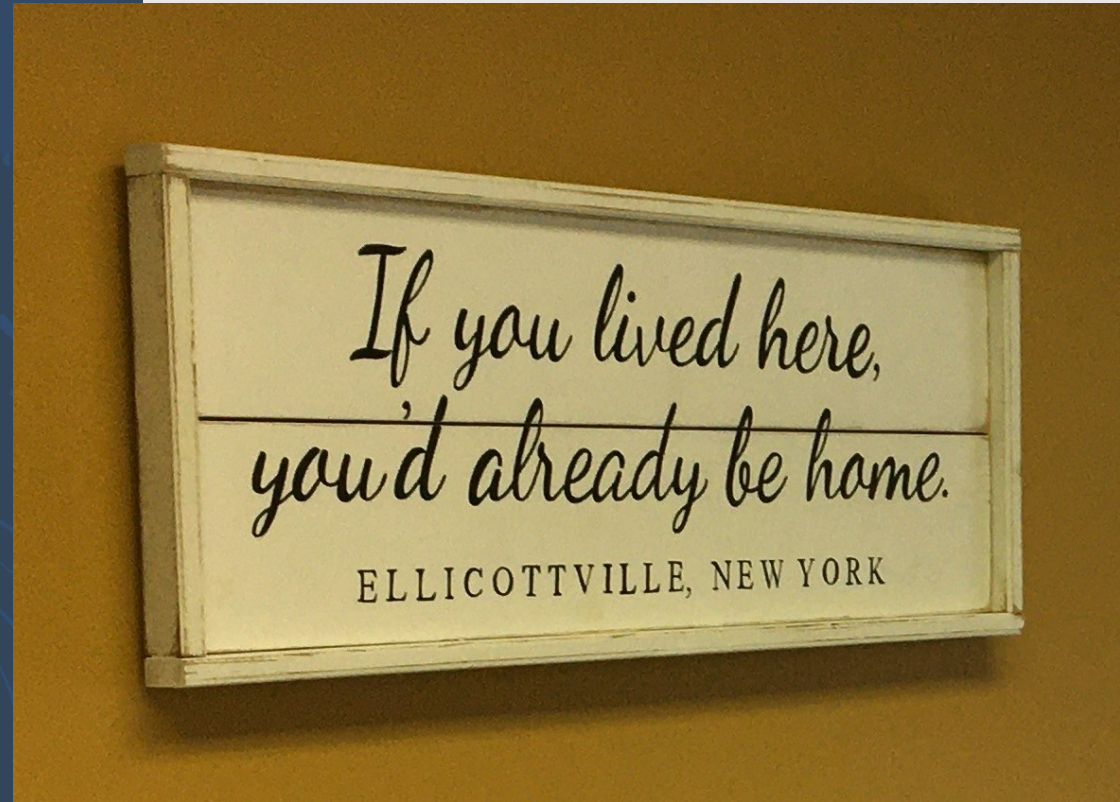
Presentation Overview

Presentation Goal

GOAL: Provide guidance on how to use comprehensive planning and zoning to protect community character.

Objectives:

- To identify and define community character through your plan.
- To develop zoning standards.
- To putting zoning into practice.
- To enforce zoning standards.



Guiding Community Character

Comprehensive Plan

Comprehensive Plan - Zoning

- NY State Authorization for zoning is based on:
“...in accord with well considered plan”¹ or
“...in accordance with a comprehensive plan”²

Drafting Amendments / Special Study

- Define existing character
- Analysis, S.W.O.T.
- Future Vision for your town
- Maps and Graphics
- Recommendations for Zoning Amendments to Facilitate Future Vision



¹ General City Law §20(25)

