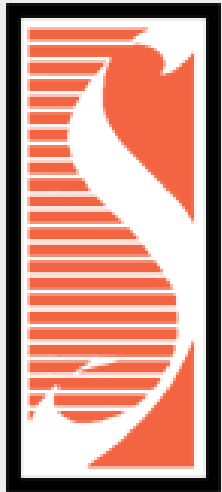


Living with Short-term Rentals in your Communities



Southern Tier West 2021 Fall Planning & Zoning Webinars

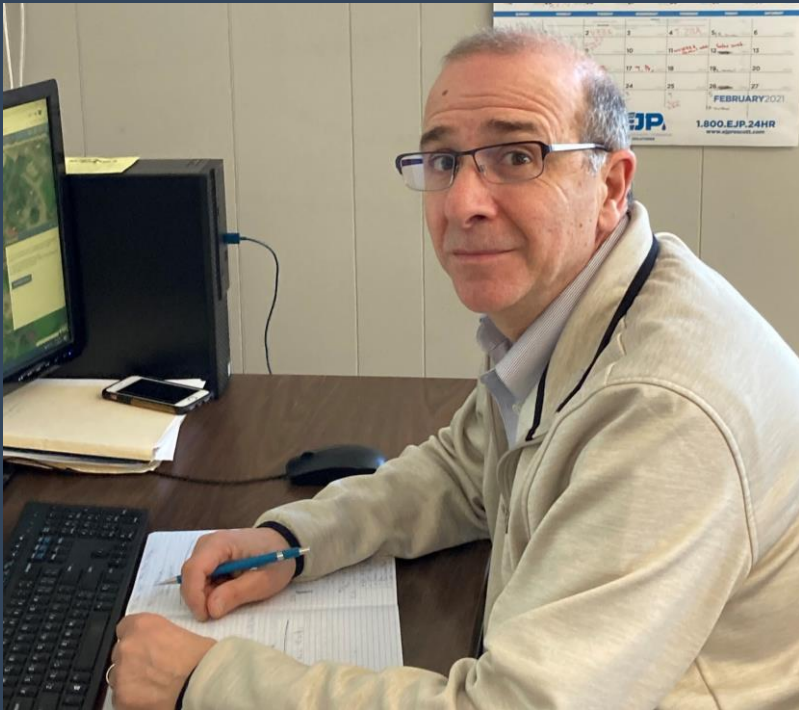
November 4, 2021

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Who We Are



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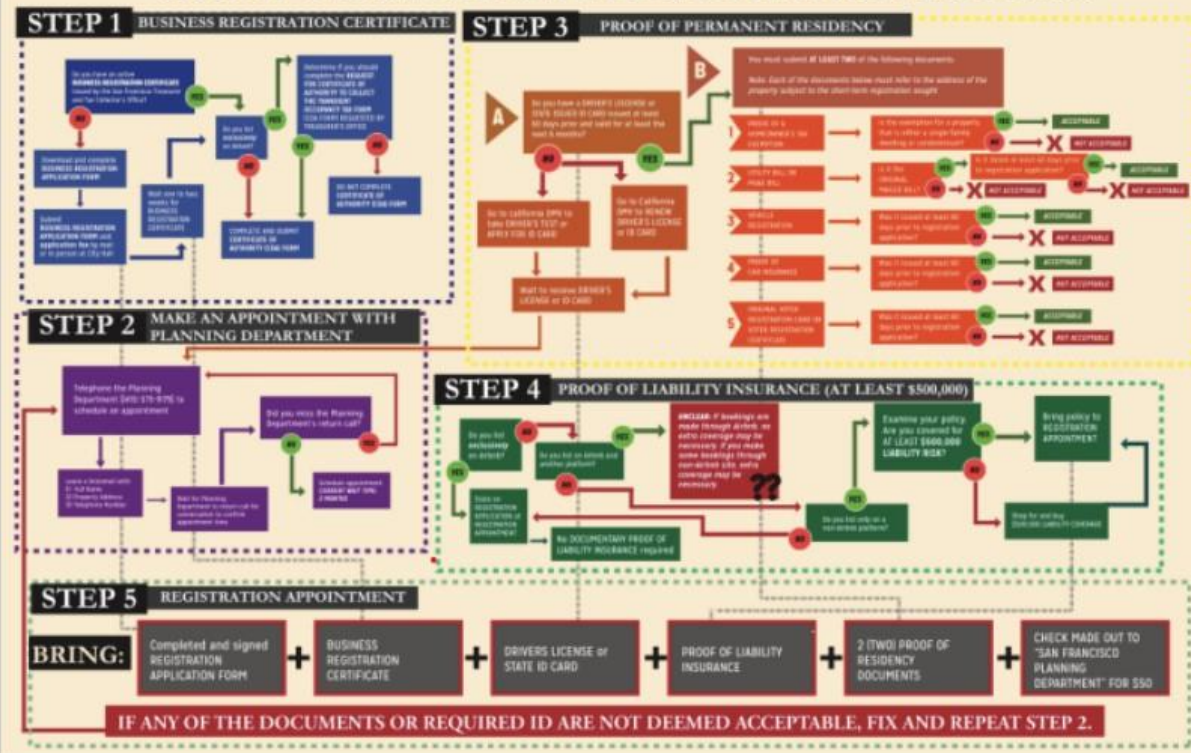
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Who Are You?

