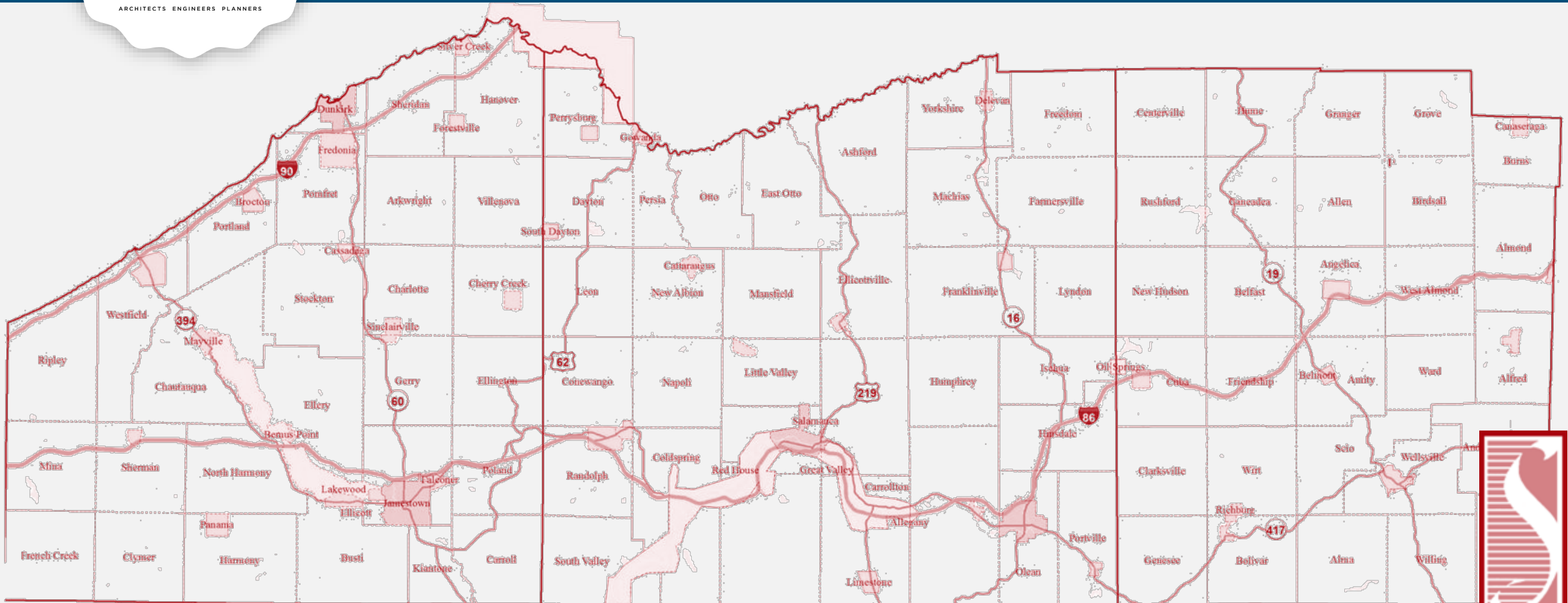




BERGMANN
ARCHITECTS ENGINEERS PLANNERS

Virtual Fall Planning & Zoning Training

OVERCOMING YOUR TOP MUNICIPAL LAND USE DIFFICULTIES



OCTOBER 14, 2021



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ARCHITECTS ENGINEERS PLANNERS

Introductions

NICE TO MEET YOU!



John Steinmetz, FAICP



Molly Gaudio, AICP

About Us!

- **Planning Nerds**
- **Zoning Geeks**
- **Former Municipal Planners**
- **Former Review Board Volunteers**
- **Now planning consultants with Bergmann Associates!**



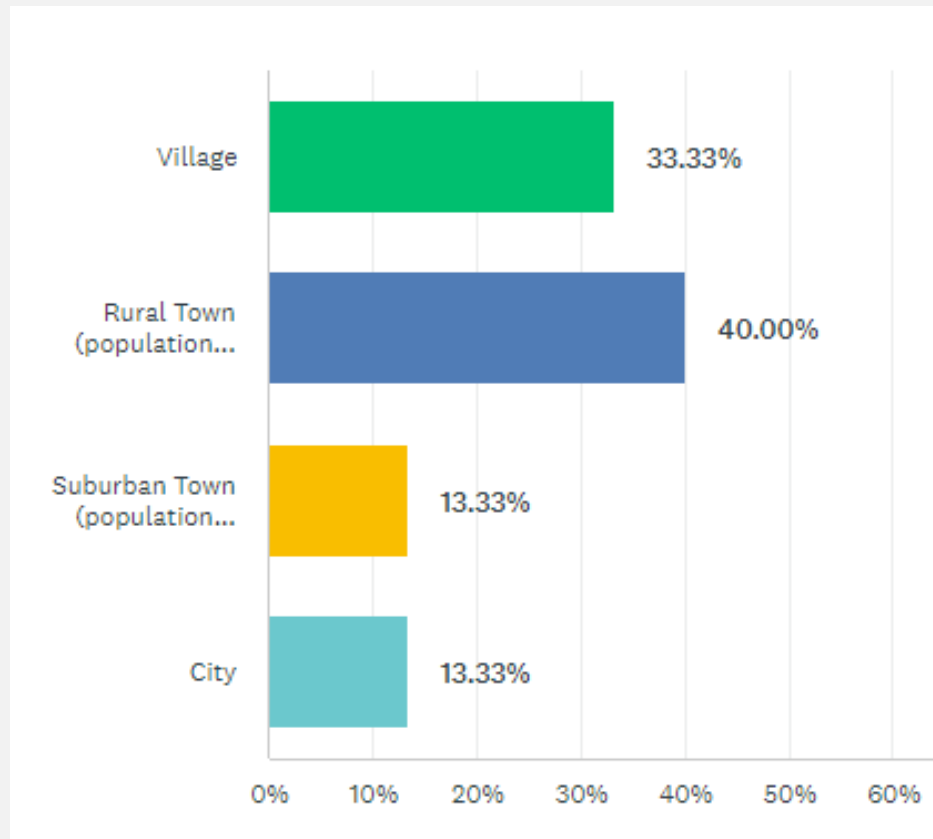
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What We Heard

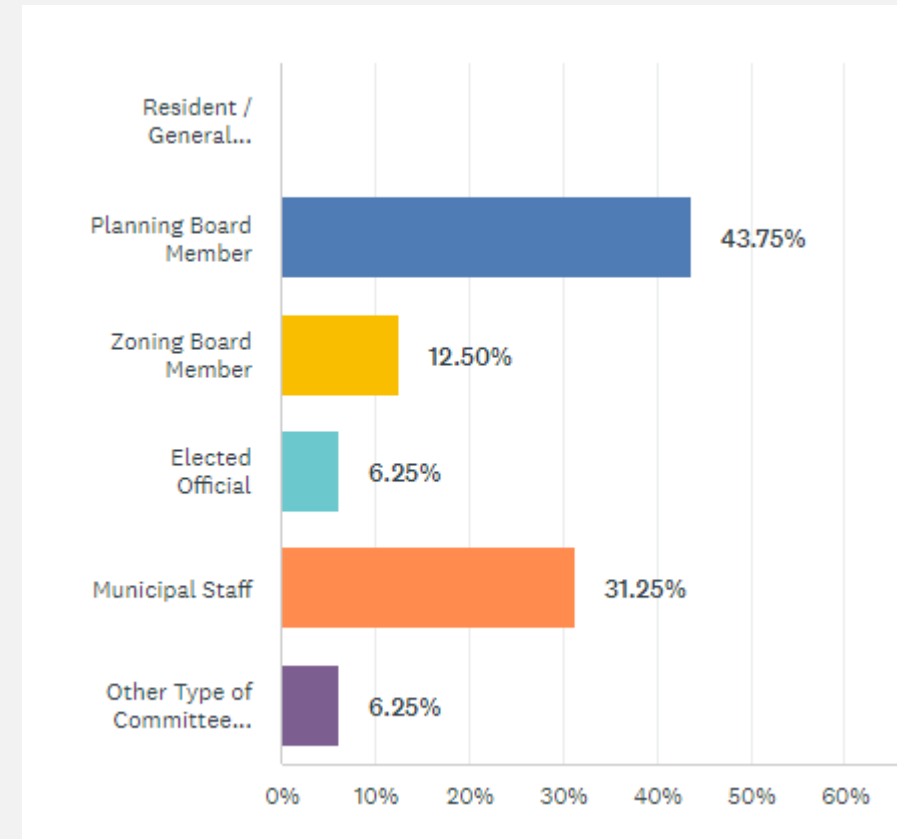
PRE-SESSION SURVEY RESULTS

Survey Results

#1 SMALL TOWN OR VILLAGE



#1 PLANNING BOARD & STAFF



Land Use Issues (for past 5 years)

MAIN CONCERNS

- Short-Term Rentals
- Too Little Development
- Solar/Wind Energy Facilities
- Poor Quality of Development
- Loss of Farmland & Open Space
- Too Much Development

OTHERS

- Missing NYS GML 239 County Referrals
- Vacant properties; excessive demolitions
- Gravel pits
- Lack of guidelines for businesses
- Large-scale solar on farmland (25MW+)

- Solar
- Housing Development & Quality
- Loss of Farmland
- Development/Investment Potential
- Preserving Small Town Character

**“... stay ahead of the curve. What’s coming next?
Do we have laws in place to address it?”**

#1 Issue or Opportunity

FOR THE NEXT 10 YEARS



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Influence vs. Control

SHORT (MAYBE NOT SO SWEET) ANSWERS

Local Influence VS Control

- Local “Control” is **optional** with regards to land use
 - + Adoption of Guiding Plans/Studies
 - + Adoption of Land Use Regulations
- In absence of policy/regulation, control is deferred to state direction
 - + E.g. building code, environmental regs
- In some cases, NYS policy/regulation supersedes local control

TOOLS OF INFLUENCE:

Comprehensive Plan,
Farmland Protection Plan, etc.

TOOLS OF CONTROL:

Land Use Laws, Zoning, Subdivision,
Stand-alone Local Laws for single issues, etc.