² Town Law §263; Village Law §7-704

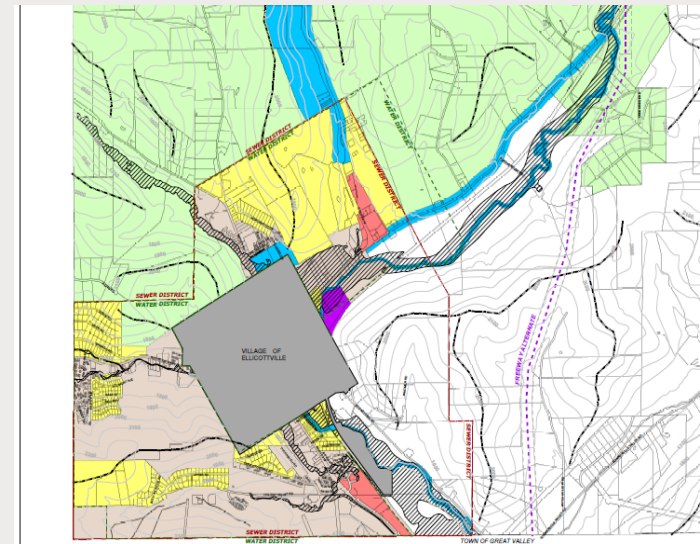
Guiding Community Character



Zoning

Zoning: Drafting Regulations

- **Districting**
 - Purpose and Intent of each District
 - Zoning Map
- **Land Use Tables** - What's Permitted Where
 - Categories
 - Residential
 - Commercial
 - Agriculture / Agri. Business
 - Mixed-Use
 - Assign Uses to Districts
 - Assign Jurisdiction:
 - As of Right
 - Permitted - Site Plan
 - Special Use Permit
 - Not Permitted



ZONING MAP
- FINAL, EFFECTIVE SEPTEMBER 17, 2014

Town of Ellicottville
CATTARAUGUS COUNTY, NEW YORK

PREPARED FOR:
THE TOWN OF ELICOTTVILLE
P.O. BOX 600
1 WEST WASHINGTON STREET
ELICOTTVILLE, NY 14291

PREPARED BY:
M&A CONSULTING ENGINEERS, PLLC
P.O. BOX 604
THREE BRISTOL LANE
ELICOTTVILLE, NY 14291

LEGEND:

—	SIGNIFICANT RIDGE LINE	□	Agricultural - Residential District
—	OVERLAY DISTRICT	□	Conservation District
—	FLOODWAY FRINGE	□	General Commercial District
—	WETLANDS	□	High Density - Residential District
—	SCHOOL DISTRICT	□	Industrial District
—	BOUNDARY	□	Low Density - Residential District
		□	Medium Density - Residential District

Zoning: Drafting Regulations

Guiding Community Character



Zoning

- **Written Regulations**
 - Influence Character
 - Lot size
 - Density
 - Setbacks
 - Open space
 - Height
 - Orientation of
 - Buildings
 - Parking
 - Noise and Light standards



Zoning - Implementation

- **Zoning and Building Permits** - CEO
- **Special Use Permit** - Allowed by P.B.
 - Use-Specific and Site-Specific
- **Site Plan** - Review by P.B.
 - Lot orientation, building and parking location
 - Landscape plan, outdoor lighting, signage
 - Light and noise buffering to surrounding residential
 - Elevation drawings required?
 - Renderings required?



Zoning - Implementation



- **Architectural Design Guidelines provide standards:**

- General Style and Mass
- Exterior materials
- Roof pitches and materials
- Window and door styles
- Ornamentation
- Exterior Lighting

- **Guidelines Must Be Objective and stated in Code**
 - Because Boards are Limited in Discretion
 - Subject to Challenges for arbitrariness, and exceedance of lawful authority



Zoning - Implementation

- Signage as Community Character
 - Don't regulate the content of the sign
 - Importance of Purpose, Intent, and Definitions
 - Limit off-premise signs. Prohibit in residential.
 - Number and square footage per location
 - Signs on roofs? Painted on walls?
 - Lighting: internal vs. overhead
 - Removal after business has closed
 - LED or electronic display signs