- **Who is participating today?**
 - Planning Board members
 - Zoning Board of Appeals members
 - Municipal Board members
- **Does your Community have the following:**
 - Short-Term Rentals occurring now?
 - A Short-Term Rental Law or Zoning?
 - Pressure from Residents for More Regulation?
 - Pressure from Owners/Investors for Less Regulation?
- **What are your Hot-topic zoning challenges?**
 - Ideas for future webinars.



SHORT-TERM RENTAL REGISTRATION PROCESS



Living with Short-term Rentals in your Residential Neighborhoods

- STR Issues, Benefits and Concerns.
- Regulate or Not? Keep it Simple.
- Does the Comprehensive Plan support STRs?
- How does STR fit into your Zoning?
- Authority to Regulate, Process, and Enforcement.
- Principles for Assessing Validity of Zoning.
- How to Enforce?
- Q&A - through Zoom Chat function

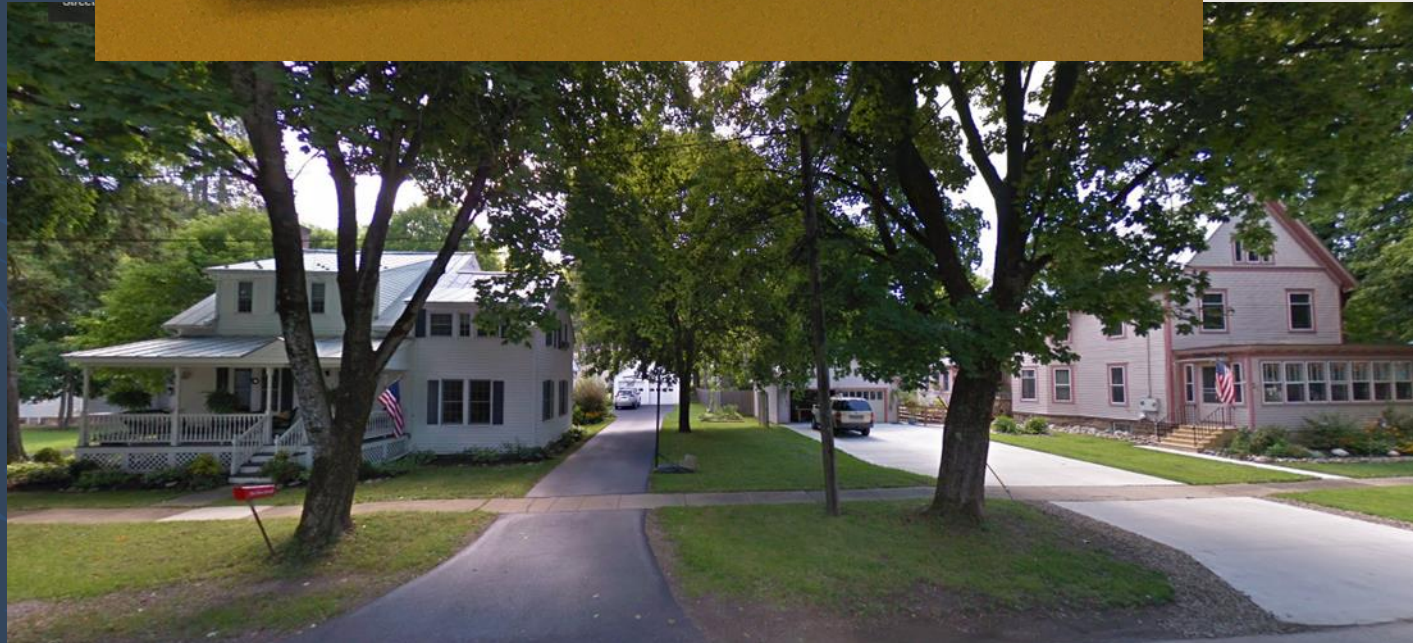
Presentation Overview

Presentation Goal

GOAL: Provide guidance on how to use comprehensive planning and zoning to allow Short Term Rentals - with minimum impact to residential neighborhoods.

Objectives:

- Identify and define Short Term Rentals.
- Identify potential impacts from STR.
- Develop zoning amendment.
- Develop an enforcement strategy for STR violations.



Issues:

ELLICOTTVILLE as an Example

Who are the Stakeholders?

- Hosts
- Guests
- Local Motels and Inns
- Residential Neighbors
- Platforms

Ellicottville by the numbers:

- 2000: 472 full-time residents, 565 Housing units ¹
- 2010: 376 full-time residents, 573 Housing units
 - (344 / 60%) classified as "seasonal, recreational or occasional use" ²,
- 2019 Census estimate: 382 full-time residents ³
- 2021 local count of housing units:
 - 401 total number of units
 - 286 / 71% considered as seasonal

Peer-to-Peer Rentals

- Are they really peer-to-peer anymore?
- Occasionally renting a space, or full-time business.
- Typical examples: San Francisco, NYC, Boston...

Stakeholders

¹ New York: 2000 Population and Housing Counts - New York: 2000, September, 2003

² New York: 2010 Summary of Population and Housing Characteristics, December 2012

³ Annual Estimates of the Resident Population for Incorporated Places in New York: April 1, 2010 to July 1, 2019

Issues: Benefits and Concerns

What are the Issues?

- Noise
- Guests' Behavior
- Garbage
- Parking Overflow
- Trespass
- Aesthetics of Place
- Public Safety
- Transient vs. Workforce...

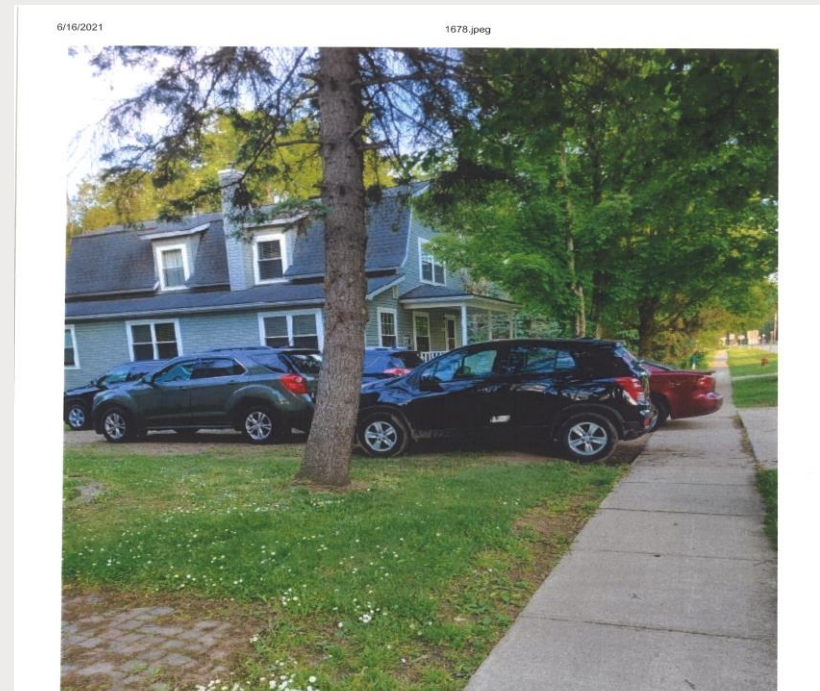
1st - What is a STR?

- Typically classified as rental units for periods less than 30 days in duration.
- Is it a Residence?
- Room in your House or Attached Apartment, or
- Separate Accessory Structure or Guest House

Air Bed and Breakfast

- (+) Income Opportunity for Homeowner
- (+) More Rooms in the Community for Visitors/Tourists
- (+) More revenues for local businesses and restaurants
- (+) Share your Home and Meet New / Different People

- (-) No longer a "shared" living space.
- (-) Commercial Operation vs. an Ancillary Residential use.
- (-) Potential to Impact Neighbors
- (-) Potential to Affect Community



Reality - What's being sold?

- Why would working class affordable long term lease spaces continue?
- 3,350/mo. w/ only weekend rentals
- No longer affordable rentals for workers (\$1200-1500)
- Tons of space for friends and family inside and out (Parking, Noise, Garbage)

9/17/21, 10:13 AM PRIME LOCATION IN THE VILLAGE! - Houses for Rent in Ellicottville, New York, United States

Entire home
You'll have the house to yourself.

Enhanced Clean
This host committed to Airbnb's strict enhanced cleaning process. [Show more](#)

This is the perfect location for all the fun Ellicottville has to offer! Located right in town with massive, brand new concrete driveways for tons of off street parking space! There is tons of space for family and friends to enjoy time together-inside and out!

What this place offers

- Kitchen
- Wifi
- Free driveway parking on premises
- TV
- Free washer
- Free dryer

\$780 / night

CHECK-IN 10/11/2021	CHECKOUT 10/14/2021
GUESTS 2 guests	

[Reserve](#)

You won't be charged yet

<u>\$780 x 3 nights</u>	\$2,340
<u>Cleaning fee</u>	\$230
<u>Service fee</u>	\$363
<u>Occupancy taxes and fees</u>	\$129
Total	\$3,062

[Report this listing](#)

https://www.airbnb.com/rooms/52736776?adults=2&transact_tgc=false&decorated_search_id=7c8d3711-46b-44fa-810a-1c4aff99bc33&source_impression_id=3_1631887538_ly03HUK527REdVY8dP...

Addressing Short Term Rentals

Comprehensive Plan



Comp Plan Update or Special Study

Do you want STRs in your Community?

Comprehensive Plan:

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

Steps to Update your Plan:

- G&O’s: (economic boost vs. neighborhood impact).
- Define neighbor character features trying to protect.
- Identify concerns or impacts of concern.
- Confirm Current Findings.
- Recommendations for Zoning Amendments to Facilitate/Regulate (or Prohibit) STRs.

¹ General City Law §20(25)

² Town Law §263; Village Law §7-704

Zoning: Drafting Regulations

- **Stand Alone Local Law vs. Zoning**
 - Zoning allows Districting - *where?*
 - *Which or all Residential Districts?*
 - *Or limited to Commercial areas*
 - Residential Dwelling? or Transient Lodging - *what?*
 - Authority to Permit - *how?*
 - *Permitted Use by right. Zoning Permit from C.E.O.*
 - *Separate License from Clerk or C.E.O.*
 - *Special Use Permit / Site Plan from Planning Board*
 - Where in the Code:
 - *Same rules in each district vs. a stand-alone section*

Regulating Short Term Rentals

Zoning



Zoning: Drafting Regulations - cont.

- **Definitions:**

- **Accessory Apt:** "...secondary dwelling unit established in conjunction with and clearly subordinate in size and subordinate in use to the principal dwelling unit..."
- **Bed and Breakfast:** "An owner-occupied single-family detached dwelling in which two to five rooms are available for overnight accommodations..."
- **Short-term Rental:** "The rental of a room, apartment, house or lockout room for a time period of less than 30 days".
- **Lockout Room:** "An area of a dwelling not to exceed one room with separate exterior access and toilet facilities, but not kitchen. Such a room may be rented independently of the main dwelling but shall not be sold independently. Only two lockout rooms are permitted for each dwelling."

Regulating Short Term Rentals

Zoning



Zoning: Drafting Regulations - cont.

Regulating Short Term Rentals

Zoning



• Standards:

- Parking. All on site. No RVs. Not in Lawn.
- Setbacks for Accessory Buildings with STR's.
- Garbage. When and where does it go out.
- Noise (behavior). Refer to the Noise Ordinance.
- Signage. Where? Size? Number?
- Number of units / house?
- Frequency (S.F.) Once per month? 100 nights/yr.?
- Number of guests? Hard to enforce.
- Transferable to Future Owners?
- Posted Point of Contact.
- Host's Residence?

The Power to Regulate STRs

The State has Clearly Granted Municipalities the Power to Regulate Land “USE”, which should include STR’s separate from “Residential”.

The Grants of Power exist in :

1. Village Law
2. Town Law
3. General City Law



The Grants of Authority

1. Village Law - For the purpose of promoting the health, safety, morals, or the general welfare of the community, the board of trustees of a village is hereby empowered, by local law, to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, **and the location and use of buildings, structures and land for trade, industry, residence or other purposes.** ([NY CLS Vill § 7-700](#))
2. Town Law - For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by local law or ordinance to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, **and the location and use of buildings, structures and land for trade, industry, residence or other purposes** ...[NY CLS Town § 261](#)
3. General City Law -Subject to the constitution and general laws of this state, every city is empowered:
 - To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open space, and **to regulate the density of population** in any given area,...
 - **To regulate and restrict the location of trades and industries and the location of buildings, designed for specified uses**, and for said purposes to divide the city into districts and to prescribe for each such district the trades and industries that shall be excluded or subjected to special regulation and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan.
 - See [NY CLS Gen City § 20](#) (24-25)

The Process to Regulate STR

Land Use is Regulated by adoption and filing of Local Zoning Laws which require. Adoption of a Local Zoning Law requires:

1. Public Notice of Hearing -Pay the Media to Publish in Official Newspaper 7 days Prior to Public Hearing- with Right to be heard.
2. Effective Nov. 18. 2021 Pub Officer Law 103 (e) requires
 - Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable at least twenty-four hours prior to the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable at least twenty-four hours prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.
3. Public Hearings may be kept open and adjourned to definite date, to avoid need to republish.
4. Always Comply with General Laws of State where applicable (General Municipal Law 239-m, and ECL 8-109 (SEQRA) (Substantive and Procedural Requirements where Potential Significant adverse Impacts on the Environment).
5. Aging of Law – for Villages 10 days (MHR 20(4)).
6. At the close of the Hearing it is helpful to discuss the need for the zoning law (WHAT IS THE PROBLEM (i.e. Late Noise in Neighborhoods, Refuse, Parking, Loss of Affordable Housing Opportunities, Loss of Community Character)), and how local Law addresses the problem should be clear, and in the Record.
7. File Local Law with NYSDOS within 20 days.

Basic Principles in Assessing Validity of Local Zoning Law

Principle 1. A Stated Rational Basis is Given Deference by the Court -

- "A heavy burden falls on one challenging the determination by the local governmental board. (Thomas v. Town of Bedford, 11 N.Y.2d 428; Rodgers v. Village of Tarrytown, 302 N.Y. 115.) In Shepard v. Village of Skaneateles (300 N.Y. 115) we said: "Upon parties who attack an ordinance rests the burden of showing that the regulation assailed is not justified under the police power of the state by any reasonable interpretation of the facts. 'If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.' "

[Bedford v. Mt. Kisco, 33 N.Y.2d 178, 186, \(1973 \)](#)

- Thus develop the legitimate need for land use Ordinance, in your Record, and tailor ordinance to address the need.

Principle 2. However True Ambiguities in the Ordinance are Interpreted in favor of Land Owner

- Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them. (*Thomson Ind. v Incorporated Vil. of Port Washington North*, 27 NY2d 537, 539; *Matter of 440 East 102nd St. Corp. v Murdock*, 285 NY 298, 304.) Any ambiguity in the language used in such regulations must be resolved in favor of the property owner. (*Matter of Turiano v Gilchrist*, 8 AD2d 953, 954.)

[Allen v. Adami, 39 N.Y.2d 275, 277\(1976\)](#)

- Thus try to clearly define what is regulated, and how.

STRs can be distinguished from Residential Use, based upon impacts, and what is a recognized residential Use

- What is a STR?
- Is a STR a residential use when it is rented out for a short period of time, to someone who has no intent to establish routes, establish voting rights, pay State Taxes based on rental, subject yourself to jurisdiction of court for purposes of being sued?

Historic Judicial Determinations of "What is a Residence ?"

"the terms legal residence, inhabitation and domicile, mean the same thing; that by legal residence, they meant the place of a man's fixed habitation, where his political rights are to be exercised, and where he is liable to taxation." *Houghton v. Ault*, 1858 N.Y. Misc. LEXIS 83, *15-16, 16 How. Pr. 77

And more recently it was determined that " New York has had a similar residency requirement since 1888 and has defined residence as "that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return." N.Y. Election Law § 1-104(22); see *People v. Platt*, 3 N.Y.S. 367, 50 Hun 454 (N.Y. Sup. Ct. 1888) (court relied on definition of resident for purposes of election law to determine where office holder resided). " *Langmead v. Monroe County Office of the Sheriff*, 2013 U.S. Dist. LEXIS 98567, *23, 2013 WL 3759958

Conclusion - a STR does not appear to meet traditional definition of a residential use- BUT you should give its own clear definition and determine where it fits, rather than risk a differing contemporary interpretation by a court, where you will lose the tie if what is regulated is ambiguous.

PRACTICAL TIPS

1. You need Lawyers, Law Enforcement, Planning. And Code Enforcement working together
2. Traditional Enforcement may be difficult
 - STR tenants do not stay around
 - Service on Property Owner may be an issue
 - You may need to rely on Publications and Business Record, as well as other observations - so preserve them
 - Document actual property conditions which have deleterious effects
3. Consider regulating the advertising of an illegal use, or advertisement requirements

A Lawyer's Conclusion

1. STRs can be regulated as a Use distinguished from residential, and Area restrictions may also be placed upon the same.
2. Facts, and ancient case law support zoning STRs differently from "residential" uses.
3. If you are concerned about STRs you should define what they are, and determine where they may be sited with what conditions, based upon what is in your Comprehensive Plan, and amend Comp Plan to further clarify need and goals if necessary.
4. Follow the "process" for Adopting Local Laws - properly "Notice", what is to be reviewed (and make available for inspection) hear comments, address substantive ones.
5. Comply with General Laws of the State (GML 239-M, and SEQRA).
6. Put your rational basis for the law in the record, and your findings.
7. File your Local Law with NYS DOS.
8. Preserve your evidence, including business records establishing the conduct.
9. Will anything change with AirBnB now that they are publicly traded.

Q&A

Please send your questions through the Q&A button.

Thank you from our "team"

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