State Influence VS Control

- Generally, NYS follows MHR Law
- But, you may **NOT** reduce regulations set by state
 - + E.g. Reducing Building Code Requirements
- May increase regulations or refine regulations in some cases
 - + E.g. Limiting adult uses or mining to certain districts
- State (or Federal) law may override local control of certain land uses
 - For Example:**
 - + 25+MW Renewable Energy Facilities
 - + Mining/Extraction
 - + Mobile/Manufactured Homes
 - + Adult Uses
 - + Public Schools
 - + NYS Licensed Residential Day Cares



25+ MW Renewable Energy Projects

NYS Article 10 Law

- Overrides municipal control or review
- Local plans & land use regs may be considered; limited influence
- May apply for “intervener” funds
- Public engagement required as part of process

- NYSERDA
 - + Tier 1 – Roof Mounted and Building Integrated
 - + Tier 2 - Ground-mounted with system capacity up to 25kW and generate no more than 110% of annual energy needs for the use
 - + Tier 3 – Not tier 1 or 2; under 25mW
- NYS Ag & Markets – Considered “on-farm” equipment if annual energy generated does not exceed needs of farm by 110%
- May restrict extent of Tier 3 that is located on prime farmland or farmland of statewide importance



Small(er) Scale Solar/Wind

No Control without Regulation

- **May prohibit at any level**
- **May designate location, size, scale, decommissioning, etc.**
- **May require permitting and/or site plan review**
- **May require local board review**



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County Referral

THIS IS NOT OPTIONAL!

County Referral Procedures

- **REQUIRED** by NYS General Municipal Law §239-m
- Purpose is county level review of actions that may have broader regional impact
- Review is done by the County planning agency or County Planning Board
- County has 30 days to review
 - + Check with your County on submission deadlines and requirements
 - + Info available on all three County websites
- You **CANNOT** issue a decision until you receive County recommendation
- You **CANNOT** act contrary to their recommendation without supermajority vote
- Failure to do so invalidates local decision and is considered a procedural error

Actions Requiring County Referral

GENERAL ACTIONS

- i. adoption or amendment of a comprehensive plan;
- ii. adoption or amendment of a zoning ordinance or local law;
- iii. issuance of special use permits;
- iv. approval of site plans;
- v. granting of use or area variances;
- vi. other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

ACTION WITHIN 500 FEET OF:

- i. the boundary of any city, village or town; or
- ii. the boundary of any existing or proposed county or state park or any other recreation area; or
- iii. the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
- iv. the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
- v. the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
- vi. the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.



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Under-Development

SUPPORTING & PURSUING INVESTMENT

Under Development... aka Need Economic Development

Often requires regional partners

SPECIAL ADVERTISING SECTION
SHOVEL-READY SITES

Barilla America to Open \$96.2 Million Pasta-Manufacturing Facility in Rochester-Finger Lakes, N.Y., Region

The largest food manufacturer in Italy is cooking up something special in Rochester, New York. Pasta-maker **Barilla America Inc.** and business partner **Jacobson Warehouse Company Inc.** have announced they will open their newest U.S. pasta-manufacturing and distribution facility on a 49-acre site in Avon, Livingston County, located outside of Rochester in New York's Finger Lakes Region.



Barilla America President and CEO Kirk Trofholz, center, talks with Village of Avon Mayor Thomas Vonglis after announcing the decision to locate a manufacturing plant in Avon, outside of Rochester, N.Y. Photo: courtesy of Livingston County Development Group

Barilla America – part of the Parma, Italy-based Barilla Group, the largest pasta manufacturer in the world – will invest \$87.7 million in the facility, while Jacobson plans to invest \$8.5 million. The 300,000 square-foot facility includes a 100,000-square-foot manufacturing plant and a 200,000-square-foot warehouse/distribution center.

The project, which is scheduled to break ground in Summer 2006, is expected to start production in Summer 2007 and create 121 jobs over the next three years.

"We sought a location that felt like a home away from home," said Barilla America President Kirk Trofholz. "Parma, Italy has

been our home for almost 125 years, ever since Pietro Barilla opened his small pasta and bread shop. We were looking for a community that would provide the same hometown feel as Parma, as well as the right mix of benefits. We found all of that in Avon."

Stamp
SCIENCE & TECHNOLOGY ADVANCED MANUFACTURING PARK

News: Plug Power Selects STAMP for \$232 Million Green Hydrogen Project

Western New York Science & Technology Advanced Manufacturing Park (STAMP)

1,250-Acre Mega Site in Genesee County, NY
100% Renewable Low-Cost Power & World-Class Talent

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Genesee County Economic Development Center (GCEDC) is a one-stop-shop, providing comprehensive economic development services to companies of all sizes. The GCEDC is the developer of the WNY

Under Development... aka Need Economic Development

Often requires regional partners

Downtown: Invested Downtown

The downtown districts of Livingston County are the "Front Porches" of our communities. They are one of the aspects that make living in Livingston County unique. These downtown districts are where the community gathers for special occasions, festivals, and parades. Where neighbors meet. Where visitors have a bite to eat and learn about local history. Our downtowns are filled with historic architecture and commercial buildings are clustered together to create walkable, pedestrian-friendly districts.

Downtown Partnership
Small Towns, Big Deals

It was with an understanding of the importance of downtown that the County established a Main Street revitalization program – the Downtown Partnership – with the goal of preserving and enhancing the businesses, buildings, and public spaces that are emblematic of what "Living in Livingston" is all about. The Downtown Partnership is an award winning community revitalization program that has had remarkable success in creating and expanding businesses and renovating historic properties. The mission of the Downtown Partnership is to promote and enhance the unique, authentic, and vibrant villages of Livingston County. Combining a mix of innovative incentives with the presence of a full-time downtown coordinator has resulted in a commitment from both the public and private sectors that is visible in renovated buildings, new storefront businesses, apartments, and increased activity in the downtowns. All nine downtowns contribute to the partnership.

Livingston County has been acknowledged as a leader in downtown revitalization projects in New York State. These projects have been accomplished through grants, loan programs, and technical assistance funding. We've made a lot of progress over the years including adding residential units on 2nd and 3rd floors of Main Street corridors, remodeling facades, adding new lighting, windows, and doors, and installing branded, eye-catching signs to draw in foot traffic. All of this has made a difference to the visual appeal and sustainability of our downtown districts. The Downtown Partnership enhances economic growth through programs and assistance in:

- Downtown Revitalization + Community Development in Nine Villages
- Preservation + Enhancement of Historic Downtown Buildings
- Entrepreneurship Development + Recruitment of Businesses
- Integrated Marketing of Existing Businesses + Community

Downtown Factoids:



Under Development... aka Need Economic Development

Often requires regional partners

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DOWNTOWN PARTNERSHIP

OUR DOWNTOWNS

DISTRICT MAPS

BEFORE • AFTERS

DESIGN GUIDELINES

SUCCESS STORIES

DESTINATION DOWNTOWN

WAYFINDING

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Downtown Revitalization +
Community Development in
Nine Villages



Preservation + Enhancement
of Historic Downtown
Buildings



Entrepreneurship
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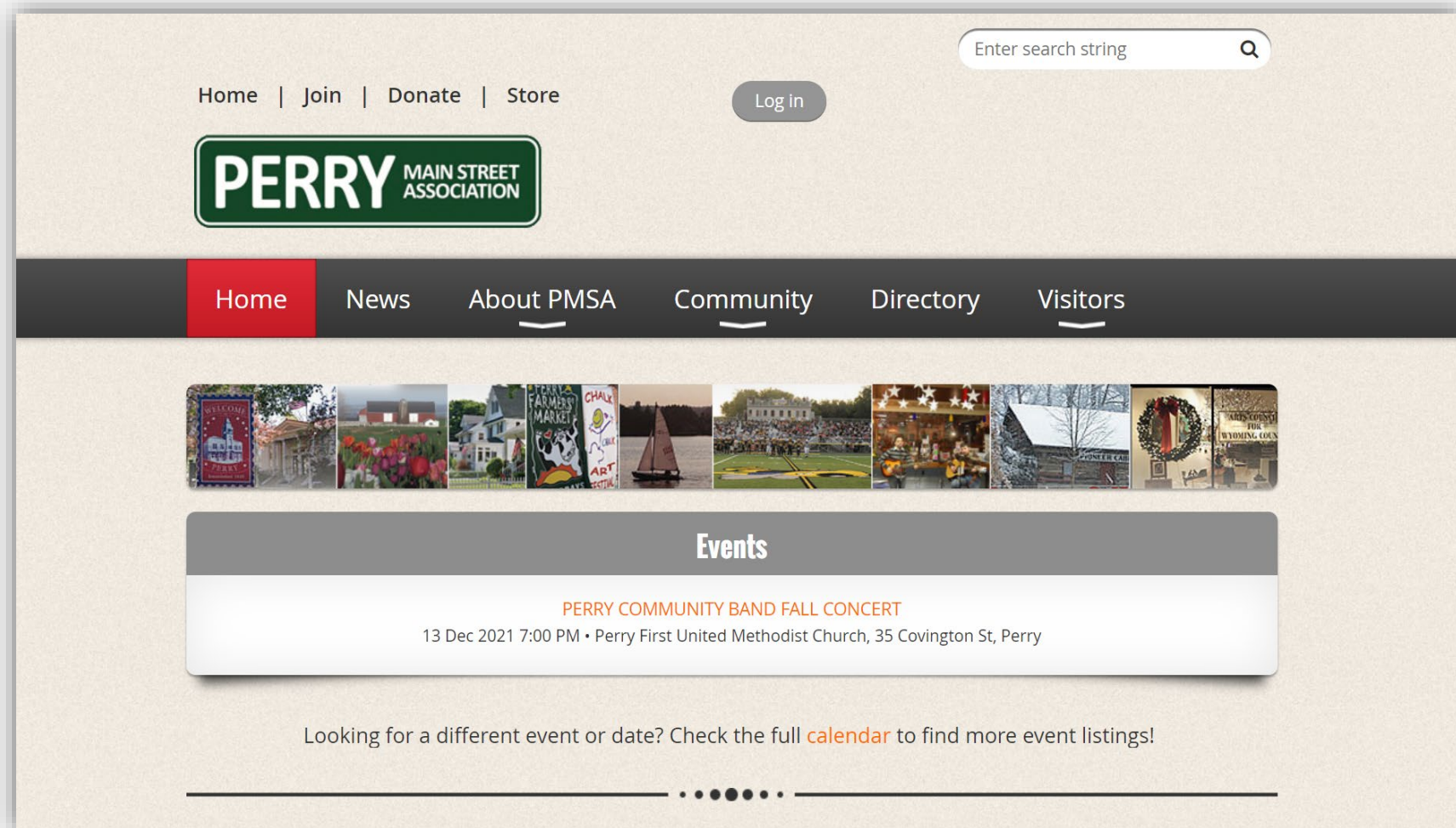
Integrated Marketing of
Existing Businesses +
Community