Why SEQRA is Important to Community Character

- What is SEQRA?
 - State Environmental Quality Review Act
 - Statutory Mandates (ECL 8-109,) and Implementing Regulations (6 NYCRR 617)
- SEQRA has a broad definition of the environment - physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.
- Significant Adverse Impacts on Human or Natural Environment may Impact Community Character
- Impacts to the Human Environment are challenged due to:
 - Noise
 - Aesthetics
 - Traffic



Enforcement to Protect Community Character



Enforcement by Whom

- Enforcement by the Building Inspector's Office:
 - by reviewing Permit Request, or
 - by responding to Complaints
- Enforcement through Planning and Zoning Board Actions
- Enforcement by Impacted Persons through Article 78 Actions
- Enforcement by Impacted Communities, beyond time limits of an Article 78 Action (Case Study) where government fails to Act



Determining Adverse Impacts on Community Character is Part of SEQRA Review Process and is Challengeable In Article 78 Action

This Wellsville NY SEQRA challenge case involved the challenge of the permitting of a big box store based upon community impacts.

With respect to the "community character" of the Village, we note that SEQRA defines "environment" as "the physical conditions which will be affected by a proposed action, including . . . existing community or neighborhood character" (ECL 8-0105 [6]), and "require[s] a lead agency to consider more than impacts upon the physical environment," including "the potential displacement of local residents and businesses" (Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359, 366, 509 NYS2d 499, 502 NE2d 176 [1986]). **Therefore, contrary to the Town Board's apparent conclusion, "[a] town . . . board reviewing a big box development should consider the impact of the development on the community character of a neighboring village that might suffer business displacement as a result of the approval of the big box development"** SEQR Handbook at 179 [3d ed 2010... .

Matter of Wellsville Citizens for Responsible Dev., Inc. v. Wal-Mart Stores, Inc., 140 A.D.3d 1767, 1770, (2016)

2016 Google Earth

Write a description for your map.

Legend

Knapp Rd

Agricultural-Residential Case Study of Model Plane Airport Permitted for Adult Enthusiasts; Where Noise Impacts Community Character

Remsen Rd

Knapp Rd

Google Earth



1000 ft

Google Earth




Noise Pressures introduced by Siting Projects May be Found to objectively Impair Community Character.

- NYSDEC has issued Guidance Doc for Assessing Noise Impacts on host communities. Summary Table is helpful

HUMAN REACTION TO INCREASES IN SOUND PRESSURE LEVEL

Increase in Sound Pressure (Db)	Human Reaction
Under 5	Unnoticed to tolerable
5 – 10	Intrusive
10 – 15	Very noticeable
15 – 20	Objectionable
Over 20	Very objectionable to intolerable



Key Facts to Knapp Road Case Study

- Non-Agricultural of Residential Use not Permitted within Zone
- Special Use Permit issued not authorized by Zoning Code grants no rights
- Application of NYSDEC Guidelines may objectively establishes “Intolerable” Noise Conditions impairing Residential Use - changes character of the neighborhood (e.g. 26 Dba over background)
- Interfered with ability to hear human voices in yards, and houses
- Town does not Act on Citizen Complaint
- Court, after trial, finds use unlawful, and Grants Injunctive Relief of Cease and Desist
- When Board acts beyond powers and government does not stop unlawful use, after Petitioned, Citizen Groups may Petition Courts
- Courts can, and sometimes do Order unlawful activities to cease and desist even after Projects built. Court shut down operations after Trial

Protecting against Adverse Impact of Community Character is Lawful and Required in Review Process

Lessons learned from experience:

1. Practical application of your zoning is what makes a difference in the “real world” - Follow and “Trust the Process” -it’s the law because many challenges may be based on failure to follow lawful process, and
2. EIS and Ultimate Denial may be based on adverse impact on character of – big box example where Commercial Big Box may displace sufficient number of small business to change character of community.
3. Establish realistic measurable review standards in Codes because Planning Boards, and ZBA’s are administrative Bodies
4. SEQRA - applies to adoption of Codes. And Application of Codes through discretionary approvals.
5. Agricultural districts, and Natural Environment may define your Community Character
6. Other ways to control/protect Community Character. The importance of listening and response in
 - a. Identifying Community Character in Comprehensive Plan,
 - b. Zoning Amendments, and
 - c. Permitting.