Downtown Factoids:



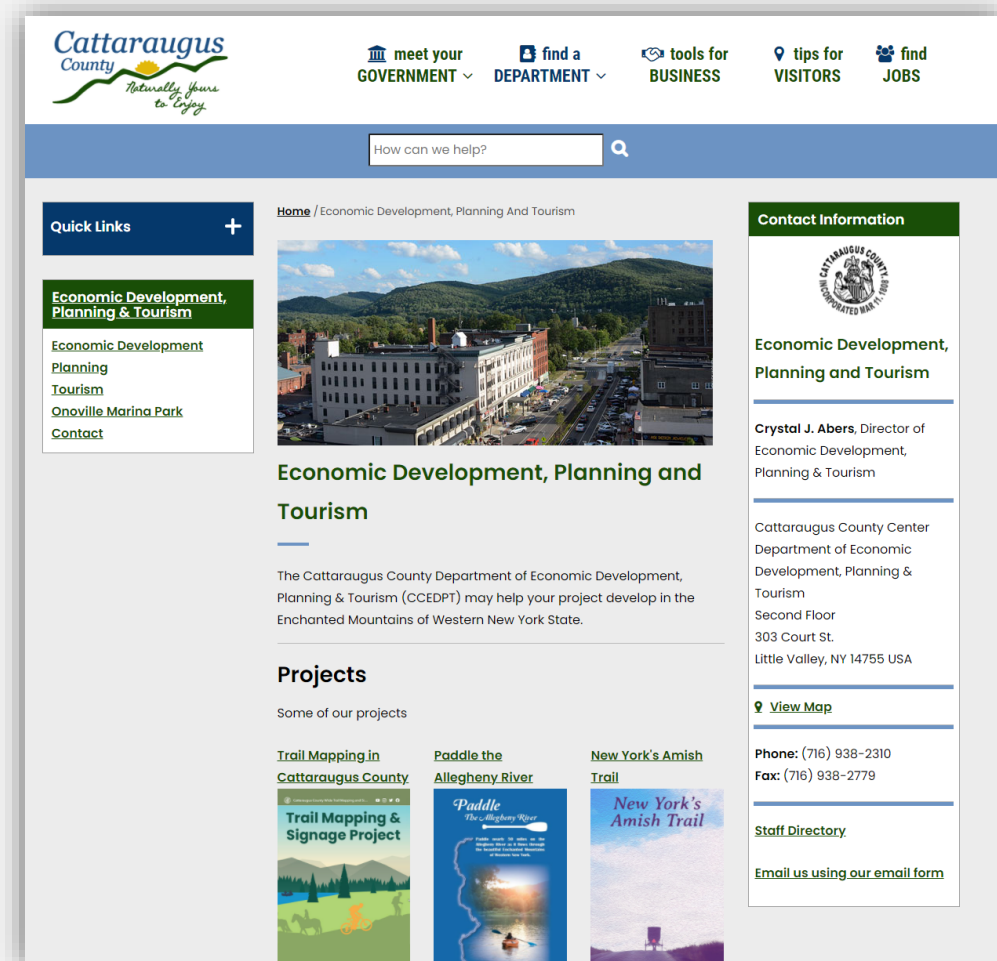
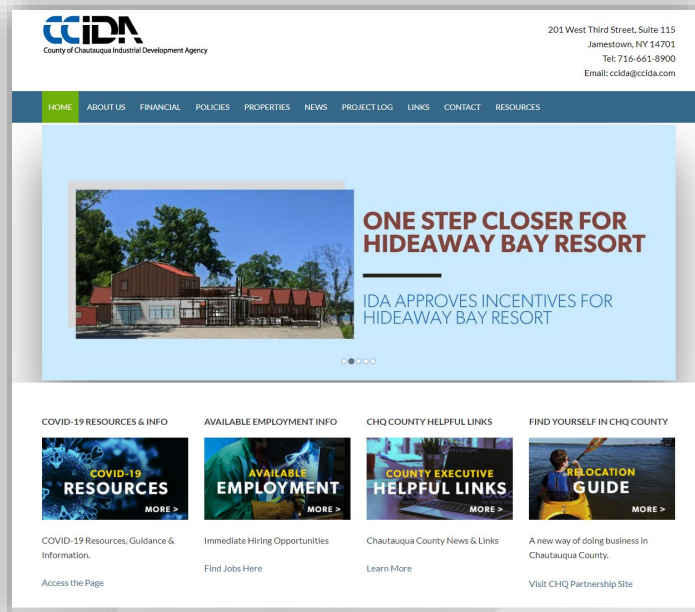
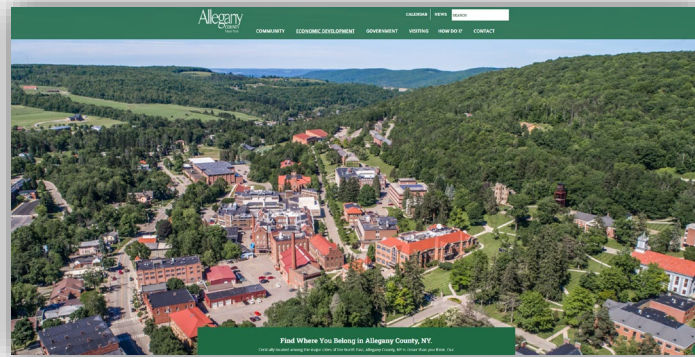
Under Development... aka Need Economic Development

Often requires regional partners



Under Development... aka Need Economic Development

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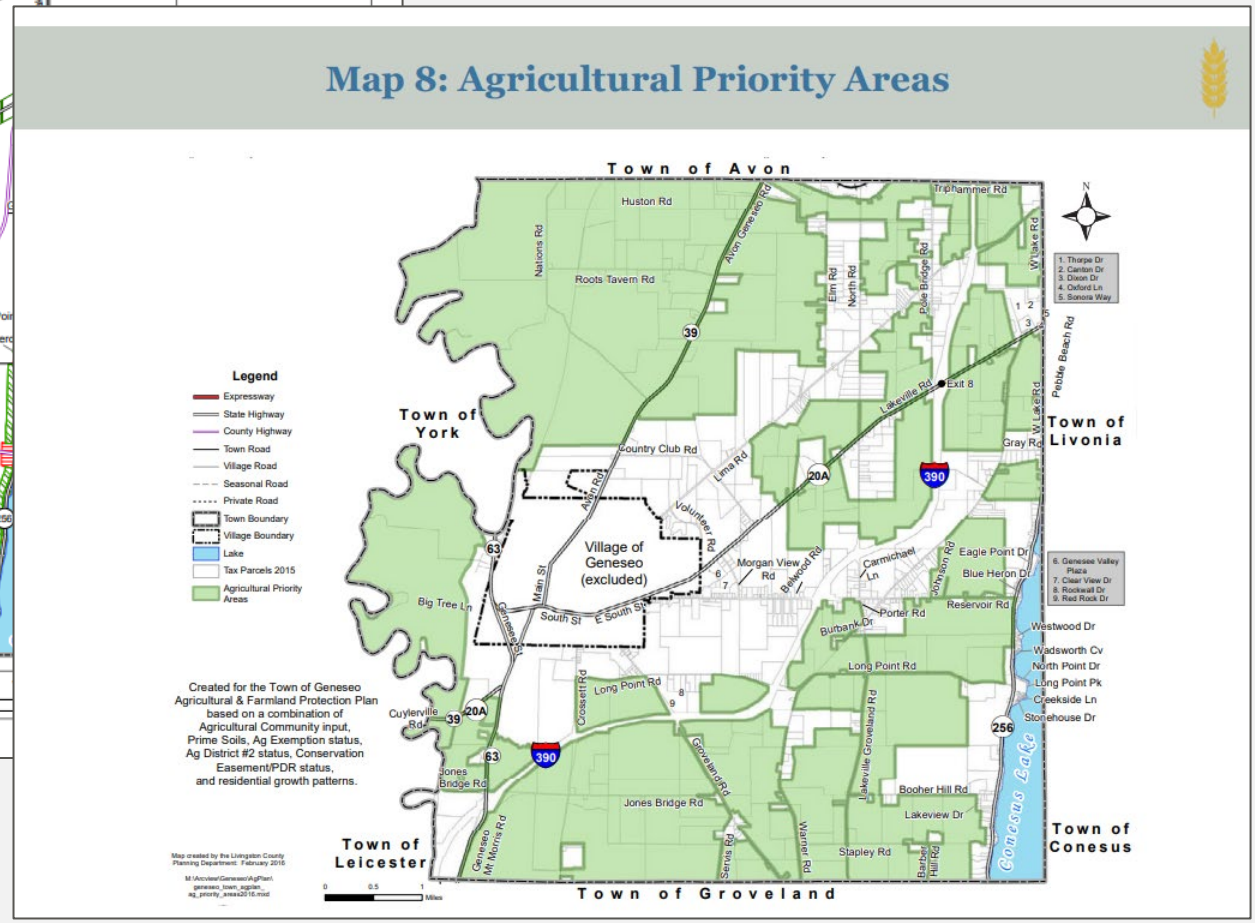
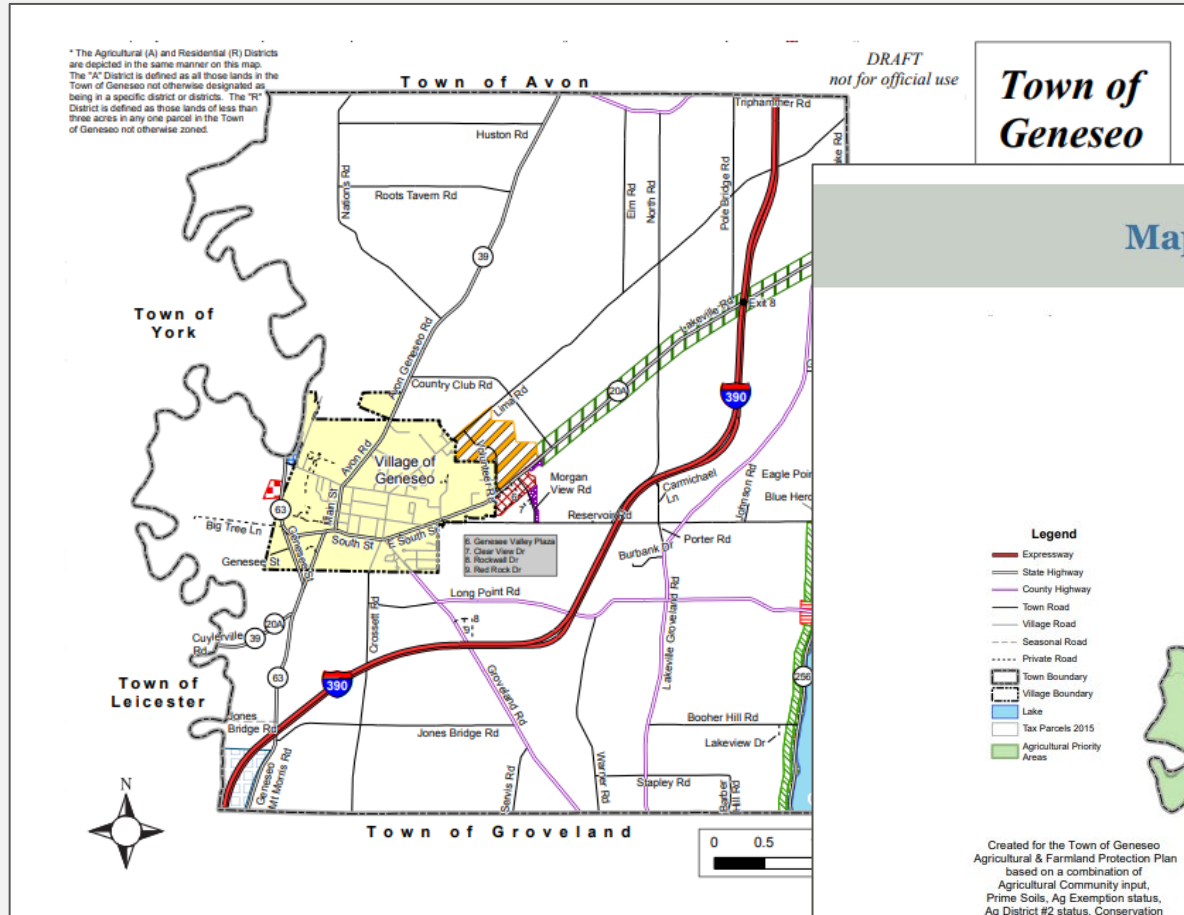


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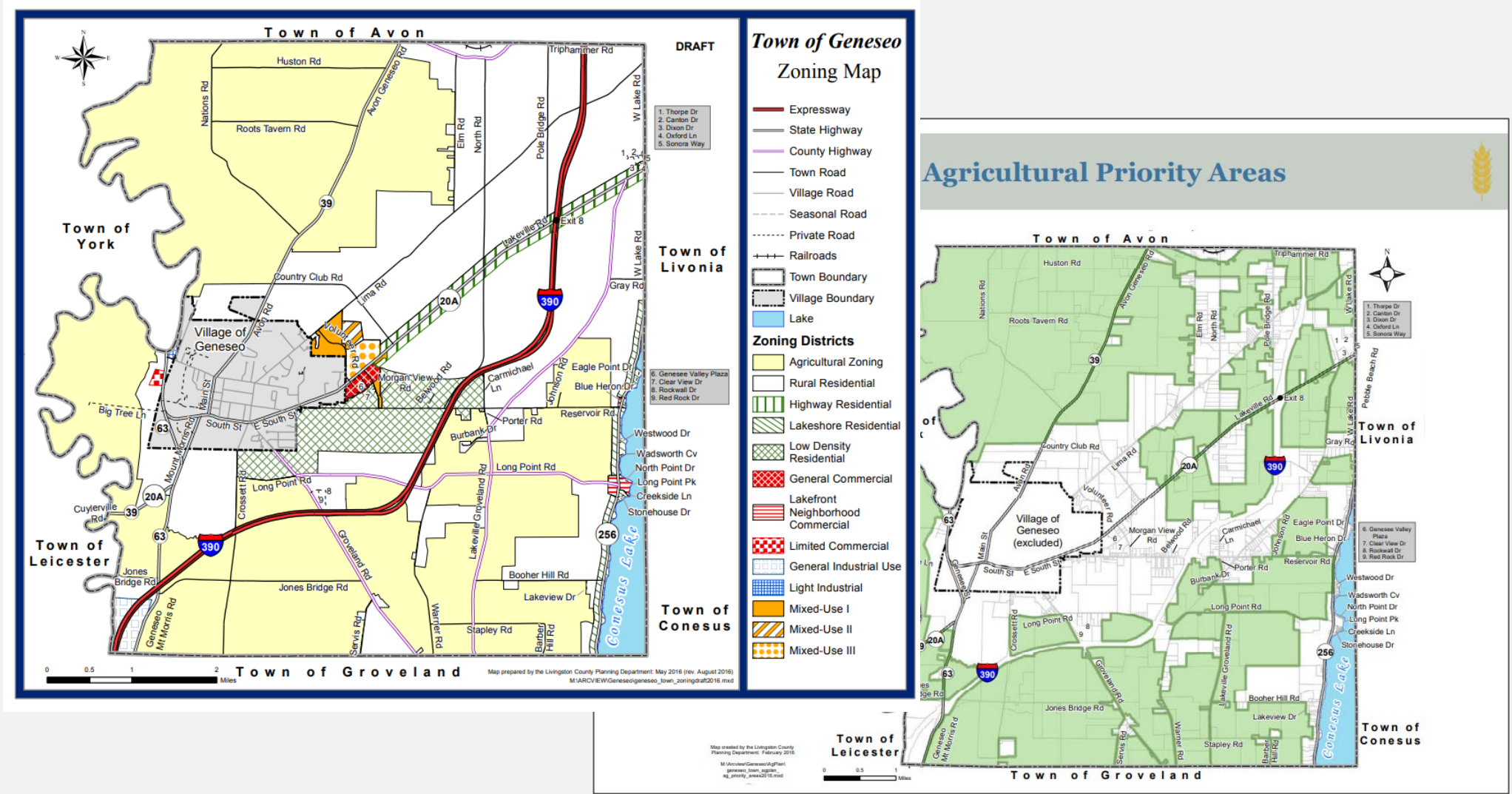
Over-Development

PROTECTING FARMLAND & MANAGING GROWTH

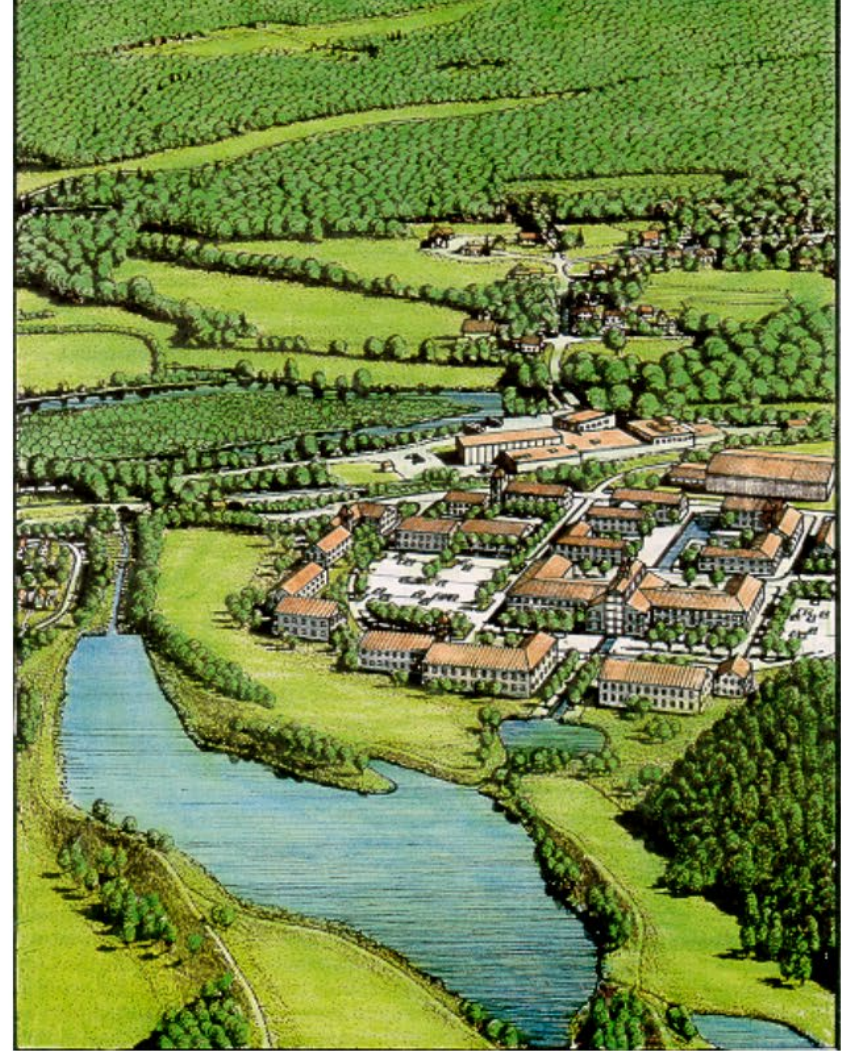
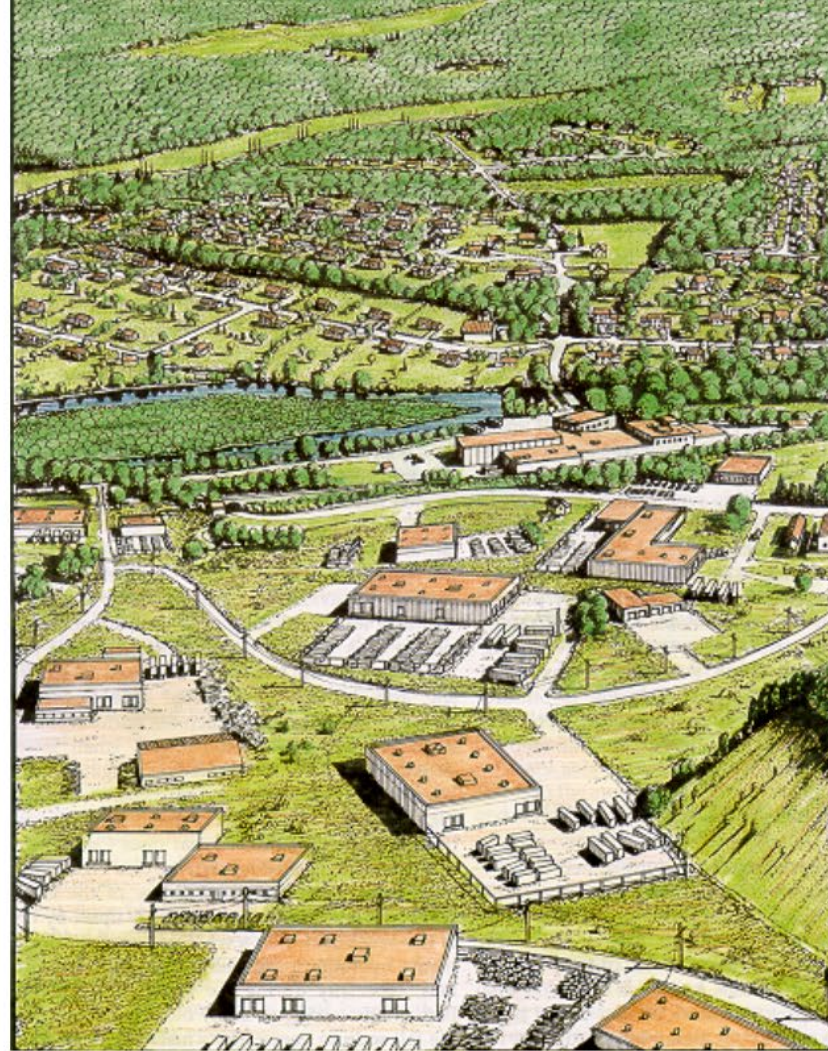
Ability to Control or Influence

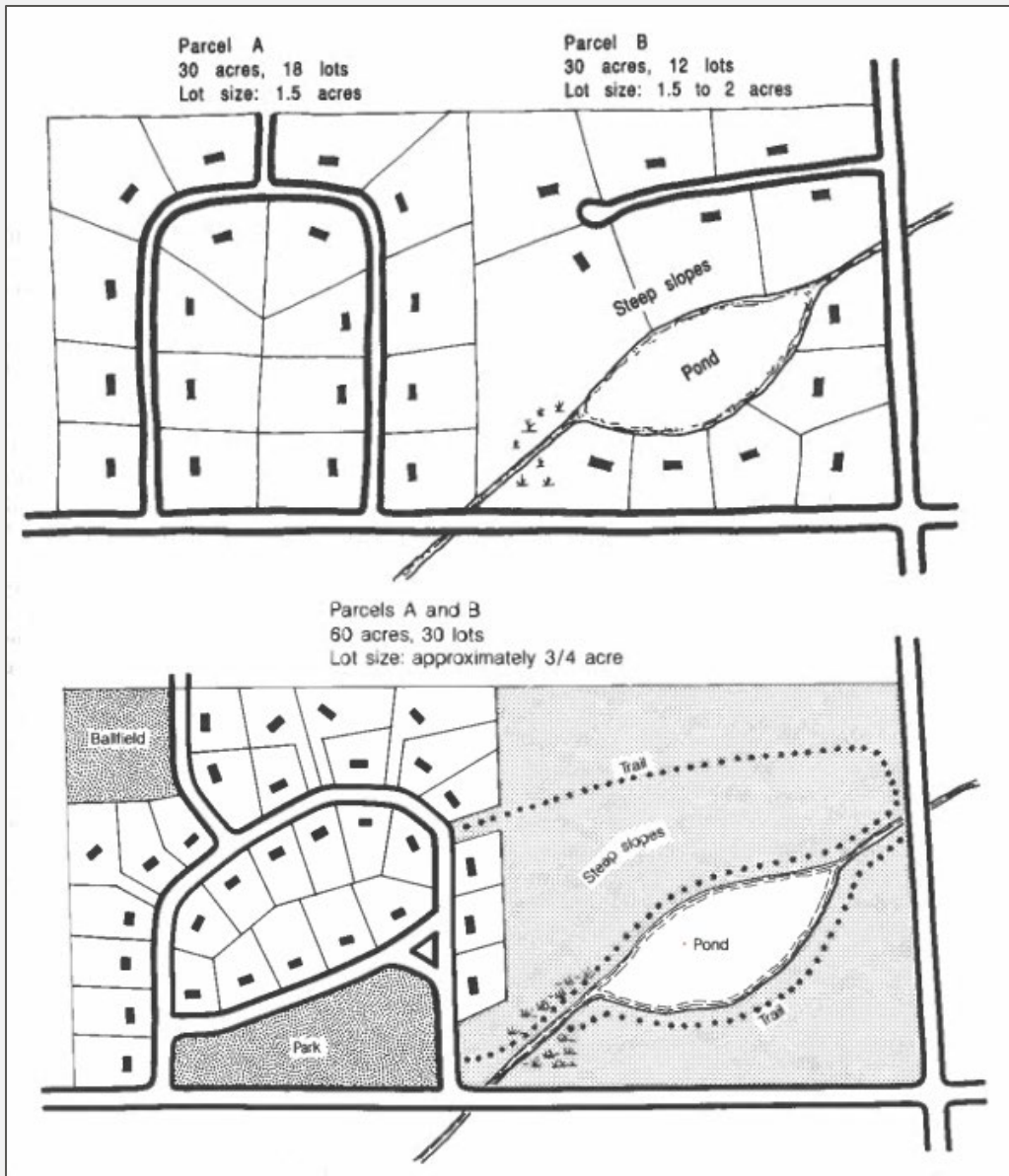


Ability to Control or Influence



Managing Growth





REGULATORY OPTIONS

Clustering, Planned Developments,
Incentive Zoning, etc.

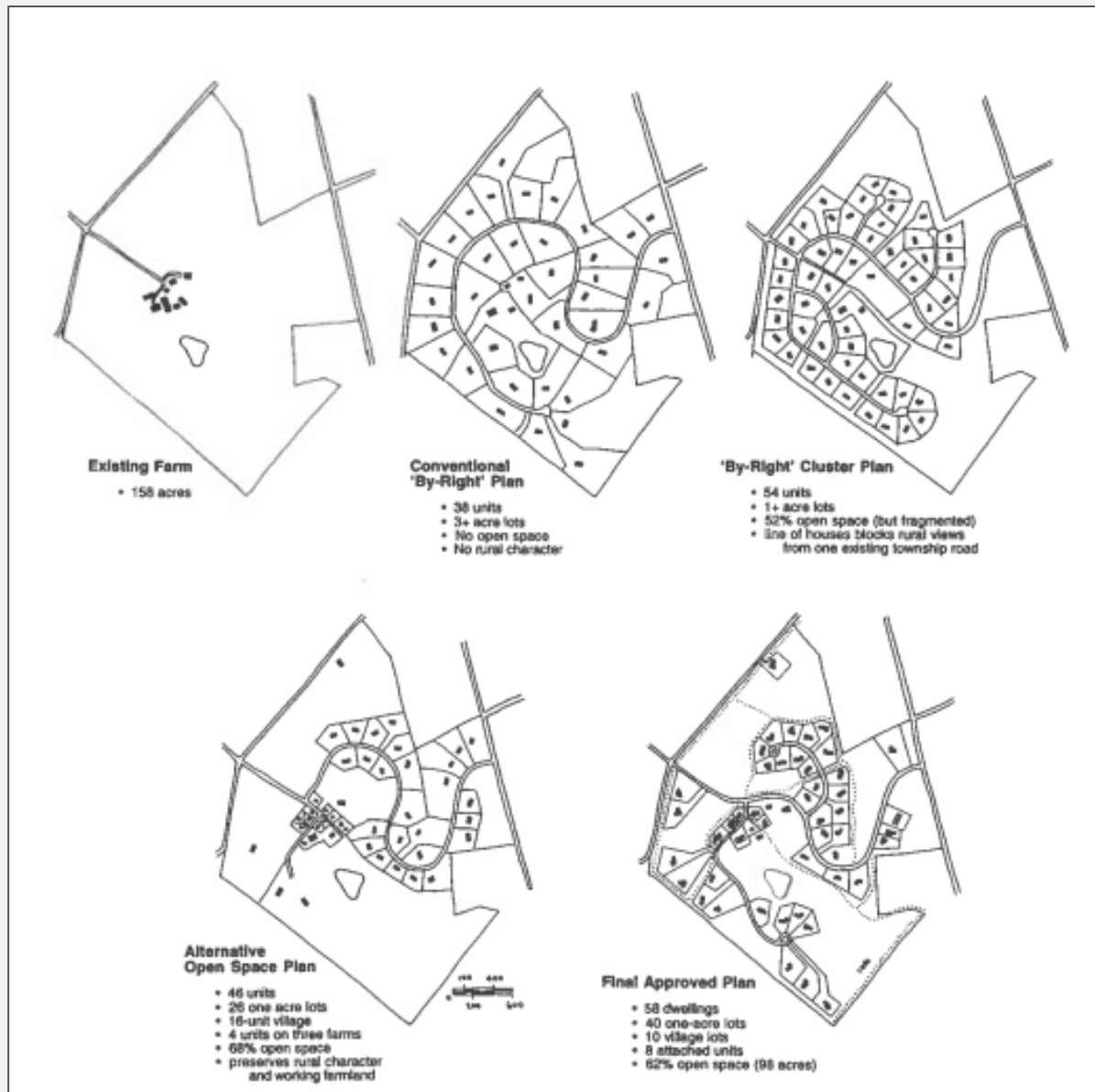
Can be used to preserve:

- Open space
- Steep slopes
- Water bodies
- Farmland
- Historic sites
- Unique natural formations

EXAMPLE

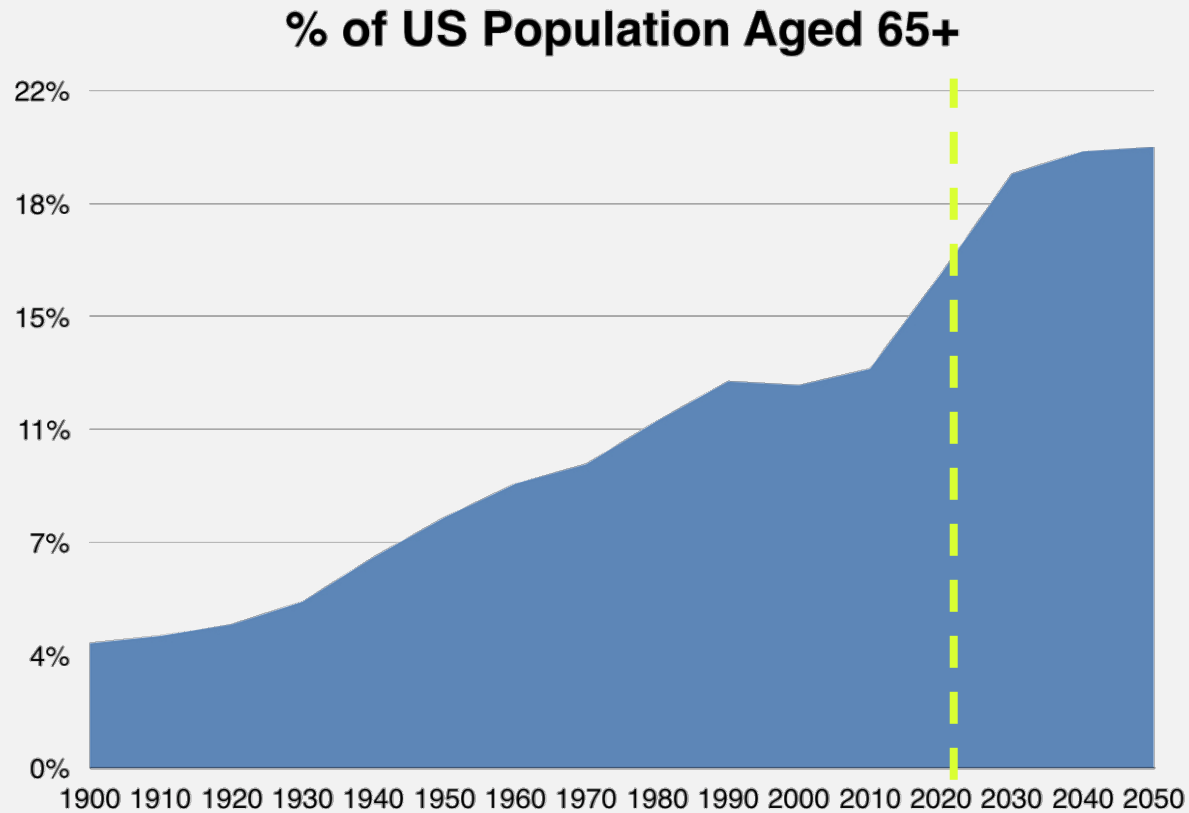
CLUSTERING

- Option 1: Permit same number of units allowed under traditional zoning code
- Option 2: Permit additional units than what is allowed under traditional zoning law
- Make sure open space is just not left over land
- Require comparison drawings



National Housing Trends

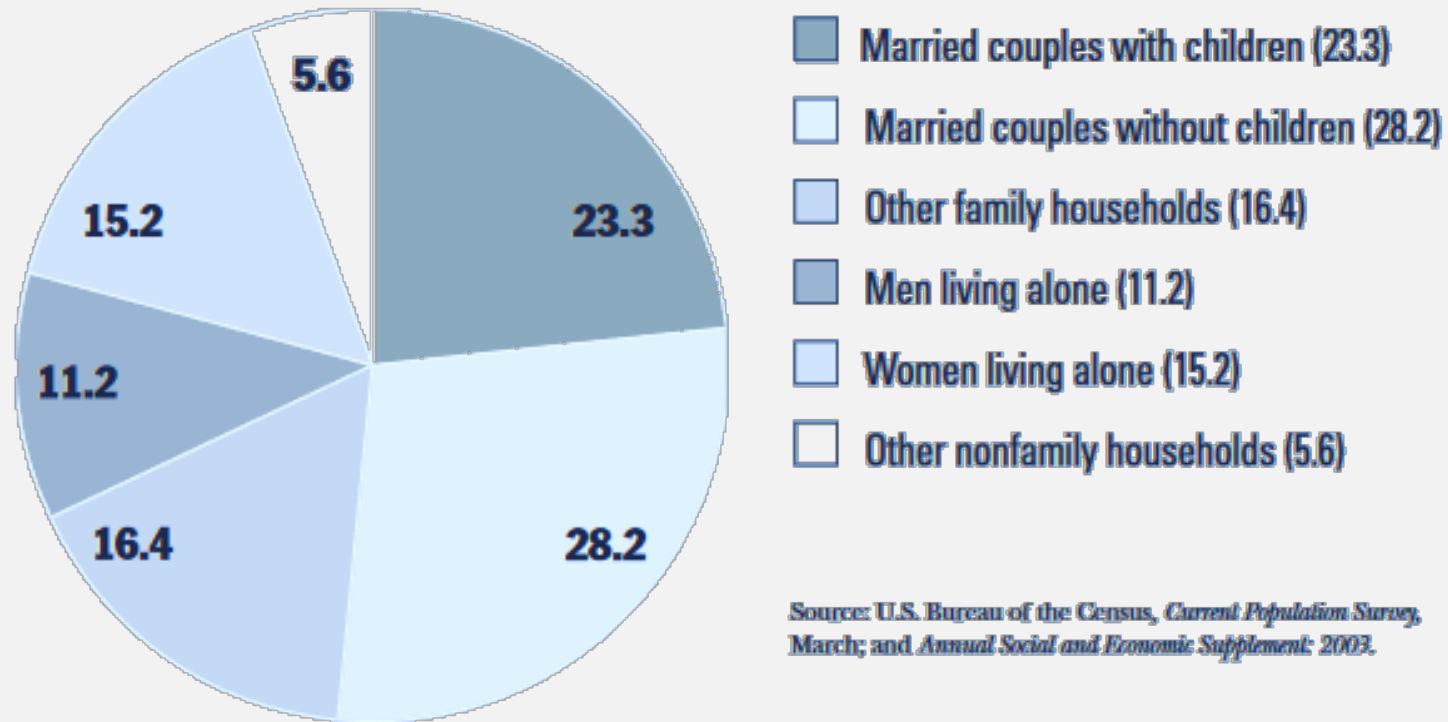
- We are getting older and will continue to do so



Source: U.S. Administration on Aging & U.S. Census Bureau

National Housing Trends

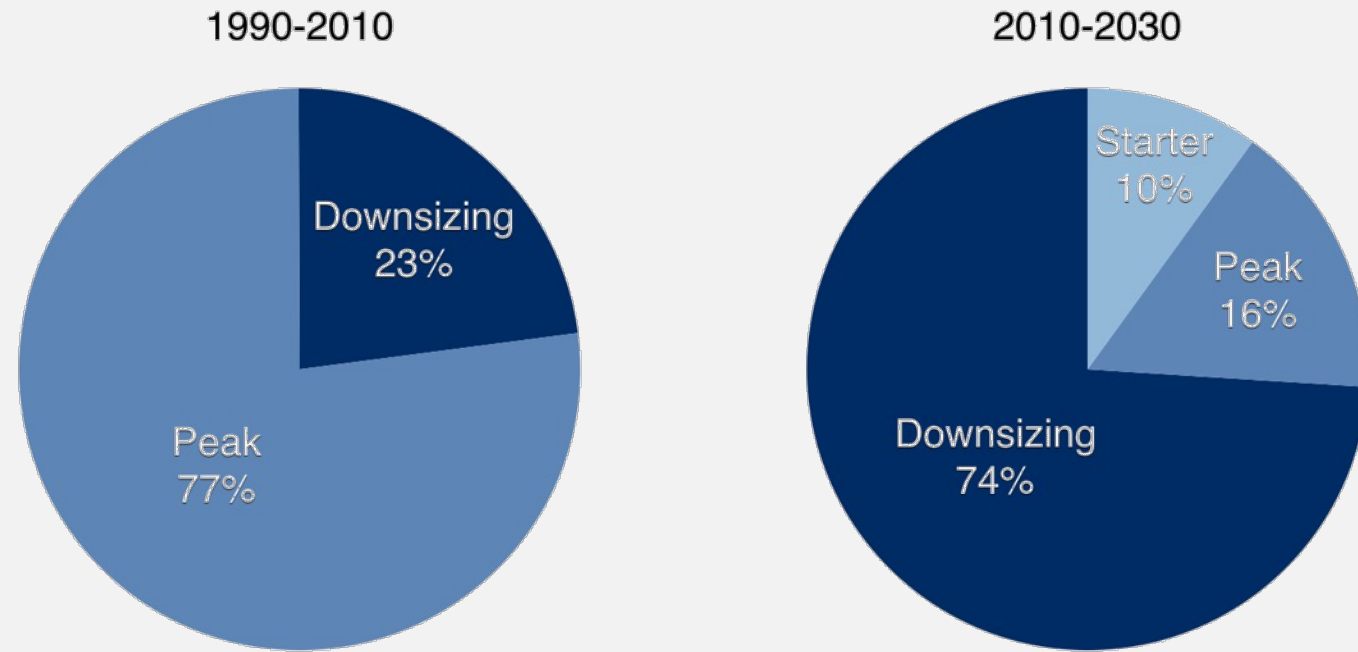
HOUSEHOLDS BY TYPE: 2003 (PERCENTAGE OF TOTAL)



Source: U.S. Bureau of the Census, *Current Population Survey*, March; and *Annual Social and Economic Supplement: 2003*.

National Housing Trends

Market Share of Householders

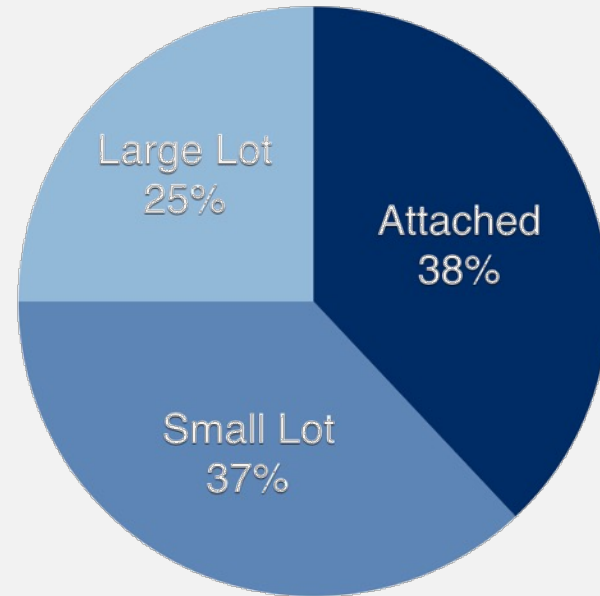


Source: Arthur C. Nelson, Reshaping Metropolitan America (2013)

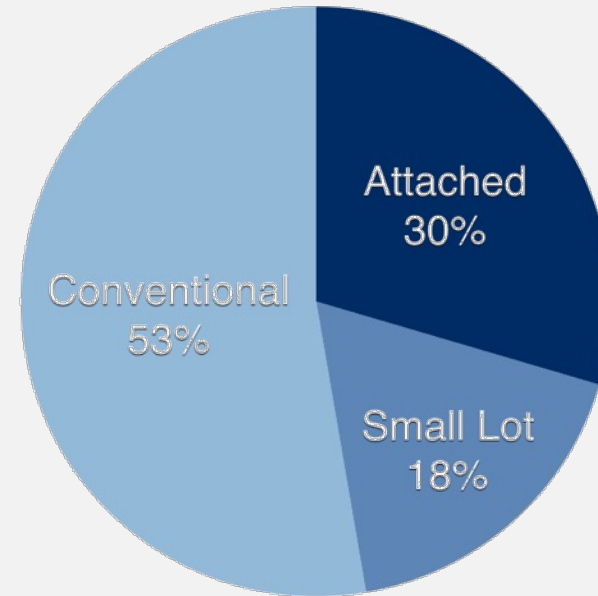
National Housing Trends

Preference vs Supply

2011 US Owner Preference



2011 US Housing Supply



~ Housing supply is not meeting demand ~

Source: Arthur C. Nelson, Reshaping Metropolitan America (2013)



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Poor Quality of Development

ADDRESSING CHARACTER & IMPACT OF USE









“Protect Community Character”

- What does this mean for your community?
- How might it differ in various areas?
- What elements of character are of priority?





Preferred Character of Commercial & Interchange Areas

	<i>To Be Avoided</i>	<i>To Be Encouraged</i>
<i>Large Scale Commercial Operations</i>		
<i>Auto-Oriented Uses</i>		
<i>Franchise Architecture</i>		
<i>Landscaping & Screening</i>		

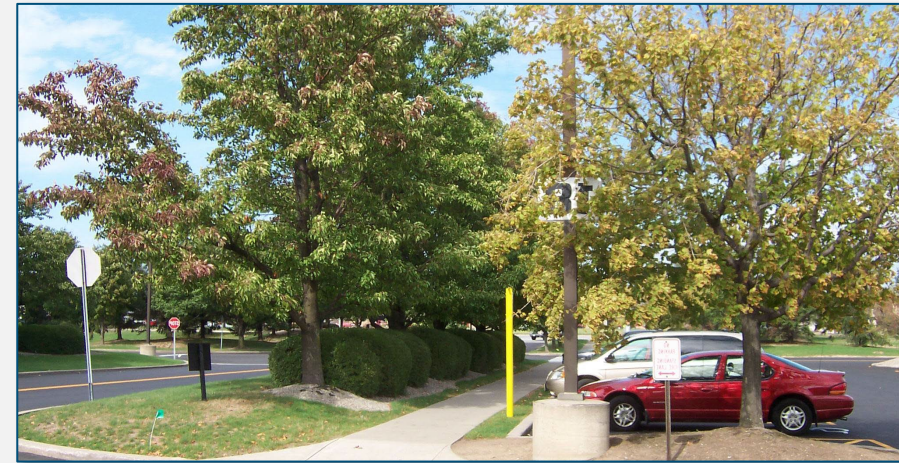
2016 Comprehensive Plan 63



Building Design

- What are your local preferences?
- Guidelines vs. Regulations
- "Shoulds" vs. "Shalls"

Landscaping & Screening



What is your baseline standard? – That should be your REQUIREMENT

Compatibility of Use

EXISTING



PROPOSED



Without local regulation you have no “teeth” to say no – Greater chance of legal challenge

Compatibility of Use - Tools

SITE PLAN REVIEW

- Physical site and building characteristics
- Adequacy of layout, circulation, parking, etc.

SPECIAL USE PERMIT

- Consideration of context
- Intensity of use, potential for negative impacts

CONSIDERATIONS

- Site Plan – Does it meet zoning req's? Is it a desirable/adequate layout and design?
 - + INFLUENCE
- Special Use Permit – What is impact to neighborhood? Is it an appropriate use?
 - + CONTROL



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Short-Term Rentals

SOME CONTEXT



Google

Similar to B&Bs

- Owner-occupancy requirements
- Max occupancy requirements
- Max nonresident employees
- Off-street parking requirements
- Maintain residential character

... But balancing property owner economic opportunity, neighborhood quality of life, and impact to commercial lodging operations.



Short Term Rental Considerations

- STR definition
- Permitting process
- Location restrictions (zoning districts)
- Density restrictions
- Owner/resident occupancy requirements
- Timing requirements
- Maximum occupancy
- Parking provisions
- Use and operation standards

Short-Term Rentals

COMMON REGULATIONS

- Permit required – PB review via Special Use Permit
- Owner, operator, or property manager on site
- Local contact must be provided (30 min distance)
- Maximum of two nonresident employees
- Minimum distance separation (by district)
- Off-street parking minimum by residential unit
- Maximum occupancy of two adults per bedroom
- Must maintain residential character
- Must conform to NYS Building Code, PLUS:
 - + Posting of emergency evacuation procedures
 - + Fire extinguishers
- Insurance, tax, and registration requirements
- Rental contract presented to guests

Village of Cooperstown

- **STR definition:**
 - + **SHORT-TERM RENTAL.** A special permitted use for overnight accommodations provided for or offered to one or more transient guests in exchange for compensation. Meals may be served to overnight guests but not to the public. Motels and Hotels are excluded from this definition.
 - + **TRANSIENT RENTAL.** Any rental for transient guests including Short-Term Rentals, Existing Tourist Accommodations and Pre-Existing Nonconforming Short-term Rental Units. Motels and Hotels are excluded from this definition.
- **Permitting process:**
 - + Special use permit
 - + Issued for a period of the current calendar year and two additional calendar years after.
 - + Annual registration required as well

Village of Cooperstown

- **Location restrictions (zoning districts)**

- + Only permitted in residential zoning districts in single-family dwellings or accessory apartments
- + Density restrictions

- **Owner/resident occupancy requirements**

- + All short-term rentals must have an operator:
 - Residential Zoning Districts: The Operator shall be the Owner or an individual with a minimum of 50 percent ownership interest in the entity Owner.
 - Business and Commercial Zoning Districts: The Operator shall be the Owner or the Owner's agent.
- + The operator shall:
 - Be a long-term occupant of the property
 - Be present on the property during each day and overnight whenever guest space is rented
 - Ensure safety and monitor noise and activities that create a public or private nuisance.

Village of Cooperstown

- **Timing requirements:**

- + Owners may rent their house to visitors during Hall of Fame Induction Weekend without an application for a special use permit or payment of a registration fee to the Village. The total household occupancy shall not exceed 10 individuals. The total rental period for the weekend shall be less than 60 hours.

- **Maximum occupancy:**

- + 10 people max
- + There must be 1 bedroom for every two guests

- **Parking provisions**

- + One space per each guest sleeping room
- + Located in a manner that minimizes impacts to neighboring properties and streets

- **Use and operation standards:**

- + Short-term rentals shall be incidental to residential use in residential districts.
- + On site lighting cannot be directed toward adjacent properties or streets, and must be extinguished after 11:00 p.m
- + Any transient rental may be used for long-term occupancy without obtaining an additional special use permit from the Village.

Town of Rochester

- **STR definition:**

- + **SHORT-TERM TRANSIENT RENTAL** – The use of a parcel for the rental or lease of any dwelling unit or part of a dwelling unit, for a period of thirty (30) days or less, to one entity whether by an owner or a long-term lessee of the short-term transient rental unit. Motels, hotels, resorts, inns, and bed & breakfasts are excluded from this definition.
- + **SHORT-TERM TRANSIENT RENTAL UNIT** – A dwelling unit utilized for the purposes of Short-term Transient Rentals

- **Permitting process**

- + Special Use Permit and Short-Term Transient Rental Permit must be secured
- + Expires annually on December 31st (unless issued after November 1st of that year)
- + Non transferrable

- **Location restrictions (zoning districts):**

- + Strictly allowed as accessory uses to residential use single and two family dwelling units
- + Permitted in all districts aside from Industrial (I) and Natural Resources (NR) Districts
- + A residential dwelling unit must be located on the parcel to be eligible

Town of Rochester

- **Density restrictions**

- + Number of total permits capped
 - Number determined by Town Board annually based on 5% of Residential Dwelling Units on the Final Tax Roll
- + Permits for Resident Owner-Occupied dwelling units are not capped

- **Owner/resident occupancy requirements:**

- + **Resident Owner** – A property owner who resides on the parcel of land as their primary residence. The parcel may have additional dwelling units, however all dwelling units located on the parcel shall be considered resident owner occupied.
- + **Local Manager** - The person specifically named on the application and permit that is responsible for the day-to-day operation of the short-term transient rental, and who may be contacted, day or night, if there is a problem at the short-term transient rental. The local manager may be either the owner or an agent of the owner. The local manager must reside within thirty (30) miles of the Town of Rochester Town Hall.

Town of Rochester

- **Timing requirements: None**
- **Maximum occupancy:**
 - + Set by the based on the number, size, configuration, and furnishings of the bedrooms and/or sleeping rooms, and per the provisions of NYS Uniform Fire Prevention and Building Code .
- **Parking provisions**
 - + One parking space for each sleeping room in the dwelling plus other parking as required in §140
 - + There shall be no on-street parking allowed
 - + No parking shall be allowed outside of the parking spots designated and detailed on the permit.
- **Use and operation standards**
 - + All properties must post a list of House Rules
 - + Must meet all density requirements for the zoning district
 - + Parcels utilized for multi-family dwelling units, commercial or industrial purposes cannot be issued short-term rental permits
 - + Vacant properties cannot be issued short term rental permits
 - + A local manager shall be able to respond to any issue in person within one hour.
 - + No person or persons shall be housed separately and/or apart from the approved dwelling unit in any alternative dwelling unit (such as a camper or tent) without securing a Special Use Permit



Additional STR Training

- **November 4th – 1:00PM ([Southerntierwest.org](https://southerntierwest.org))**
- Living With Short-Term Rentals In Your Residential Neighborhoods
- Presenters: Gary Palumbo and Richard Stanton, Ellicottville NY



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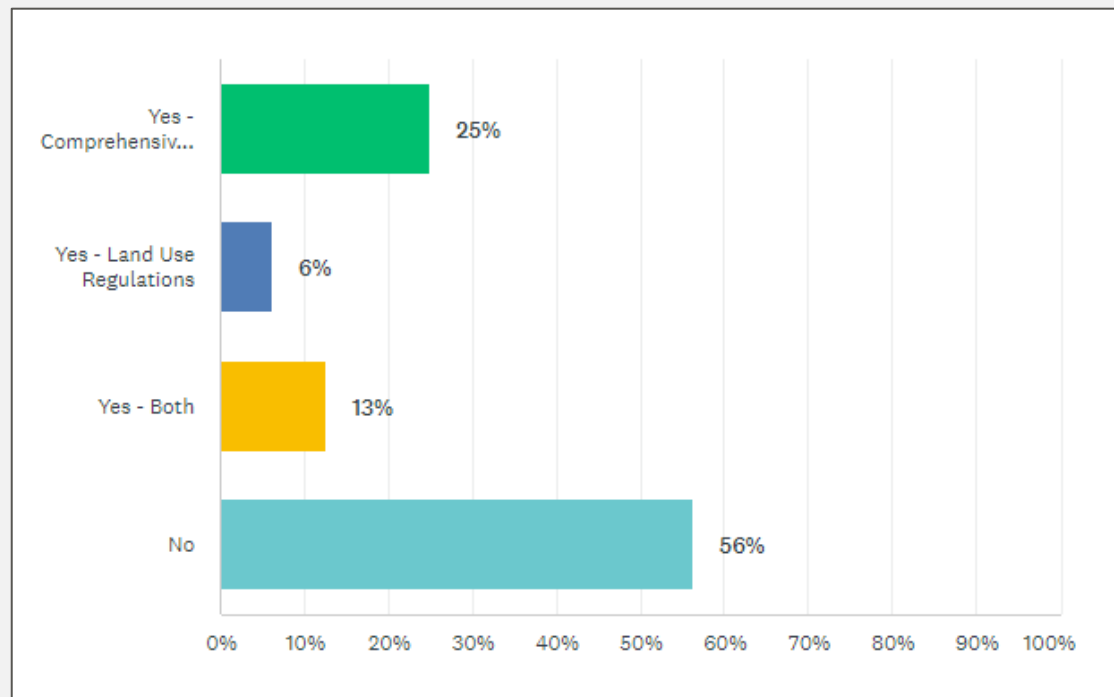
Bottom Line

IMPORTANCE OF UP-TO-DATE PLANS & LAWS

Purpose of Plans/Regulations

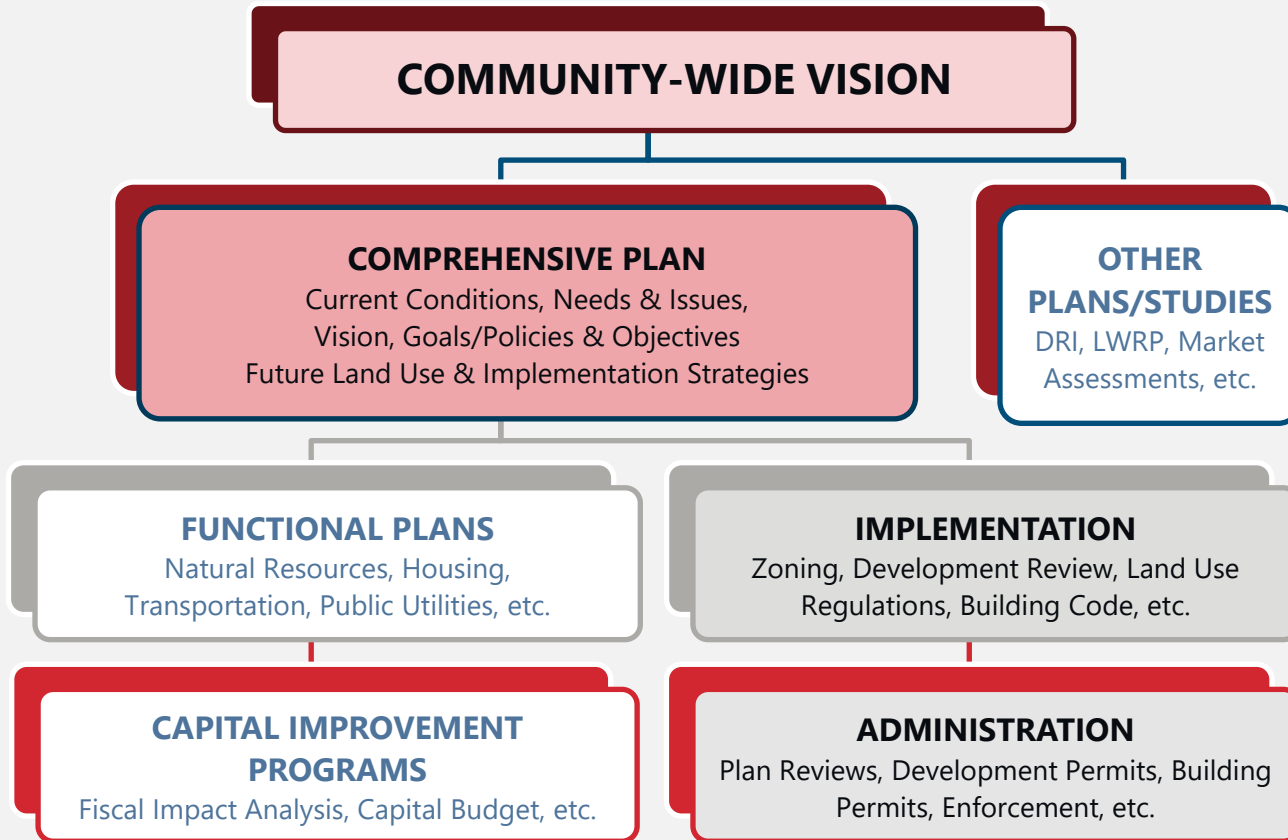
- Regardless of intent to restrict or support development, plans and land use regulations are necessary to support local decision-making and preferences

Updated plans/regulations in the last 5 years?



~ In the absence of a well-considered plan, all land use decisions based upon it may be subject to legal challenge ~

Your Vision



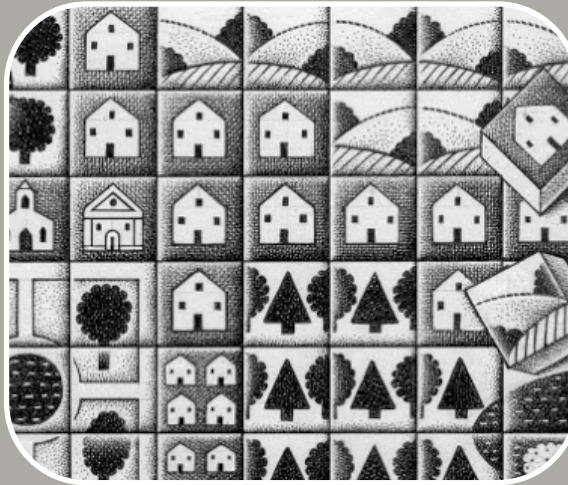
- **Methods & Tools for Success**
- **Policy informs Law**

~ **In the absence of a well-considered plan, all land use decisions based upon it may be subject to legal challenge ~**

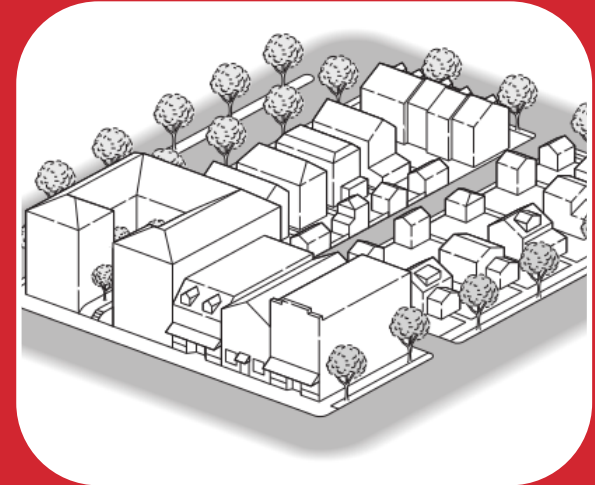
Spectrum of Control



No Local Regulation



Some Local Regulation



Heavy Local Regulation

HOW MUCH INFLUENCE DO YOU HAVE? HOW MUCH DO YOU WANT?

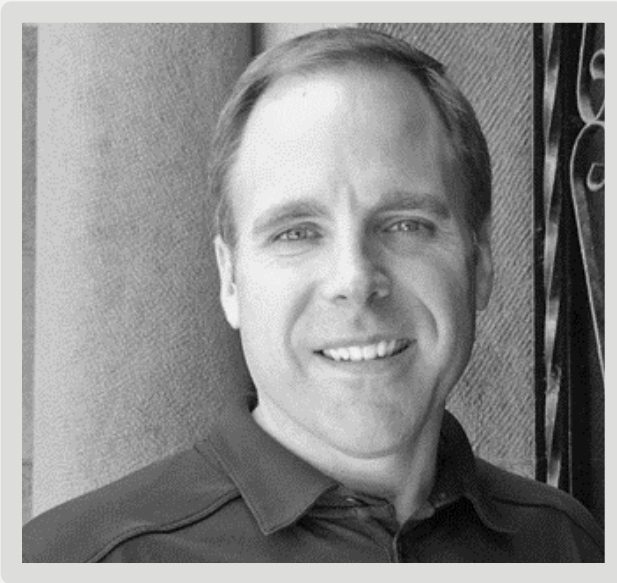


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Phew!

COMMENTS? QUESTIONS?

Feel Free to Reach Out!



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