Q&A

Please send your questions through the Q&A button.

Thank you from our "team"

Gary Palumbo, AICP

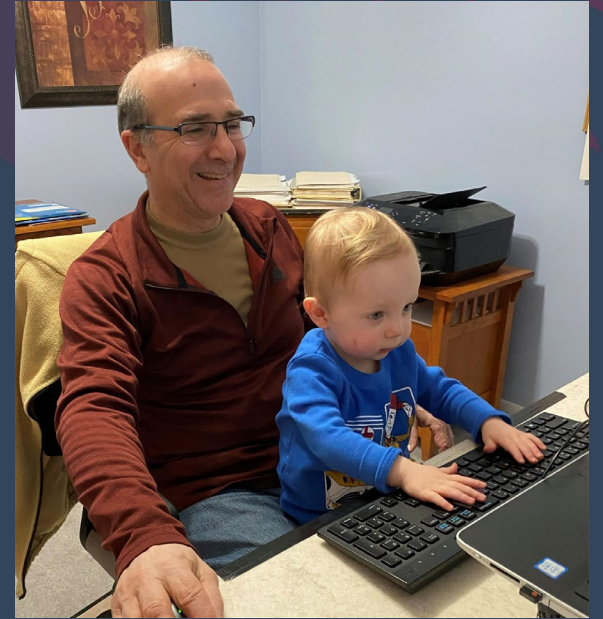
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Additional Content Resources

New York State Division of Local Government Resources. (2009). *Creating the community you want: Municipal options for land use control*. James A. Coon Local Government Technical Series.

https://www.dos.ny.gov/lg/a/Creating_the_Community_You_Want.pdf

New York State Division of Local Government Resources. (2015). *Zoning and the comprehensive plan*. James A. Coon Local Government Technical Series.

https://www.dos.ny.gov/lg/publications/Zoning_and_the_Comprehensive_Plan.pdf

New York State Division of Local Government Resources. (2015). *Municipal Control of Signs*. James A. Coon Local Government Technical Series.

https://www.dos.ny.gov/lg/publications/Municipal_Control_of_Signs.pdf

Image Sources

Slide 1: <https://www.tourchautauqua.com/destinations/jamestown-renaissance-corporation>

Slide 2: http://lackawannany.gov/wp-content/uploads/2021/01/SteveBalon_BuildingInspector_01222021-e1611333988936-400x243.jpg

Slide 3: <https://www.smwllc.com/protect-meetings-zoom-teams-webex/>

Slide 4: Photo credit Gary Palumbo (Bolton Landing, NY)

Slide 5: <https://www.google.com/search?q=images+of+town+master+plan+process&tbm>

Slide 6: https://www.uwsp.edu/cnr-ap/clue/Documents/Comprehensive_Planning/Land_Use_Resource_Guide_Chapter_7.pdf

Slide 7: Town of Ellicottville Zoning Map, amended September 17, 2014

Slide 8: Photo credit Gary Palumbo (housing density Amherst, NY - Buffalo, NY)

Slide 9: <https://www.moyne.vic.gov.au/Your-Property/Building-and-Planning/Planning/Statutory-Planning/Planning-Permits>

Slide 10: <https://www.facebook.com/themartinhouse/>

Slide 11: <https://www.ellicottvillegov.com/planning--zoning.html>;
https://www.dos.ny.gov/lg/publications/Municipal_Control_of_Signs.pdf

Slide 17: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf