

Planning & Development Advisors



Creating value by unlocking opportunities

February 23, 2023

To: Comprehensive Plan Update Committee

From: David B. Smith

Re: Comprehensive Plan Update Meeting Materials

Cc: Mark Taylor

In advance of next week's Comprehensive Plan Update Committee meeting, please find the following for your review and consideration: Updated Action Items List; compendium of recent planning and zoning proposals submitted to the Town; and, selected examples of on-line public input formats.

The Updated Action Items List has been revised with highlighted text to indicate revisions and updates to the list based on input received from the Committee at its last meeting. Added or edited items are indicated in the highlighted text. The benefit of this review is to help focus on next steps for review and or implementation. As an example on page IV-6 regarding Senior Housing, the 2005 Update recommended updated definitions and review of appropriate locations for senior housing. The Town then went on to implement zoning text amendments that provides bonuses when senior housing is provided. The Town is now evaluating how that approach has been implemented and whether it is meeting the current goals and objectives of the Town.

The second part of the submission package includes a compendium of the various petitions for zoning amendments (e.g., 9W Self-storage Overlay, Stewart Commons) and other planning related matters (e.g., EV charging, tree preservation) which the Town has either received or raised on its own. The pdf version of the compendium has bookmarks which can be used to navigate and find each issue individually.

The third portion of the package includes some selected examples of on-line public input formats which the Committee can discuss and eventually incorporate into the Town of Newburgh's Web-site.

Proposed Agenda:

1. Review Updated Action Items List
2. Review Compendium of recent proposals to the Town, add or subtract based on discussion
3. Review on-line format examples
4. Discuss format for presentation to the public and timing.

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Short Term Action Items

Issue	Action Summary (Short Term)	Status	Notes
Infrastructure & Utilities			
Water	Study whether and how water service should be expanded within the existing service area and benefits, impacts, and costs of this service expansion.		Encourage infill development. Study commissioned for West Orange Lake
	Evaluate water-intensive developments to see if they should be prohibited.		Examine Zoning Code for permitted uses.
Sewer	Study benefits, impacts, and costs of service expansion within the existing service district boundaries.		Focus on infill development within existing District. Target commercial development to potentially assist in the cost of expanding sewer service.
	Investigate the opportunities for land-banking property along the Hudson River for a new Sewage Treatment Plant.		Identify appropriate locations.
Utilities	Prepare a Capital Improvements Program for necessary utility improvements.		Town maintains a list of Capital Projects, approx 20 current open projects.
Stormwater Management	Review stormwater management regulations. Determine if stagnant water can be addressed during the site plan approval process		Stormwater Management Regulations adopted 2009

Issue	Action Summary (Short Term)	Status	Notes
Transportation			
Speed Limits	Establish a town-wide 30mph speed limit.	Ongoing In Progress	
	Discuss speed limits on State/County owned roadways with NYSDOT and Orange County.	Ongoing In Progress	
Transportation Safety	Address traffic safety issues throughout the Town.	Ongoing	
Traffic Calming	Modify street configuration requirements for new developments as a means of traffic calming.		Discourage new private roads. [Maximum of 3 houses for a private road.]
Transportation Plan	Prepare transportation plan and use it to lobby NYSDOT to receive more resources.	Ongoing	Corridor study for NYS Route 17 just completed.
Site Access	Comprehensively coordinate site access with commercial developers.	Ongoing In Progress	
	Study access between residential developments.	Ongoing	Study should exclude private roads.
Maintenance	Better enforcement of truck weight limits on local roads.	Ongoing	
Transportation Alternatives	Encourage sidewalks, where appropriate.	Ongoing	Examine subdivision regulations. Refer to Section 161-35, encourage coordination with bus routes

Issue	Action Summary (Short Term)	Status	Notes
Route 9W Corridor	Study ways to accommodate the future expansion of Route 9W.		Examine zoning requirements and ROW requirements. *
Planning & Zoning			
Clustering	Update clustering provisions and identify locations. Examine regulations for environmentally sensitive features, limits on house size, design standards, access, creation of useable open space, etc.		Design criteria added to cluster ordinance 2007 Guidelines for future solar access also added to the zoning Code Section 185-86.
Subdivision Regulations	Review requirements for sidewalks, street lights, street trees, and treatment of planting strips.		
	Review the maximum number of residential units per road.		Examine standards for private roads and town roads.
Residential Lot Size	Review the minimum lot sizes for each of the residential zoning districts.		
Useable Area	Consider including bulk regulations for minimum useable lot area, buildable area envelopes.		Town adopted zoning amendment in 2010 adding useable area definition and residential lot area section.
Housing Density	Review R-1 and R2 Districts to determine if the regulations are encouraging higher densities than desired due to conversion of single-family homes to multiple-family homes.		

* The Town has had meetings with the NYS DOT re: 9W right of way, including the potential for the Town to acquire targeted strips of land. The Planning Board has been active as part of project review and approval setting aside area on the east side of 9W. Potential for projects to bring

Issue	Action Summary (Short Term)	Status	Notes
Lot Sizes	Evaluation of minimum lot size and clustering should be considered in areas outside of the proposed growth boundary (see <i>Growth Management Factors Exhibit 3</i>).		
Agricultural Parcels	Comprehensively evaluate the remaining agricultural parcels in the Town.		For the remaining orchards take advantage of the Agricultural District designations
Waterfront	Study increased public access and recreation opportunities on the Hudson River waterfront.	Ongoing	Anchorage Property acquired partly as park with Hudson River access
Open Space	Explore methods for preserving, and possibly acquiring, open space, including pursuing the 50 percent funding available through the Orange County Open Space Fund.	Ongoing	Open Space Fund Closed
Recreation Resources	Evaluate recreation resources & explore methods for preserving, possibly acquiring, open space.		Desmond Property acquired with community enrichment center
Design Controls	Create a comprehensive set of design guidelines, focusing on new residential, commercial and corporate uses. Review design elements in the Town such as the retention of stone walls and building height.		Design Guidelines created 2007
	Include architectural renderings as part of the required submissions for site plan review.	Ongoing In Progress	PB has ARB powers (see Article X including review of subdivisions of 10+ lots)
Sign Ordinance	Review sign regulations.		Last amended 2018

Town of Newburgh Comprehensive Plan Update

Issue	Action Summary (Short Term)	Status	Notes
Motor Vehicle Service Station & Convenience Store	Update regulations and definition of motor vehicle service station and convenience store.		To do
	Examine need for recreational vehicle sale and service uses along portions of Route 9W.		Enacted
Travel Centers	Review regulations for travel centers.		Section 185-48.1 Travel Centers does not appear to have been updated. Zoning Amendment was prepared but not introduced
Fast-Food Establishments	Define various types of fast-food and other restaurants, update regulations.		Section 185-42 has not been updated
Adult Uses	Examine negative secondary effects and if warranted, establish definition and regulations.		Section 185-69 of the Code regulates Adult Uses negative secondary effects was adopted relying on studies of other municipalities as allowed by case law
Town Center / Hamlets	Study Town Center/Hamlet design overlay district possibilities.	On-going	East Coldenham draft 2011, Local Law to public hearing in 2022 **
IB District	Review bulk regulations and residential uses in the IB District.		Affordable housing and Senior housing allowed by Town Board action
Senior Housing	Update definition and review appropriate locations.		Section 185-48 modified to allow for increased density for senior housing development. Section 185 provides for less reduction in useable area calculation *
Buffers	Study techniques for screening non-residential areas from residential areas and screening similar commercial areas from each other.		Amended 2007

* Many developers of multi-family housing projects have taken advantage of the density bonus for senior housing to obtain higher densities with only limited number of age restricted units, the Town Board is evaluating the approach and the number of age restricted units the Town is providing versus other communities in the region.

** Town board has not moved forward with a mixed use hamlet concept. Reevaluation to occur during the Update process.

Town of Newburgh Comprehensive Plan Update

Issue	Action Summary (Short Term)	Status	Notes
Accessory Uses	Simplify approval process for accessory apartments.		Enacted
	Consider modifying height requirements for garages with useable area above the garage.		To do
Bed and Breakfast	Establish definition and regulations.		To do To also include newer uses such as AirBnB and extended stay hotels
Steep Slope Regulations	Enact steep slopes regulations either for purposes of density calculation or viewshed and storm water drainage protection.		Definition of steep slope added 2010, used to define buildable area, useable area, residential lot areas,
Viewshed and Ridgeline Protection	Adopt an overlay district protecting remaining significant scenic views and ridgelines.		Town Board considered but did not proceed with Local Law imposing additional submission review requirements
Condominium Design Guidelines	Establish design guidelines pertaining to new condominium developments.		Design Guidelines prepared 2007
Rezoning	Rezone R-3 and R-2 Districts to R-1 and an area of the IB District to B in the southwest portion of the Town. Rezone three areas from business to residential. Rezone an area of R-2 District to B as per Table III-5.		Enacted

- Electric vehicle Charging
- Consider legislation to regulate EV charging as part of site plan approval
- Drive-thru's
- warehouses

Intermediate Action Items

Issue	Action Summary (Intermediate)	Status	Notes
Infrastructure & Utilities			
Water	Review watershed regulations for the Chadwick Lake reservoir for potential update.		compliance issues for Chadwick Lake tributaries
Sewer	Study benefits, impacts, and costs of service expansion.		Investigate lands outside the Growth Boundary area (see <i>Growth Management Factors</i> map <i>Exhibit 3</i>).
Water Resources	Conduct study of water quality, stormwater capabilities and recreational policies of Town’s water bodies.		
Transportation			
Traffic Calming	Implement traffic calming measures with assistance from a traffic engineer.		
Transportation Alternatives	Explore locations for dedicated bike route/lanes.		
	Encourage sidewalks, where appropriate.		Sidewalk repair and maintenace Local Law adopted in 2011

Issue	Action Summary (Intermediate)	Status	Notes
Planning & Zoning			
Chadwick Lake CEA and Orange Lake	Update zoning regulations for areas surrounding the two lakes to provide better protection. Prepare a planning study of Orange Lake.		Need map to show watershed boundary for Chadwick Lake.
Workforce Housing	Consider approaches that would integrate workforce housing with other uses.		Need to define affordable housing. Section 185-47 not clear when this was added to the Code
Economic Development	Identify strategies for promoting economic growth with corporate entities (high tech/light industrial/corporate office).		
Economic Development	Study implementation of a community development agency and/or program to coordinate economic development and land use planning within the Town.		Outreach to Chamber of Commerce and Orange County Partnership.
Municipal Organization	Investigate establishing a Department of Public Works (DPW) vs. a Highway Department.		DPW Dept. was established when office of DPW Commissioner was established
Volunteer Firefighter Recruitment	Evaluate various tools for providing incentives for residents to volunteer with the local fire departments.		New property tax exemption for Volunteer Firefighters and Ambulance workers recently enacted and Ambulance district established

Long Term Action Items

Issue	Action Summary (Long Term)	Status	Notes
Infrastructure & Utilities			
Water	Examine potential for an additional water connection to the Catskill Aqueduct to create a redundant water supply system for emergency supply.		Would require discussion with the Town of New Windsor and NYC DEP. <i>Town acquired potential high volume well site on the Anchorage property</i>
Sewer	Consider possibility of the Town building its own Sewage Treatment Plant and land banking property along the Hudson River for such use.		See related discussions on land banking under short term items.
Sanitation	Consider establishing uniform sanitation and recycling collection program.		
Transportation			
Traffic Calming	Examine location of commercial nodes closer to residential areas, as a means of reducing traffic.		
Route 9W Corridor	Study ways to accommodate the future expansion of Route 9W.		

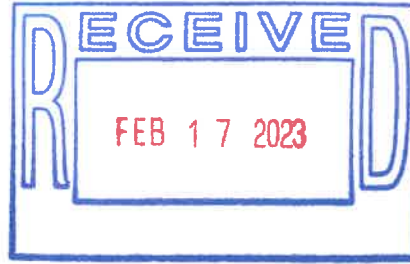
Issue	Action Summary (Long Term)	Status	Notes
Planning & Zoning			
Impact Fees	Explore the use of developer impact fees to cover impacts to utilities, schools, and other areas.		
Tree Ordinance	Review need for a Town-wide tree ordinance.		Adopted revisions underway

Zoning item that needs addressing

- 1) Storage of vehicles / garage or carport / Bulk table column A / Per site / per structure / how to determine number of vehicles?
- 2) Definition of accessory apartment (Detached)
- 3) 185-43-c-2 lot meets requirements for single family. Lot size or all bulk table requirements (see zba ruling 12-28-2017 stating yes)
- 4) Where can an accessory building be located? Only states required side or rear yard. If outside of the side yard does height and area matter?
- 5) Difference between an accessory building 185-15 and garden house or tool shed 185-43?
- 6) Gas station canopy signage / not addressed / 185-14 or 185-14A
- 7) Religious signage in residential zones / not addressed / put into bulk table schedule
- 8) Menu boards for fast food occupancies not addressed
- 9) Window signage for shopping centers?
- 10) Drive thru usage allowance in bulk tables (185-42 Fast food) (Banks 185-48.7) The bulk table does not connect any permitted places to use the drive thru except IB -D-6
- 11) 185-15-c-1-a Terrace definition / is a deck a terrace and exempt from setbacks
- 12) Bed and breakfast use
- 13) Add definition of gross floor area / accessory apartment 185-38-c-5
- 14) Add definition for increasing the degree of non-conformity / 185-19-c-1
- 15) 185-49 (400 cubic feet) 83-7-h (400 cubic yards)
- 16) 185-17-A: Choosing corner lot. New construction or can be changed @any time?
- 17) IB bulk table building height 40% ?

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February 16, 2023



VIA OVERNIGHT COURIER

Supervisor Gilbert J. Piaquadio
and Councilmembers of the Town Board
Town of Newburgh
1496 NY-300
Newburgh, NY 12550

NICHOLAS M. WARD-WILLIS
Principal Member
nward-willis@kblaw.com
Also Admitted in CT

Re: Newburgh Chicken, LLC - Zone Change Petition

Dear Supervisor Piaquadio and Councilmembers of the Town Board:

Keane & Beane, P.C. respectfully submits the enclosed Petition on behalf of Newburgh Chicken, LLC (“Newburgh Chicken”), the contract vendee of real property located at 197 South Plank Road (New York State Route 52), known and designated as Tax Parcel No. 60-3-6.1 and located in the Business (B) zoning district (“Property”). We have enclosed five (5) copies of the Petition for your review. By the Petition, Newburgh Chicken seeks the following two (2) amendments:

- (1) An amendment to the Zoning Map of the Town of Newburgh to change the zoning designation of the Property from the Business (B) zoning district to the adjacent Interchange Business (IB) zoning district; and
- (2) An amendment to the text of the Table of Use and Bulk Requirements for the IB District – Schedule 8 (Attachment 13 to Chapter 185 of the Code of the Town of Newburgh). Specifically, it seeks to amend the text of Column D, No. 6 to permit restaurants and fast-food establishments as standalone permitted principal uses in the Interchange Business (IB) zoning district, regardless of their conjunction with other uses. Such an amendment would codify what is already largely existing in the Interchange Business (IB) zoning district, where several other restaurants and fast-food establishments in the vicinity of the Property exist as standalone uses, such as the Taco Bell located at 1412 Union Avenue (Parcel ID No. 66-2-26), the Wendy’s located across the street from the Taco Bell, at 1417 Union Avenue (Parcel ID No. 60-3-38), and the Perkins Restaurant & Bakery located next door to the Wendy’s, at 1421 Union Avenue (Parcel ID No. 60-3-54).

Supervisor Gilbert Piaquadio
Town of Newburgh Town Board
February 16, 2023
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The Property is currently developed with an approximately 2,691 square-foot, one-story fast-food establishment (specifically, a Dairy Queen) with a drive-thru and 26 parking spaces. The existing fast-food establishment and drive-thru is a legal nonconforming use, as fast-food establishments are not permitted in the Business (B) zoning district, and has been located on the Property for several decades. Newburgh Chicken seeks to develop the Property with an approximately 2,537 square-foot, one-story fast-food establishment (specifically, a Popeyes Chicken) with a drive-thru and 23 parking spaces. Rezoning the Property to the Interchange Business (IB) zoning district designation and amending the text of the IB District Table and will permit the development of the Property as envisioned by Newburgh Chicken, and will eliminate the nonconforming use status of the Property.

Based on the foregoing, we respectfully request that the Petition be placed on the Town Board's March 13, 2023 agenda for the scheduling of a public hearing and for any other recommendations that the Town Board sees fit. Should the Town Board require any funds to be placed in the Town's land use review escrow account for costs the Town incurs in processing the Petition, please advise and we will coordinate accordingly.

We look forward to working with the Town Board and Town staff as you consider our client's requests. If you need anything further, please do not hesitate to contact me directly.

Thank you for your consideration.

Respectfully submitted,



Nicholas M. Ward-Willis

Enclosure

TOWN BOARD: TOWN OF NEWBURGH
COUNTY OF ORANGE: STATE OF NEW YORK
-----X

Petition of

NEWBURGH CHICKEN, LLC,

For an Amendment of the Zoning Map of the Town of Newburgh to Change the Zoning Designation on Certain Real Property known and designated on the Tax Assessment Map of the Town of Newburgh as SBL 60-3-6.1 from the B Zoning District to the IB Zoning District, and for an Amendment of the Text of the Town Code to Permit Restaurants and Fast-Food Establishments as Standalone Permitted Principal Uses in the IB Zoning District.
-----X

PETITION

Newburgh Chicken, LLC (hereinafter referred to as “Newburgh Chicken”), by its attorneys Keane & Beane, P.C., respectfully petitions the Town Board of the Town of Newburgh (“Town Board”), as follows:

I. INTRODUCTION

1. Newburgh Chicken is the contract vendee of approximately 0.97 acres (42,212 square feet) of certain real property located at 197 South Plank Road (New York State Route 52), situated within the Town of Newburgh (“Town”), County of Orange, State of New York, known and designated on the Orange County Tax Maps for the Town of Newburgh as Tax Parcel Section 60, Block 3, Lot 6.1 (“Property”). A metes-and-bounds description of the Property is annexed hereto as Exhibit “A.”

2. The Property is currently owned by Louis J. Gallo and Jean F. Gallo, who authorize Newburgh Chicken to submit this Petition to the Town Board, and to have Keane & Beane, P.C. serve as attorneys for this Petition. A letter from Louis J. Gallo and Jean F. Gallo authorizing such is annexed hereto as Exhibit “B.”

3. By this Petition, Newburgh Chicken seeks an amendment to the Zoning Map of the Town of Newburgh (“Zoning Map”) to change the zoning designation of the Property from the Business (B) zoning district to the adjacent Interchange Business (IB) zoning district, consistent with the Comprehensive Plan Update of the Town of Newburgh and the Orange County Comprehensive Plan adopted in May 2019. The rezoning will encompass the entire Property.

4. The requested amendment is also consistent with the zoning district classifications of neighboring parcels. A map depicting the modified boundary of the Interchange Business (IB) zoning district with the inclusion of the Property is annexed hereto as Exhibit “C.”

5. By this Petition, Newburgh Chicken also seeks an amendment to the text of the Table of Use and Bulk Requirements for the IB District – Schedule 8 (Attachment 13 to Chapter 185 of the Code of the Town of Newburgh) (“IB District Table”). Specifically, it seeks to amend the text of Column D, No. 6 to permit restaurants and fast-food establishments as standalone permitted principal uses in the Interchange Business (IB) zoning district, regardless of their conjunction with other uses. Such an amendment would codify what is already largely existing in the Interchange Business (IB) zoning district, where several other restaurants and fast-food establishments in the vicinity of the Property exist as standalone uses, such as the Taco Bell located at 1412 Union Avenue (Parcel ID No. 66-2-26), the Wendy’s located across the street from the Taco Bell, at 1417 Union Avenue (Parcel ID No. 60-3-38), and the Perkins Restaurant & Bakery located next door to the Wendy’s, at 1421 Union Avenue (Parcel ID No. 60-3-54).

6. The Property is currently developed with an approximately 2,691 square-foot, one-story fast-food establishment (specifically, a Dairy Queen) with a drive-thru and 26 parking spaces. The existing fast-food establishment and drive-thru is a legal nonconforming use, as fast-food establishments are not permitted in the Business (B) zoning district, and has been located on the Property for several decades.

7. Newburgh Chicken seeks to develop the Property with an approximately 2,537 square-foot, one-story fast-food establishment (specifically, a Popeyes Chicken) with a drive-thru and 23 parking spaces. A site plan and renderings depicting such developments is annexed hereto as Exhibit "D."

8. While fast-food establishments are not permitted in the Business (B) zoning district, they are permitted principal uses (in conjunction with other specific uses) in the adjacent Interchange Business (IB) zoning district.

9. Rezoning the Property to the Interchange Business (IB) zoning district designation and amending the text of the IB District Table and will permit the development of the Property as envisioned by Newburgh Chicken, and will eliminate the nonconforming use status of the Property.

10. The proposed Interchange Business (IB) zoning district designation and the proposed amended text of the IB District Table provide the necessary flexibility to encourage reasonable development on the Property that will yield significant benefits by improving the safety of the Property, the traffic flow along South Plank Road, the appearance of the building, and the landscaping and functionality of the Property.

11. The proposed amendments will also assist the Town in updating its Zoning Code to better address the demands of today's society.

II. THE PROPERTY

12. The Property is located at 197 South Plank Road, known and designated on the Orange County Tax Maps for the Town of Newburgh as Section 60, Block 3, Lot 6.1, and identified on the Zoning Map of the Town of Newburgh as being within the Business (B) zoning district. The Property consists of approximately 0.97 acres, and the rezoning will encompass the entire Property.

13. The Property is located on the south side of South Plank Road (NYS Route 52), at the intersection of Union Avenue and South Plank Road. The Property abuts South Plank Road on the north side, Union Avenue on the east side, 203 South Plank Road on the west side, and 1437 Union Avenue on the south side.

14. The adjacent property at 203 South Plank Road is currently used as a CVS Pharmacy with a drive thru pharmacy, and the property located at 1437 Union Avenue consists of a vacant building which is closed and not currently operational.

15. The Property is located in the Business (B) zoning district, which does not permit fast-food establishments. All properties along South Plank Road within the vicinity of the Property are also within the Business (B) zoning district. The property immediately adjacent to the south (1437 Union Avenue) is in the Interchange Business (IB) zoning district. In fact, all properties along Union Avenue and south of South Plank Road are located within the Interchange Business (IB) zoning district. As stated above, a fast-food establishment is a permitted use in the Interchange Business (IB) zoning district.

16. The Property is located less than one mile from the exit ramps providing access to Interstate 84 and 87.

III. PROPOSED ZONE CHANGE

17. Newburgh Chicken is seeking to rezone the Property from the Business (B) zoning district to the Interchange Business (IB) zoning district.

18. The current zoning designation of the Property as Business (B) is limiting and will prevent Newburgh Chicken from developing the Property with the proposed Popeyes Chicken and associated drive-thru.

19. The existing fast-food establishment (Dairy Queen) and drive-thru has been located on the Property for several decades, and, as such, is a legal nonconforming use.

20. The fast-food establishment use permitted by the proposed zone change and text amendment is appropriate in the community, as such a use has existed for several decades on the Property.

21. The change is in accordance with the existing community plan, as the Property is adjacent to other commercial business uses and abuts the Business (B) and Interchange Business (IB) zoning districts.

22. The Town of Newburgh adopted a Comprehensive Plan Update in October 2005 (the "Town Plan Update"). The Town Plan Update focuses on planning for growth through short, intermediate and long-term actions related to infrastructure and utilities; transportation; and planning and zoning. The Property is located within the southern half of the Town, which is described in the Town Plan Update as having a higher density residential area and commercial corridors. (Town Plan Update, p. III-23). The Town Plan Update also

acknowledges that commercial uses in the town are located along the Town's major corridors, particularly around Interstates 84 and 87 and Route 17K. (Town Plan Update, p. III-26). The proposed zoning map amendment is consistent with the Town Plan Update as there are no recommendations specific to the Property. The use will remain the same (albeit under a different corporate establishment), but will now become a conforming use. The fast-food establishment use is also appropriate for the Property given its proximity to major corridors such as Interstates 84 and 87 and Route 52. A copy of the above-referenced pages from the Town Plan Update is attached hereto as Exhibit "E."

23. The zone change also complies with the Orange County Comprehensive Plan, adopted in May 2019 (the "County Plan"). The Property is located within a priority growth area in the County Plan pursuant to Map 1, Priority Growth Areas Map, of the County Plan. (County Plan, p. 21). The County Plan states that, "Within the Growth Areas, the County encourages additional urban development within those areas of higher density such as cities, villages and hamlets. Appropriate development includes commercial, appropriate industrial, higher density residential, and community service uses." (County Plan, p. 17). Accordingly, fast-food establishments are appropriate commercial uses for the area. A copy of the above-referenced pages from the County Plan is annexed hereto as Exhibit "F."

24. Rezoning the Property, coupled with the proposed text amendment to the IB District Table as described below, provides the necessary flexibility to encourage reasonable development on the Property that will yield significant benefits by improving the safety of the Property, the traffic flow along South Plank Road, the appearance of the building, and the landscaping and functionality of the Property.

25. Adopting the changes requested by this Petition will yield significant benefits to the Town of Newburgh by allowing the continued use of the Property as a fast-food establishment, as has been the case for several decades, and improving the safety of the Property, the traffic flow along South Plank Road, the appearance of the building, and the landscaping and functionality of the Property. Its present status as a legal nonconforming use means any modifications to the Property which are deemed to result in an expansion or increase in the intensity of the use would require a use variance, which would be exponentially more difficult to obtain.

26. Additionally, the proposed changes are directly consistent with the Town Plan Update and the County Plan.

IV. PROPOSED TEXT AMENDMENT

27. Newburgh Chicken is also seeking to amend the text of the IB District Table to permit restaurants and fast-food establishments as standalone permitted principal uses, regardless of their conjunction with other specific uses.

28. In its current form, the IB District Table permits restaurants and fast-food establishments in the Interchange Business (IB) zoning district under two circumstances: (i) as a principal use subject to site plan review by the Planning Board, in conjunction with uses Nos. 3 (shopping centers), 4 (theaters), and 5 (offices for business, research and professional use and banks), and in accordance with § 185-42 [*see* Column D, No. 6]; and (ii) as an accessory use [*see* Column A, No. 10].

29. Thus, restaurants and fast-food establishments are not currently permitted as standalone principal uses in the Interchange Business (IB) zoning district.

30. Newburgh Chicken seeks to amend the text of Column D, No. 6 of the IB District Table by removing the words “in conjunction with uses in Nos. 3, 4 and 5” so that the amended text reads, in its entirety: “Restaurants and fast-food establishments in accordance with § 185-42.” A copy of the IB District Table depicting such a text amendment is annexed hereto as Exhibit “G.”

31. Newburgh Chicken does not propose amending any of the bulk requirements associated with Column D, No. 6 of the IB District Table.

32. The proposed text amendment to the IB District Table would permit restaurants and fast-food establishments as a standalone principal use in the Interchange Business (IB) zoning district, subject to site plan review by the Planning Board, and independent of any other permitted principal uses. This proposed text amendment, in conjunction with the proposed zone change detailed above, will permit Newburgh Chicken to develop the Property as envisioned, which will yield significant benefits to the Town.

33. Moreover, although the proposed text amendment will permit restaurants and fast-food establishments as standalone principal uses in the Interchange Business (IB) zoning district, there is no proposed amendment to the text reference to § 185-42, which is explicitly stated in the IB District Table and provides specific protections/supplementary regulations applicable to fast-food, drive-thru, and drive-up establishments. Thus, those protections will continue to apply to the uses, allowing the Town to ensure compatibility and to attach certain conditions to any proposed restaurant or fast-food establishment in the Interchange Business (IB) zoning district. A copy of Town Code §185-42 is annexed hereto as Exhibit “H.”

34. It is important to note that the existing fast-food establishment on the Property (specifically, a Dairy Queen) has been in operation for over 50 years. The proposed zone change and text amendment will merely allow Newburgh Chicken to continue to operate a fast-food establishment on the Property (albeit under a different corporate establishment) while maintaining the status quo of the Property and the surrounding neighborhood.

35. In fact, if one drives south on Union Avenue (NY Route 300) from South Plank Road, there are several other restaurants and fast-food establishments existing as standalone uses in the Interchange Business (IB) zoning district. For example, there is a Taco Bell located at 1412 Union Avenue (Parcel ID No. 66-2-26), a Wendy's located across the street from the Taco Bell, at 1417 Union Avenue (Parcel ID No. 60-3-38), and a Perkins Restaurant & Bakery located next door to the Wendy's, at 1421 Union Avenue (Parcel ID No. 60-3-54).

36. Thus, the proposed text amendment would simply codify what is already largely existing in the Interchange Business (IB) zoning district.

37. The proposed text amendment would also assist the Town in updating its Zoning Code. The current text of the IB District Table permits restaurants and fast-food establishments as principal permitted uses only in conjunction with shopping centers, theaters, and offices for business, research and professional use and banks. However, the changing landscape of society and increased development over the past several decades have led to a rise in standalone restaurants and fast-food establishments, especially in areas where there might not be sufficient space for theaters, shopping centers, and offices to exist in conjunction with food-related establishments. Moreover, given the ever-increasing pace of society, there is

an increase in demand for quick and convenient options to purchase food. The proposed text amendment will address such needs and will consequently benefit the Town as a whole.

CONCLUSION

WHEREFORE, Newburgh Chicken respectfully requests that, after due deliberation, the Town Board of the Town of Newburgh amends the Zoning Map and grants the requested zoning amendment as described herein.

Dated: White Plains, New York
February 16, 2023

KEANE & BEANE, P.C.

By:



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Exhibit A

Exhibit A
Meets-and-Bounds Description
197 South Plank Road
SBL 60-3-6.1

BEGINNING at a point marking the intersection of the northwesterly line of Union Avenue and the southwesterly line of Route 52 (South Plank Road) as aforesaid, and runs thence along the southwesterly line of Route 52, North 40° 43' West 114 feet more or less to an iron pipe marking the northeasterly corner of premises described in a certain deed John H. Monell et al to Sarah W. McNamara dated April 6, 1951 and recorded in the Orange County Clerk's Office on April 10, 1951 in Liber 1192 of Deeds at Page 5, said point also being the northwesterly corner of a parcel heretofore conveyed to one Mumford as recorded in the Orange County Clerk's Office in Liber 1310 of Deeds at Page 528, thence along said McNamara parcel south 37° 37' West 318 feet to a stake being along the general line of a wire fence (as referred to in Liber 1192 of Deeds, Page 5) to the southeasterly corner of the said McNamara parcel, thence south 55° 40' 1/2" East 175 feet more or less to a point in the northwesterly line of Union Avenue, said course being the prolongation of the southerly line of McNamara parcel, thence along the northwesterly line of Union Avenue North 25° 55' 40" East (bearing as taken from a June 1954 Harry C. Carpenter, P.E., Middletown, New York survey) 285 feet more or less to the point or place of beginning.

BEING AND INTENDED TO BE all of the premises in which title was acquired by grantors LOUIS J. GALLO and JEAN F. GALLO, husband and wife, by

- (a) Deed dated 11-7-61 by Walter Dork and Lillian Dork, his wife, recorded February 26, 1962 in Liber 1611 cp. 505, Orange County Clerk's Office; and
- (b) Deed dated June 18, 1962 by William V. Grant and Jean Grant, recorded June 20, 1962 in Liber 1618 cp. 767, Orange County Clerk's Office; and
- (c) Deed dated January 29, 1985 by Albert W. Futika and Vivian R. Futika, recorded February 1, 1985 in Liber 2323 cp. 77, Orange County Clerk's Office.

Exhibit B

Louis J. Gallo and Jean F. Gallo
2 Kelley Circle
Poughkeepsie, New York 12601

December 9, 2022

Supervisor Gil Piaquadio and
Councilmembers of the Town Board
Town of Newburgh
1496 Route 300
Newburgh, New York 12550

Re: Newburgh Chicken LLC – Zone Change Petition
197 South Plank Road
Tax Parcel No. 60-3-6.1

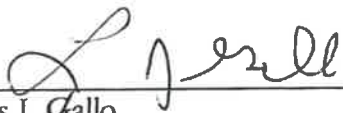
Dear Supervisor Piaquadio and Councilmembers of the Town Board:

We, Louis J. Gallo and Jean F. Gallo, are the current owners and contract vendors, of certain real property located at 197 South Plan Road, Newburgh, Tax Parcel No. 60-3-6.1.

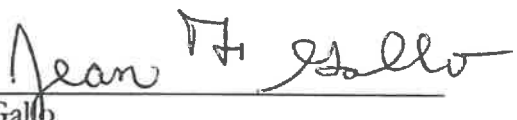
The above property is the subject of a zone change petition (“Petition”) to be submitted to the Town Board. I authorize Newburgh Chicken, LLC, or its designee, as contract vendee, to submit the Petition to the Town Board, and to have Keane & Beane, P.C. serve as attorneys for the Petition.

Thank you for your consideration.

Very truly yours,

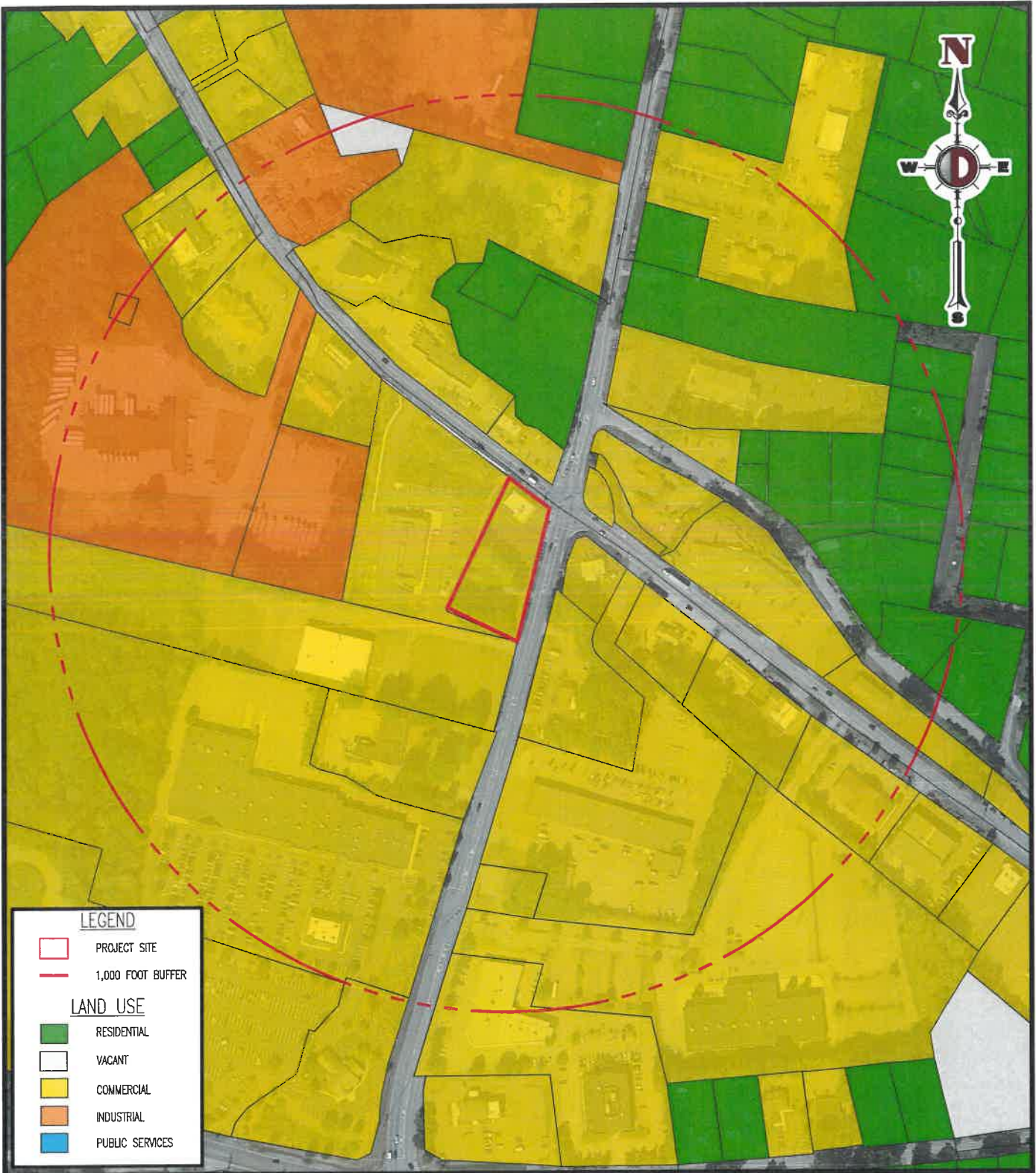


Louis J. Gallo



Jean F. Gallo

Exhibit C



LEGEND

- PROJECT SITE
- 1,000 FOOT BUFFER

LAND USE

- RESIDENTIAL
- VACANT
- COMMERCIAL
- INDUSTRIAL
- PUBLIC SERVICES

DYNAMIC ENGINEERING

1904 Main Street - Lake Como, NJ 07719
 T: 732.974.0198 - F: 732.974.3521
www.dynamiccec.com

DRAWN BY: RPK	CHECKED BY: RW	DATE: 12/21/2022
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TITLE:	LAND USE MAP
PROJECT:	<p>PROPOSED POPEYES PARIKH NETWORK, LLC PACEL 60-3-6.1 197 SOUTH PLANK TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK</p>
SCALE: (H) 1"=300' (V)	JOB No: 22-01041



LEGEND

	B, BUSINESS
	R2, RESIDENTIAL
	R3, RESIDENTIAL
	IB, INTERCHANGE BUSINESS

DYNAMIC ENGINEERING

1904 Main Street - Lake Como, NJ 07719
 T: 732.974.0198 - F: 732.974.3521
 www.dynamiccec.com

DRAWN BY: RPK	CHECKED BY: RW	DATE: 12/21/2022
------------------	-------------------	---------------------

TITLE: **EXISTING AND PROPOSED ZONING**

PROJECT: **PROPOSED POPEYES PARIKH NETWORK, LLC**
 PACEL 60-3-6.1
 197 SOUTH PLANK
 TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK

SCALE: (H) 1"=500'
(V)

JOB No:
22-01041

Table 1: IB District Rezoning Assessment

Fast Food Restaurant	IB (Interchange Business) Zone	Existing Condition
Minimum Lot Area	40,000 SF	42,212 SF (0.97 AC)
Minimum Lot Width	150 SF	125.5 FT (E)
Minimum Lot Depth	150 SF	297.0 FT
Minimum Front Yard Setback (South Plank Road)	50 FT	13.9 FT (E)
Minimum Front Yard Setback (Union Avenue)	50 FT	25.3 FT (E)
Minimum Rear Yard Setback	60 FT	79.4 FT
Minimum Side Yard Setback	30 FT	6.6 FT (E)
Maximum Building Height	40 FT	≤ 40 FT
Maximum Lot Surface Coverage	80%	49.4% (20,837 SF)
Maximum Building Coverage	40%	6.4% (2,691 SF)
Required Parking: Fast Food Restaurant	1 space per 4 seats, or 40 SF of seating area	23
Required Loading	< 25,000 SF = 1 space	0
N/S: No Standard N/A: Not Applicable (E): Existing Non-Conformance (V): Variance		

Exhibit D







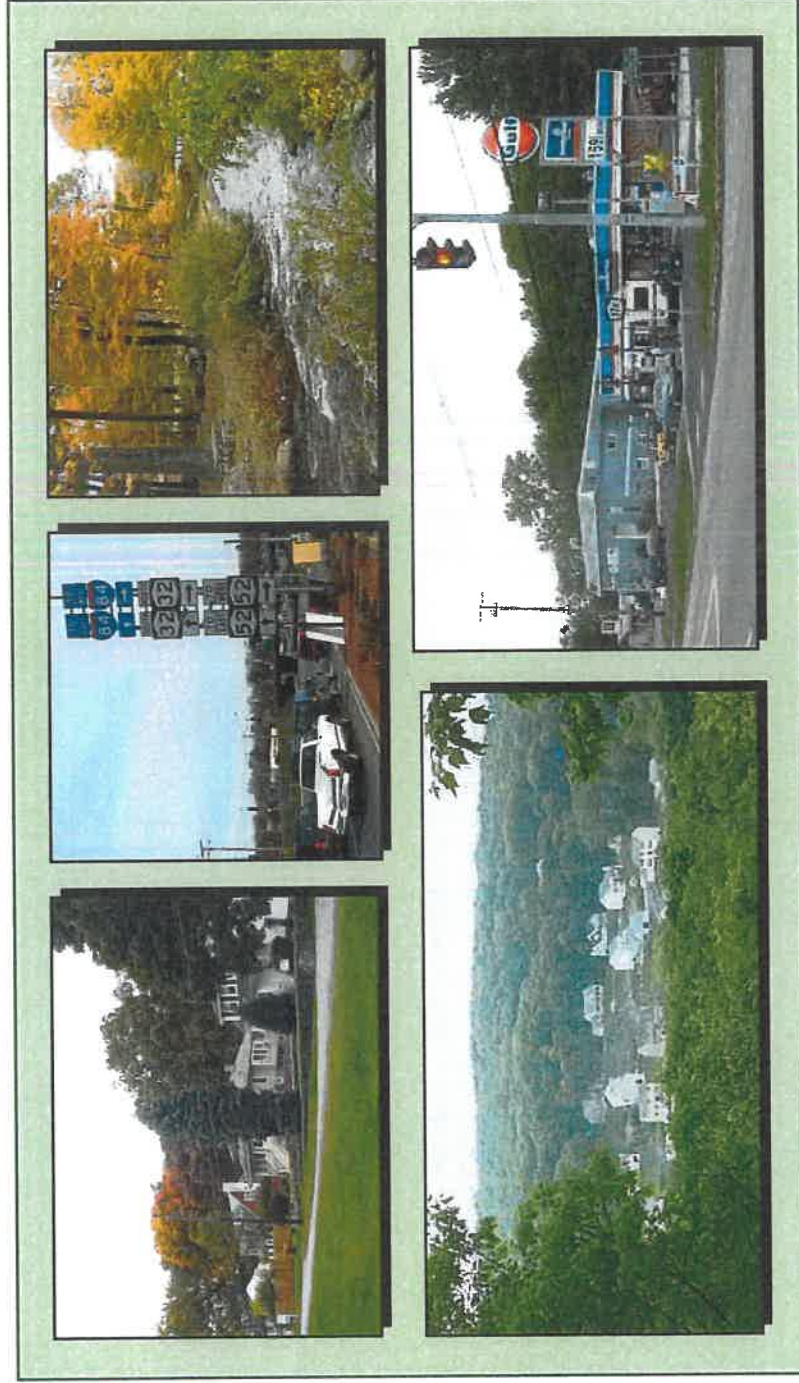




Exhibit E

COMPREHENSIVE PLAN UPDATE

Town of Newburgh, New York



Saccardi & Schiff, Inc.
October 2005

3. Planning and Zoning

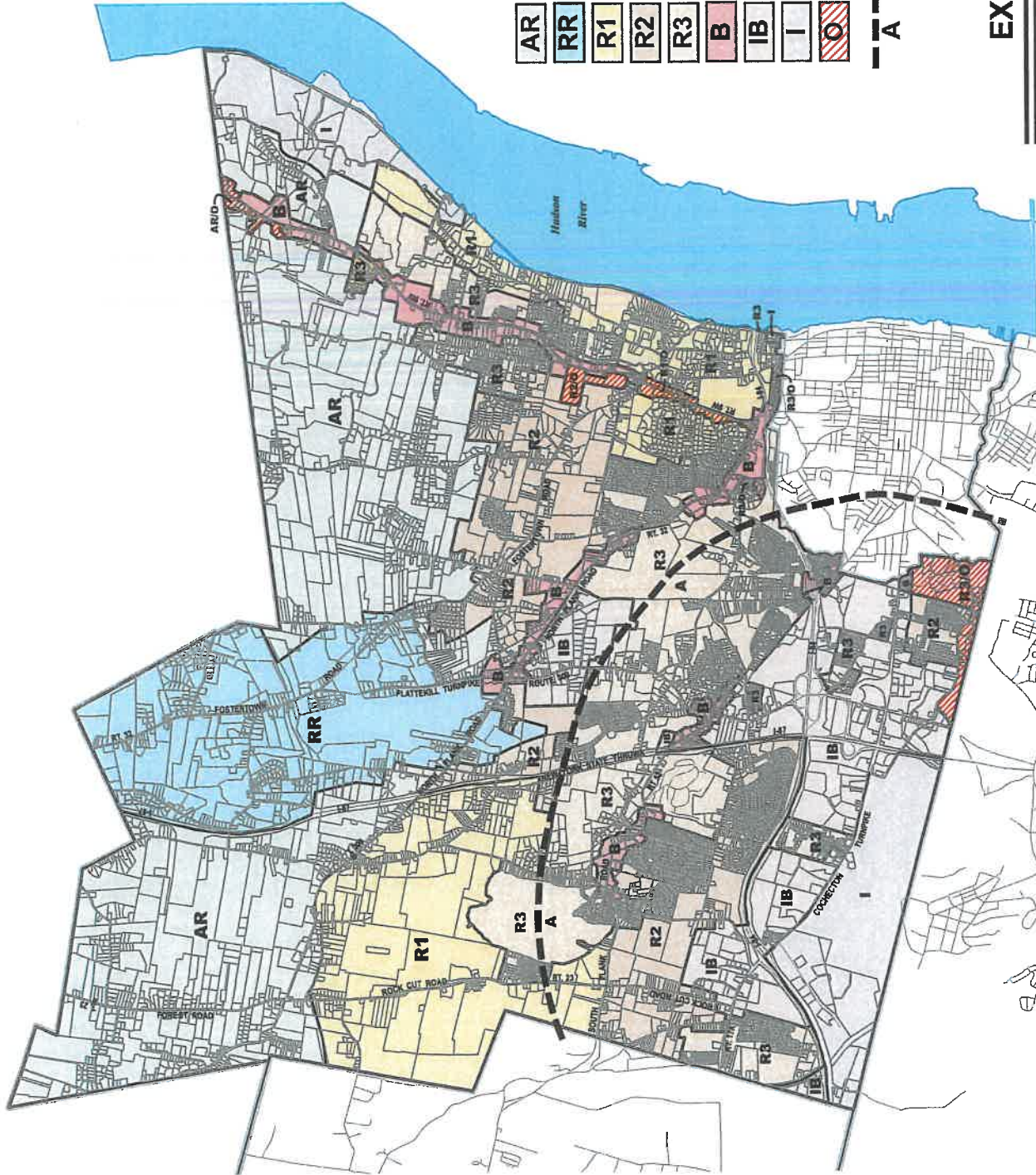
A. Existing Conditions

Planning and zoning in the Town of Newburgh is a very important municipal activity with far reaching implications. Decisions that are made today can impact a resident's day-to-day activities, in addition to affecting the future well being of the community. In order to understand existing planning and zoning conditions many different factors related to growth and development need to be examined. There are also a number of trends and conditions that are of particular importance to the Town of Newburgh. These include: recognition of the Town's existing zoning regulations; an awareness of the existing land use and current development activity being proposed in the Town; open space and agricultural trends need to be appreciated; and an understanding of town center, hamlets and community character conditions needs to be provided. Below is a summary of these important factors which together provide an overview of existing conditions for planning and zoning in the Town of Newburgh.

1. Existing Zoning

As shown in the following *Existing Zoning* map (*Exhibit III-8*), the Town's Zoning Code identifies nine different zoning categories. The IB Interchange Business zone is predominately located in and around Interstates 84 and 87, with the exception of a small area adjacent to Route 300. I Industrial uses are permitted south of Route 17 and along Route 9W in the northeast corner of Town. An O Professional Office Overlay district exists along Route 9W and in the southeast corner of Town.

Residential zoning in the Town is generally divided between the lower-density, rural residential areas of the northern half of Town and the higher-density residential areas and commercial corridors in the southern half of Town. Five different zoning districts exist. From least dense to most dense, the districts are: RR Reservoir Residential, AR Agricultural Residential, R-1 Residential, R-2 Residential and R-3 Residential. The following table lists the principal permitted uses and uses requiring site plan approval from the Town's Planning Board for each of the residential zoning districts:



- AR** Agricultural Residential
- RR** Reservoir Residential
- R1** Residential
- R2** Residential
- R3** Residential
- B** Business
- IB** Interchange Business
- I** Industrial
- O** Professional Office Overlay
- A** A-Airport 841' Radius

Exhibit III-8

EXISTING ZONING

COMPREHENSIVE PLAN UPDATE Town of Newburgh, New York

BASE MAP SOURCES: Orange County Water Authority and
Town of Newburgh Zoning Map

Saccardi & Schiff, Inc. - Planning and Development Consultants

Table III-1
Residential Zoning

Residential Districts	Permitted Uses	Uses Subject to Site Plan Approval by Planning Board
RR, Reservoir Residential (Minimum lot area of 2 acres for single-family)	<ul style="list-style-type: none"> • 1-family dwellings, not to exceed 1 dwelling per lot • Municipal buildings and town activities 	<ul style="list-style-type: none"> • Cluster developments for single family detached dwellings (min. lot size of 10 acres) • Substance abuse rehabilitation homes and community residence for the disabled • Public utility structures and rights-of-way
AR, Agricultural Residential (Minimum lot area of 40,000 square feet for single-family)	<ul style="list-style-type: none"> • 1-family dwellings, not to exceed 1 per lot • 2-family dwellings, not to exceed 2 units per lot • Semidetached dwellings, not to exceed 2 units per lot • Municipal buildings and town activities • Agricultural operations 	<ul style="list-style-type: none"> • Cluster developments for 1-family dwellings • Membership clubs • Places of worship • Nursery schools for preschool • Other schools including colleges • Hospitals and nursing homes • Veterinarians offices • Commercial kennels • Mobile home courts • Substance abuse rehabilitation homes and community residence for the disabled • Public utility structures and rights-of-way
R-1, Residential (Minimum lot area of 40,000 square feet for single-family)	<ul style="list-style-type: none"> • 1-family dwellings, not to exceed 1 per lot • 2-family dwellings, not to exceed 2 units per lot • Semidetached dwellings, not to exceed 2 per lot • Municipal buildings and town activities 	<ul style="list-style-type: none"> • Conversion of existing dwellings for multi-family use • Cluster developments • Membership clubs • Places of worship • Substance abuse rehabilitation homes and community residence for the disabled • Public utility and rights-of-way • Marina

Residential Districts	Permitted Uses	Uses Subject to Site Plan Approval by Planning Board
<p>R-2, Residential (Minimum lot area for single-family between 15,000 square feet to 40,000 square feet depending on sewer and water service)</p>	<ul style="list-style-type: none"> • 1-family dwellings, not to exceed 1 per lot • Municipal buildings and town activities 	<ul style="list-style-type: none"> • Conversion of existing dwellings for multi-family use • Cluster developments • Affordable housing • Membership clubs • Places of worship • Nursery schools for preschool • Other schools including colleges • Hospitals and nursing homes • Substance abuse rehabilitation homes and community residence for the disabled • Public utility and rights-of-way • 2-family dwellings, not to exceed 2 units per lot • Semidetached dwellings, not to exceed 2 units per lot
<p>R-3, Residential (Minimum lot area for single-family between 12,500 square feet to 40,000 square feet depending on sewer and water service)</p>	<ul style="list-style-type: none"> • 1-family dwellings, not to exceed 1 per lot • Municipal buildings and town activities 	<ul style="list-style-type: none"> • Multiple dwellings (3- or 4-family dwellings, 1-family attached dwellings, garden-style dwellings) • Conversion of existing dwellings for multi-family use • Cluster developments • Affordable housing • Membership clubs • Places of worship • Nursery schools for preschool • Other schools including colleges • Hospitals and nursing homes • Substance abuse rehabilitation homes and community residence for the disabled • Funeral homes • Cemeteries • Public utility and rights-of-way • Senior citizen housing • 2-family dwellings, not to exceed 2 units per lot • Semidetached dwellings, not to exceed 2 units per lot

2. **Existing Land Use, Current Development Activity, and Build Out Analysis**

Existing Land Use in the Town is depicted in the following map (*Exhibit III-9*). The majority of the Town is comprises single-family residential land uses. High density residential is located in a number of different areas around the Town. Industrial and commercial uses are located along the Town's major corridors, particularly around Interstates 84 and 87 and Route 17K. Recreation and entertainment, community services, and public service uses can be found throughout the community. Agriculture, vacant, and wild and forest lands are mostly located in the northern part of Town.

The fastest growing land use in the Town of Newburgh is residential. Between 1985 and 1999 residential land uses increased by five percent and now account for approximately 36 percent of all land uses in the Town. Growth and development is occurring with increased pace in specific parts of the Town, where a combination of factors are particularly influential, including: existing zoning, which permits multi-family residential adjacent to single-family neighborhoods; the availability of water and/or sewer service; large parcels of available and developable vacant land; and, farmland which is becoming increasingly uneconomical to maintain for agricultural uses. The *Major Development Activity and Open Space Components* map on the attached page (*Exhibit III-10*) is provided to show where major residential development activity is occurring, the location of large parcels of vacant and open space land, and the remaining areas of agricultural lands within the Town.

Major residential development appears to be concentrating in the more developed southern half of Town, but also increasingly in the central and northeastern portions of Town. In the southern part of Town, State Route 17K is a magnet for development, given its proximity to Interstates 84 and 87, as well as other major roads such as State Route 300. The single largest recent development in Town, the Meadow Winds project, is also located in the southern part of Town, off of State Route 52. Since its construction, a number of concerns have been raised about the Meadow Winds project including the impact on viewsheds and community aesthetics. In part, because of this, the Town felt it was necessary to prepare a Comprehensive Plan Update in order to identify tools and strategies that would allow the Town to more proactively incorporate contemporary design standards.

Exhibit F

2019 UPDATE

Adopted May 2019



ORANGE COUNTY, NEW YORK
**COMPREHENSIVE
PLAN**



ORANGE COUNTY DEPARTMENT OF PLANNING

transportation (both motorized and non-motorized), central water and sewer services, dense housing, and other infrastructure that enables efficient and logical development.



Fig. 20. The entirety of the City of Middletown was designated a Priority Growth Area according to the 2010 Priority Growth Area update.

The Priority Growth Areas are divided into three categories: Growth Areas, Local Centers, and Transit Centers.

i. Growth Areas

Growth Areas include the cities and villages of the County where growth has historically occurred, with some outlying areas where growth is projected and could potentially be accommodated. Most of the Areas include a prominent central business district, regional civic and employment sites, a mix of land use types and intensities, pedestrian-oriented neighborhoods, access to major transportation systems, and a diversity of housing, community and commercial activities.

Within the Growth Areas, the County encourages additional urban development within those areas of higher density such as cities, villages and hamlets. Appropriate development includes commercial,

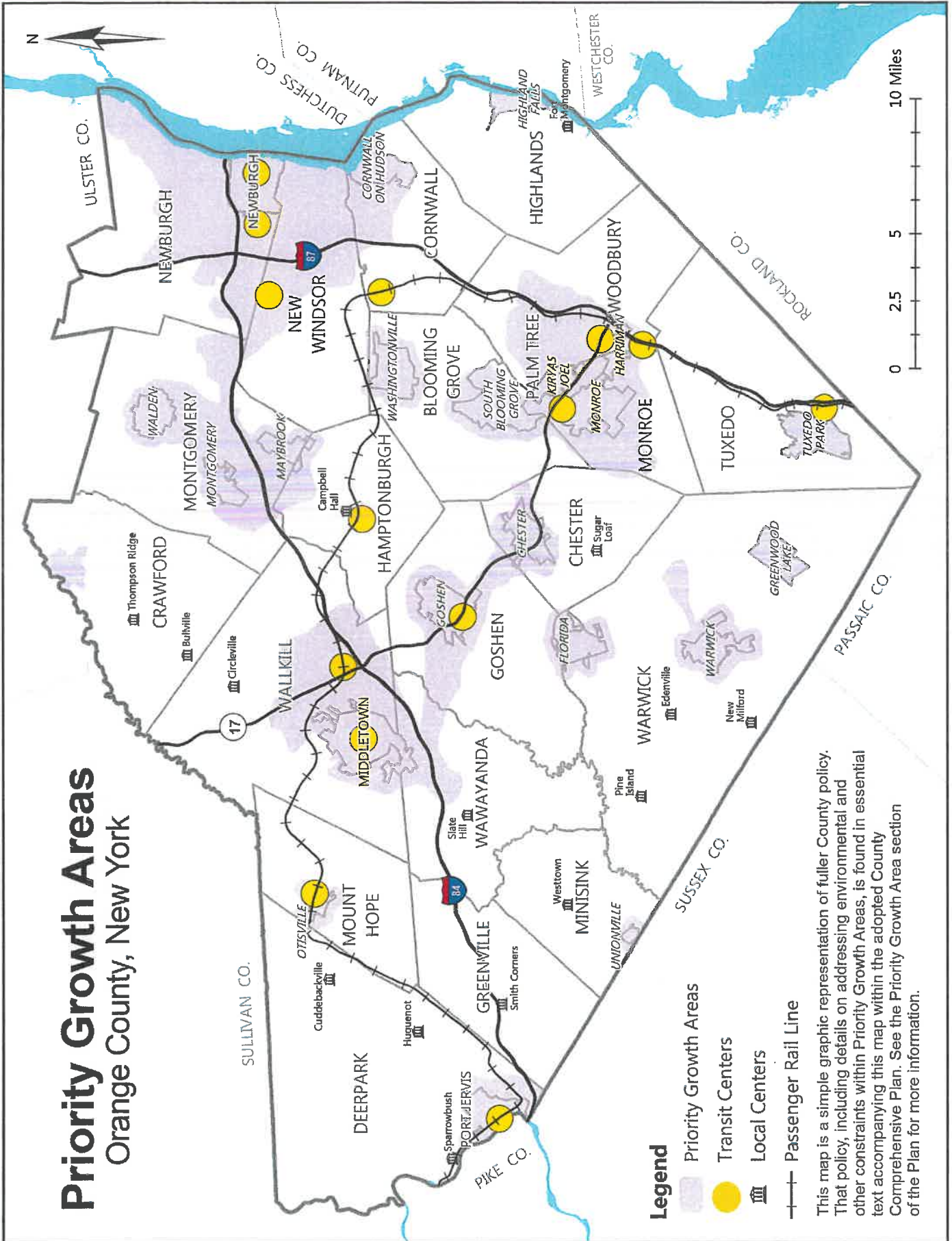
appropriate industrial, higher density residential, and community service uses. The use of infill construction and mixed-use building development as methods of revitalization are especially appropriate in these areas. While the County encourages growth within the Areas, it is critical to note that growth should be sustainable and be based on the available infrastructure and other resources of that community; water and sewer service are two of the most critical and often scarce commodities that should be considered when a new development is proposed. The Growth Areas are intended to be able to accommodate growth that is projected for the County, considering the factors discussed within this section, and typically include:

- Centralized water and sewer services
- Land use and zoning allows for a diverse mix of uses and housing types within a walkable area
- Existing municipal plans for development and conservation
- Complete Streets criteria, such as a connected road network, bicycle lanes and accessible sidewalks, along with other facilities to increase safety and ease of use
- Other services and infrastructure that allow for the efficient use of land and relatively low-impact development
- Transit opportunities, including train stations, park and rides, and other intermodal connections
- Neighborhood-scale commercial and institutional uses that are pedestrian friendly

Environmental and conservation considerations should also be carefully considered within the Growth Areas. Features and areas that should be preserved

Priority Growth Areas

Orange County, New York



Map. 1. Priority Growth Areas Map

Exhibit G

ZONING

185 Attachment 13

Town of Newburgh

Table of Use and Bulk Requirements

IB District – Schedule 8

[Amended 7-15-1996 by L.L. No. 3-1996; 9-23-1998 by L.L. No. 10-1998; 2-10-2014 by L.L. No. 2-2014; 8-20-2014 by L.L. No. 7-2014; 12-29-2014 by L.L. No. 13-2014; 9-11-2017 by L.L. No. 1-2017; 4-9-2018 by L.L. No. 3-2018; 4-9-2018 by L.L. No. 5-2018]

A. Accessory User	B. Permitted Use	C. Permit Use	D. Use Subject to Site Plan Review for the Planning Board	Lot (square feet)	Lot Width (feet)	Lot Depth (feet)	Minimum Required	Inhabitable	Dwelling Units Per Acre	Minimum Permitted	Lot Surface Coverage (percent)	
							Front (feet)	Rear (feet)	Side Yards (feet)	Both Side Yards (feet)	Building Height (feet)	
1. Storage buildings up to 30% of the floor area of the principal building	C1, 7, 11 and 13	1. Municipal buildings and town vehicles		20,000	125	150	NA	NA	NA	NA	35	80%
2. Cafeterias, clinics and recreation facilities for the use of employees engaged on the premises	D5, 7-9, 13 and 18	2. Existing single-family dwellings: a. Without both public sewer and public water systems b. With both public sewer and public water systems c. With either public sewer or public water system only		15,000	100	125	40	40	15	30	35	50%
3. Signs in accordance with § 185-14	D5	3. Existing 2-family dwellings: a. Without both public sewer and public water systems b. With both public sewer and public water systems c. With either public sewer or public water system only		30,000	150	175						
a. Professional	D1-2, D4-13 and 18			22,500								
b. Financial	C14, D1-2, D4-18			25,000	125	150						
c. Personal services	All											
4. Signs in accordance with § 185-14.1	D3											
5. Off-street parking as required by the principal use	All											
6. Truck-loading facilities	D10											
7. Sales of used motor and running vehicles, boats and snowmobiles in conjunction with a franchised dealership	D5, 7-14											
8. Retail banks in accordance with § 185-39	D5, 7-14, 18 and 18			2 acres	200	260	40	50	30	60	35	
9. Satellite earth stations in accordance with § 185-40	D4-7			40,000	150	150	50	60	50	100	35	
10. Accessory use to an existing principal residence as listed for the R-1 District	D1-4, 12 and 18											
11. Restaurants and conference and banquet facilities	D8 and 13			5 acres	300	300	60	60	50	100	40	30
12. Retail outlets	D8 and 13			3 acres	300	300	60	60	50	100		
13. Swimming pools, tennis courts and other recreational facilities, including related cabanas	D3, 7-9, 12, 17 and 11											
14. Car wash				40,000	150	150	50	50	30	80	40%	80%

Proposed deletion of text.

NOTES:
1. Minimum 1,500 square feet of lot area per guest room.
2. These requirements shall not be applicable to a school or college which utilizes all or part of an office building for classroom space. Such a use shall meet the bulk requirements of use DS.

NEWBURGH TOWN CODE

Table of Use and Bulk Requirements
IB District – Schedule 8
(Cont'd)

A. Accessory Uses	B. Permitted With	C. Permitted Uses	D. Uses Subject to Site Plan Review by the Planning Board	Minimum Required						Inhabitable		Minimum Permitted		Lot Surface Coverage (percent)	
				Let Area (square feet)	Let Width (feet)	Let Depth (feet)	Front Yard (feet)	Rear Yard (feet)	1 Side Yard (feet)	Back Yard (feet)	Back Yard (feet)	Back Building Height (feet)	Dwelling Units Per Acre		Lot Building Coverage (percent)
15. Motor vehicle rental agency	D10, 11 and 12		9. Warehouse, storage and transportation facilities, including parking lots, not within 500 feet of a residential zone.			50									
16. Storage area for motor vehicle dealerships for storage of vehicles without relationship to normal parking standards	D10		10. Dealership of new motor and camping vehicles, mobile homes, boats and automobiles, including repair and service facilities in accordance with § 185-28.			50									
17. Eating and drinking facilities or food preparation shops not offering full table service	D1-4		11. Motor vehicle service stations and mobile services, car wash and rental agency, in accordance with § 185-28.			50								20%	
18. Cargo storage containers in accordance with § 185.15.1	C1, 05, 7, 11 and 13		12. Hotels and motels in accordance with § 185-27.	3 acres	200	200	50	60	60	50	100			25%	30
			13. Amusement parks in accordance with § 185-41.	10 acres	400	400	60	60	60	50	100			25%	40
			14. Public utility structures and utility-ways	NA	NA	NA	NA	NA	NA	NA	N/A			20%	35
			15. Self-storage centers in accordance with § 185-35	3 acres	100	125	80	40	40	30	60			30%	15
			16. Affordable housing in accordance with § 185-48												
			17. Senior citizen housing in accordance with § 185-48												
			18. Travel center in accordance with § 185-48.1*	12 acres	400	400	60	60	60	50	100			30%	35
			19. Schools and colleges for general and technical education with related facilities†	5 acres†	300†	300†	60†	60†	60†	50†	100†			30%†	40†

NOTES:
 * Minimum 1,500 square feet of lot area per guest room.
 † (Reserved)
 ‡ (Reserved)
 § These requirements shall not be applicable to a school or college which utilizes all or part of an office building for classroom space. Such a use shall meet the bulk requirements of use D5. (Adopted 9-24-1998 by L.L. No. 10-1998)
 ¶ (Reserved)

Exhibit H

§ 185-42. Fast-food, drive-thru and drive-up establishments. [Amended 7-15-1996 by L.L. No. 3-1996; 9-23-1998 by L.L. No. 10-1998]

- A. Compatibility. Before approving any fast-food, drive-up or drive-thru establishment, the Planning Board shall consider:
- (1) Vehicular traffic movements and potential hazards to pedestrian safety. All drive-thru aisles shall exit into a parking area or onto a side street and not directly onto Routes 9W, 17K, 32, 52 or 300.
 - (2) Proposed signs, lighting, speaker noise where residential properties are located nearby and landscaping.
 - (3) Parking shall be adequate for the type of facility proposed, with three additional short-term spaces devoted specifically for pick-up or order delays for each drive-up, drive-thru, walk-up or pickup window or area inside or outside of the building.
 - (4) Public roads and internal drive aisles shall not be blocked by waiting drive-thru traffic.
 - (5) Parking areas and circulation drives shall be adequately separated so as to avoid conflict between parking cars and waiting drive-thru traffic.
 - (6) Adequate stacking space will be provided for waiting drive-thru vehicles such that these vehicles do not interfere with site vehicular or pedestrian circulation.
 - (7) The site plan checklist for parking lot area traffic and pedestrian movements/safety concerns shall be reviewed in preparation of plans.
- B. Conditions. Any such use shall meet the following conditions of operation:
- (1) Provision of sufficient security to prevent the use of the premises as a loitering place during hours of operation.
 - (2) Provision of adequate facilities and personnel for disposal of trash and other debris.
 - (3) Provision for continuing maintenance of the exterior of the building and the grounds, including landscaping, signs and policing of litter.



David Smith <davidbsmith1992@gmail.com>

FW: Traffic Improvements; Proposed Popeyes at Dairy Queen site

1 message

Mark Taylor <MTaylor@riderweiner.com>
To: David Smith <davidbsmith1992@gmail.com>

Fri, Dec 16, 2022 at 10:27 AM

Dave,

Thought this might be useful information for the Comprehensive Plan as well.

Best,

Mark

From: Kenneth Wersted <KWersted@cmellp.com>
Sent: Friday, December 16, 2022 8:49 AM
To: Mark Taylor <MTaylor@riderweiner.com>; Patrick Hines <PHines@mhepc.com>
Cc: Nicholas M. Ward-Willis <nward-willis@kblaw.com>; Scott Manley <councilmanmanley@townofnewburgh.org>
Subject: RE: Traffic Improvements; Proposed Popeyes at Dairy Queen site

You can start with the attached information sent to the applicants traffic engineer. There may need to be additional follow up once digested.

Ken Wersted, PE (NY, VT), PTOE

Associate

Creighton Manning | 518.689.1834 (d) | www.cmellp.com

From: Mark Taylor <MTaylor@riderweiner.com>
Sent: Thursday, December 15, 2022 3:46 PM
To: Patrick Hines <PHines@mhepc.com>
Cc: Nicholas M. Ward-Willis <nward-willis@kblaw.com>; Scott Manley <councilmanmanley@townofnewburgh.org>; Kenneth Wersted <KWersted@cmellp.com>
Subject: FW: Traffic Improvements; Proposed Popeyes at Dairy Queen site

Pat,

Per the discussion at the staff meeting today, please forward the names of the projects for which the PB required traffic studies which included the Route 52/300 intersection to Nick so that he may submit a FOIL request for copies of the pertinent studies.

Ken if you have time to chime in on the improvements/issues query, it would be appreciated.

Kindest regards,

Mark Taylor

----- Forwarded message -----

From: **Nicholas M. Ward-Willis** <nward-willis@kblaw.com>

Date: Wed, Dec 7, 2022 at 10:53 PM

Subject: RE: Traffic Improvements

To: Scott Manley <councilmanmanley@townofnewburgh.org>

Thank you. would also be helpful to understand if there have been studies and reports prepared that can be provided which explain proposed improvements or what issue(s) are being mitigated.

Nick

Nicholas M. Ward-Willis

Principal Member



Serving the Hudson Valley and Beyond for over 40 Years

[445 Hamilton Avenue, Suite 1500](#)
[White Plains, NY 10601](#)

(914) 946-4777 Ext: 323

(914) 946-6868 (Fax)

nward-willis@kblaw.com

www.kblaw.com

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 Please consider the environment before printing this email message.

From: Scott Manley <councilmanmanley@townofnewburgh.org>
Sent: Wednesday, December 7, 2022 6:24 PM
To: Nicholas M. Ward-Willis <nward-willis@kblaw.com>
Subject: Re: Traffic Improvements

Nick

Yes we have been requesting fair share towards improvements The matrix warehouses across from the mall put in money. I believe for 52 and 300. Polo club put on money for rt 300. Not totally sure which intersection.

A while back we had three developments contribute money for light at Gardnertown and gidney.

Farrell warehouse just north of Jeanie dr and 300 I believe also had to put in

I can also check to see what others were done.

Scott Manley

On Wed, Dec 7, 2022 at 4:43 PM Nicholas M. Ward-Willis <nward-willis@kblaw.com> wrote:

Good Afternoon Scott,

There is one item that was discussed during our November 10th meeting regarding the proposed redevelopment of the Dairy Queen that I wanted to get some further clarification. During the meeting it was discussed that any proposed redevelopment would likely be requested to contribute its fair share toward certain improvements at the Union Avenue/South Plank Road intersection. Can you clarify? Have there been any studies or reports prepared of proposed improvements to the intersection? Have other projects contributed funds and if so, what are those amounts? Is there a cost estimate for the mitigation measures to be implemented? Any information you can provide to further clarify this discussion topic would be appreciated. Thank you.

Nick

Nicholas M. Ward-Willis

Principal Member



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[White Plains, NY 10601](#)

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(914) 946-6868 (Fax)

nward-willis@kblaw.com

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Scott Manley

Deputy Town Supervisor

[Town of Newburgh](#)

[1496 Route 300](#)

[Newburgh, NY 12550](#)

Tel: (845) 564-4552

Fax: (845) 566-1432

E-mail: councilmanmanley@townofnewburgh.org

--

Scott Manley

Deputy Town Supervisor

[Town of Newburgh](#)

[1496 Route 300](#)

[Newburgh, NY 12550](#)

Tel: (845) 564-4552

Fax: (845) 566-1432

E-mail: councilmanmanley@townofnewburgh.org

----- Forwarded message -----

From: Kenneth Wersted <KWersted@cmellp.com>

To: "Kevin Savage" <ksavage@dynamictraffic.com>

Cc: "Matthew Bersch" <mbersch@dynamiccec.com>, "Patrick Hines" <PHines@mhepc.com>

Bcc:

Date: Mon, 21 Nov 2022 18:57:19 +0000

Subject: RE: Newburgh - TIS Adjacent Developments

Hi Kevin. Please refer to the attached and items below.

-Polo Club – 1582 Rt 300 (just south of Jeanne Dr) – 246 apartments, under construction

-Farrell Industrial Park – (just north of Jeanne Dr) – warehouse, approved – unsure if under construction

-The Enclave 1565 Rt 300 – 246 apartments – Was previously approved ~2008, but never constructed. Just returned to the Planning Board, starting the SEQR/scoping process.

-Monarch Woods – 25 Monarch Dr -100 senior apartments – approved recently, not started construction

-WellNow – 1425 Rt 300 – 3,515 SF clinic replacing a 3,645 former bank, approved, I believe construction started but unsure if its complete.

-SAM Newburgh – 1420 Rt 300 (former Showtime Cinemas) – changing to indoor self-storage, 85,000 SF, still under review but would expect approval, however negligible traffic generator

-Resorts World Casino (Newburgh Mall) – was formerly Jennifer Furniture. Approved and under construction or close to opening (Fall 2022 on website but google says “closed”).

-Matrix Warehouse (opposite Newburgh Mall) - +1 million SF of warehouse, approved, under construction. Note that they did not have a tenant so it could be a low generator like a warehouse or something higher like manufacturing. The revised supplement considers 3.0x factor to cover any “what if” conditions if a higher use tenant is landed.

Assuming you are getting/have gotten recent traffic counts, include the projects that are approved and/or under construction. The Enclave should be considered, perhaps as a sensitivity analysis, with/without it. They'll be studying the Rt 300/52 intersection as well.

Note that the Rt 300/52 intersection is a choke point. I most frequently travel through there in the afternoons, and Rt 300 NB can be backed up to the next light (Stop and Shop/Marshalls) and take 2 or 3 cycles to clear. There is a lot of use of the shoulder (Rt 52 EB) to pass left turning traffic, likewise WB traffic will use the right turn lane to pass. It's a busy corner – be prepared for turn restrictions to Rt 52; sidewalks on both frontages; land dedication for widening roads; contribution or the like to improvements at the intersection. If you have any survey/ROW mapping of the other corners, that would be helpful; multiple projects overlap with this study area intersection.

My wife loves Popeye's but the one I frequent does not have a drive-thru. I waited 25 mins for her chicken sandwich on my last visit. Not the norm but 10 min wait is typical. Looks like the next closest one is near Vails Gate (6 miles), then Middletown (25 miles). You can get Dunkin and Mc'ds just about anywhere, but will people be making specific trips to Popeye's because it's not in every town? If you have any local data on queuing or trip gen, that may be useful.

Lastly, when do you expect to submit a formal application?

Cheers,

Ken Wersted, PE (NY, VT), PTOE

Associate

Creighton Manning | 518.689.1834 (d) | www.cmellp.com

From: Kevin Savage ksavage@dynamictraffic.com
Sent: Monday, November 14, 2022 9:33 AM
To: Patrick Hines ; Kenneth Wersted
Cc: Matthew Bersch
Subject: RE: Newburgh - TIS Adjacent Developments

Thanks Pat – attached is the PDF of the Site Plan shared last week. Please let me know if you need any additional information.

Thank you,

Kevin

Kevin Savage, PE, PTOE

Project Manager

Dynamic Traffic

1515 Market Street | Suite 1920 | Philadelphia, PA 19102

PH: (445) 202-5400 Ext. 3224 | Cell: (609) 617-3629

From: Patrick Hines <PHines@mhepc.com>
Sent: Monday, November 14, 2022 8:41 AM
To: 'kwersted@cmellp.com' <kwersted@cmellp.com>
Cc: Kevin Savage <ksavage@dynamictraffic.com>
Subject: FW: Newburgh - TIS Adjacent Developments

Ken

This is a proposed Popeye's on the site of the current Dairy Queen rt 52 and Rt. 300. Can you provide addition info requested .

Kevin

can you send Ken a PDF of the concept site plan



33 Airport Center Drive, Suite 202

New Windsor, NY 12553

Patrick J. Hines

Principal

Office: (845) 567-3100

Fax: (845) 567-3232

phines@mhepc.com | www.mhepc.com



From: Kevin Savage <ksavage@dynamictraffic.com>

Sent: Monday, November 14, 2022 7:56 AM

To: Patrick Hines <PHines@mhepc.com>

Subject: Newburgh - TIS Adjacent Developments

Good Morning Pat,

Hope you had a good weekend. Following up on our pre-application meeting last week regarding the proposed Popeyes on the southwest corner of the intersection of Route 52 & Route 300, we wanted to follow up regarding any potential adjacent developments in the vicinity of this intersection that should be included in the Traffic Impact Study for the project.

At your earliest convenience, would you be able to send over the applicable projects or direct us to another contact that may be able to share the information? Thank you very much for your help.

Regards,

Kevin

Kevin Savage, PE, PTOE

Project Manager



1515 Market Street | Suite 1920 | Philadelphia, PA 19102

PH: (445) 202-5400 | Ext. 3224 | Cell: (609) 617-3629

Additional office locations:

Florida (Delray Beach) - 100 NE 5th Ave | Suite B2 | Delray Beach, FL 33483 | PH: (561) 921-8570

Maryland (Annapolis) - 125 West Street | Annapolis, MD 21401 | PH: (732) 681-0760

New Jersey (Belmar) - 825 8th Avenue | Belmar, NJ 07719 | PH: (732) 681-0760 | Fax: (732) 974-3521

New Jersey (Chester) - 245 Main Street | Suite 110 | Chester, NJ 07930 | PH: (908) 879-9229 | Fax: (908) 879-0222

New Jersey (Lake Como) - 1904 Main Street | Lake Como, NJ 07719 | PH: (732) 974-0198 | Fax: (732) 974-3521

New Jersey (Newark) - 50 Park Place | Mezzanine Level | Newark, NJ 07102 | PH: (973) 755-7200

New Jersey (Toms River) - 40 Main Street | 3rd Floor | Toms River, NJ 08753 | PH: (732) 974-0198 | Fax: (732) 974-3521

Pennsylvania (Lehigh Valley) - 95 Highland Ave | Suite 170 | Bethlehem, Pennsylvania 18017 | PH: (610) 598-4400

Pennsylvania (Newtown) - 826 Newtown Yardley Road | Suite 201 | Newtown, PA 18940 | PH: (267) 685-0276 | Fax: (267) 685-0361

Texas (Austin) - 901 Mopac Expressway South | Barton Oaks Plaza One | Suite 300 | Austin, TX 78746 | PH: (512) 646-2646

Texas (Dallas) – 714 S. Greenville Avenue | Suite 100 | Allen, TX 75002 | PH: (972) 534-2100

Texas (Houston) - 6925 Portwest Drive | Suite 100 | Houston, TX 77024 | PH: (281) 789-6400

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8 attachments

-  **C1 - Polo Club Traffic Impact Study Final.pdf**
3229K
-  **13 - Traffic Study 12-03-2020.pdf**
3261K
-  **996.0602 - Sketch Plan 5 11-02-22.pdf**
3940K
-  **D - 1325.01 Traffic Impact Study.pdf**
2495K
-  **2021-02-12 Maser Traffic Ltr World Resorts.pdf**
1551K
-  **2021-08-18 Revised Supplement to Traffic Impact StudyAug2021.pdf**
1315K
-  **2021-05-14 Matrix TIS no appedices.pdf**
5627K
-  **RE: Newburgh - TIS Adjacent Developments.eml**
29375K



David Smith <davidbsmith1992@gmail.com>

Re: FW: Request to consider amendment to zoning map for Tax Map Parcel Section 4 Block 2 lot 6, 689 NY Rt 32 and Terrizzi Drive

2 messages

Gil Piaquadio <supervisor@townofnewburgh.org>

Fri, Oct 14, 2022 at 9:59 AM

To: John Cappello <jcc@jacobowitz.com>

Cc: "town-clerk@townofnewburgh.org" <town-clerk@townofnewburgh.org>, "councilmanlobiondo@townofnewburgh.org" <councilmanlobiondo@townofnewburgh.org>, "councilmanruggiero@townofnewburgh.org" <councilmanruggiero@townofnewburgh.org>, "councilwomangreene@townofnewburgh.org" <councilwomangreene@townofnewburgh.org>, "councilmanmanley@townofnewburgh.org" <councilmanmanley@townofnewburgh.org>, Mark Taylor <mtaylor@riderweiner.com>, "planningboard@townofnewburgh.org" <planningboard@townofnewburgh.org>, "davidbsmith1992@gmail.com" <davidbsmith1992@gmail.com>, ritesh patel <riteshpatel23@yahoo.com>

John

My concern would be an in-ground fuel tank near Chadwick Lake. our reservoir
That being said it would be considered by the entire Town Board and consultants
Stay well
Gil

On Tue, Oct 4, 2022 at 3:50 PM John Cappello <jcc@jacobowitz.com> wrote:

Dear Supervisor Piaquadio and Town Council members,

My office represents EK Dant, LLC (The Ritesh Patel Family) who own the above referenced property. The Patel family purchased the property with the intent of continuing to operate the existing old convenience store, which at one point include a gas pumps island, that has occupied the property for decades (which they are currently doing) with the intent to substantially renovate or demolish and rebuild the aging facility. Mr. Patel also intends to install a gas pump aisle. At the time of purchase Mr. Patel was unaware that the property was zoned RR residential and the convenience store is a pre-existing nonconforming use. Therefore any redevelopment and improvement of the property is severely restricted.

The property is located with frontage on a NYS Highway Rt. 32 and provides an ideal location for a convenience store so people in the vicinity can pick up items without having to travel far and also gas up on the way to or home from work.

I have been advised that the Town is currently looking at making some amendments to its comprehensive plan and zoning code. Rather than attempting to pursue a costly use variance where the ZBA will be bound by the strict criteria set forth in NYS Town Law, we believe it would be to everyone's interest to pursue an amendment to the zoning map to zone this property as a B (Business) zoning district that allows convenience stores with or without gas pumps. This would allow the property and building to be substantially improved and provide a much more attractive site in an area where a service like this would be greatly appreciated.

We would love to appear at a Town Board workshop meeting or at a comp plan committee meeting to discuss this in more detail. Please let me know if and what works best for all of you

Thank you and I look forward to discussing this project with the board in the near future.

Thanks and have a great weekend!

John Cappello

Partner

Jacobowitz and Gubits, LLP

158 Orange Ave., P.O. Box 367

Walden, NY 12586

(845) 778-2121 x 231

Fax (845) 778-5173

jcc@jacobowitz.com

www.jacobowitz.com

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Gil Piaquadio,
Town Supervisor

1496 Route 300

Newburgh, NY 12550

Phone (845) 564-4552

Fax (845) 566-9486

Mark Taylor <MTaylor@riderweiner.com>
To: David Smith <davidbsmith1992@gmail.com>
Cc: Gil Piaquadio <supervisor@townofnewburgh.org>

Mon, Dec 19, 2022 at 5:00 PM

Dave,

I'm not sure I forwarded this on to you previously for the Committee to address when the time comes.

Best,

Mark

[Quoted text hidden]



David Smith <davidbsmith1992@gmail.com>

FW: Lands of 601 West Rte9W Inc SBL 20-2-53 and 20-2-55

1 message

Mark Taylor <MTaylor@riderweiner.com>
To: David Smith <davidbsmith1992@gmail.com>

Fri, Dec 9, 2022 at 1:31 PM

From: Mark Taylor
Sent: Friday, December 09, 2022 1:31 PM
To: Darren Doce <ddoce12@gmail.com>
Cc: Gil Piaquadio <supervisor@townofnewburgh.org>; Scott Manley <councilmanmanley@townofnewburgh.org>;
planningboard@townofnewburgh.org
Subject: FW: Lands of 601 West Rte9W Inc SBL 20-2-53 and 20-2-55

Dear Darren:

Supervisor Piaquadio requested that I respond to the inquiries in your letter of December 5, 2022.

The Comprehensive Plan Committee (consisting of the Town Board members and Planning and ZBA Chairmen) had a kick off meeting with Planner Dave Smith this fall, reviewed the status of implementation of the previous Comprehensive Plan Update, discussed approaches the current undertaking and certain readily apparent issues in the Town.

The Town was then awaiting news with regard a grant application to fund a substantial portion of the cost of the Comprehensive Plan Update but Gil has since instructed that Dave Smith proceed. The Town is in the process of setting up a mechanism

on the Town's website for the submission of public input on the Comprehensive Plan. The Committee will likely conduct a few meetings at different locations in the Town where it solicits input before developing an updated Plan and then conducting a public hearing. It will then refer a recommended updated Plan to the Town Board to conduct its own hearing (with Council members also sitting as Committee members, the proceedings will be somewhat duplicative, but still required.)

The Supervisor has discussed also potentially having regularly scheduled Committee meetings with the Planner in attendance for member discussion, but we will need to see how that works out scheduling wise, etc. Property owner's specific requests for rezoning or creating or extending overlay districts will likely first be addressed during these meetings and whether the specific owners will be allowed to present at that time or await public input sessions will be at the discretion of the Committee.

All Committee meetings will be open to the public. Notice will typically be given in advance on the Town's website, so I'd recommend you check it on a regular basis.

You can submit supplemental information in support of a rezoning request at any time to the Supervisor, as I believe he is maintaining a file with zoning requests from property owners for distribution to the Committee members and planner when the time is appropriate.

Should you have additional questions or concerns, please do not hesitate to contact me.

Best wishes for the Holidays!

Mark Taylor

 **Request for Storage Locker Overlay (Update 12-5-22).pdf**
227K

Vincent J. Doce Associates
Land Use Consultants
5 Lincolndale Road
Campbell Hall, NY 10916
Tel: 845-561-1170

September 23, 2022

Newburgh Town Board
1496 Route 300
Newburgh, NY 12550

Re: Town of Newburgh Tax Parcel SBL 20-2-53 & 55
Lands of 601 West Rte 9W, Inc.
Request for Self-Storage Center Overlay District

Dear Supervisor Piaquadio and Newburgh Town Board Members:

We have recently been engaged to review the above captioned parcel and make recommendations as to its best use. After reviewing the property history, studying its existing uses, and the uses in the adjacent neighborhood, we have concluded that storage facilities would be an excellent choice, particularly in conjunction with an innovative approach.

Said use will allow the property and neighborhood to be enhanced.

It will allow removal of the existing buildings.

It will involve new construction.

It will require attractive site improvements and landscaping.

The property is located on the westerly side of 9W, just southerly of the existing 9W Self-Storage Center Overlay District.

A location map accompanies herewith, said map depicting the subject property and the existing Overlay District.

Will you kindly advise as to your consideration and direction?

Thank you for your time and indulgence.

Sincerely,

Darren C Doce

Darren C. Doce



EXISTING SC OVERLAY ZONE

SOUTHERLY BOUNDARY OF SC OVERLAY ZONE

SUBJECT SITE

LATTINTOWN RD

OVERLOOK DR

HIGHLAND TER

MCCALL PL

9W

9W

9W

9W

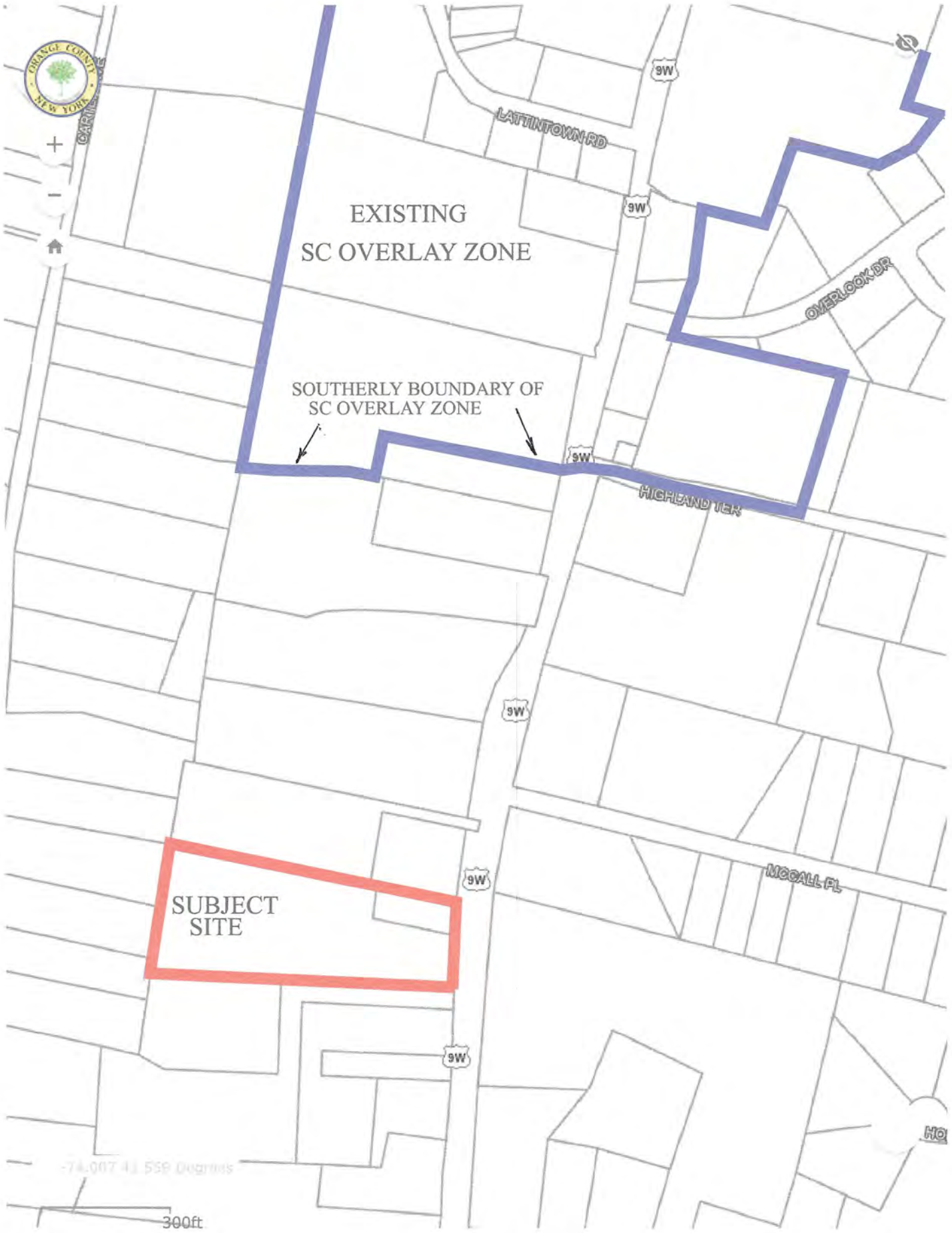
9W

9W

HO

-74.017 41 559 Degrees

300ft





David Smith <davidbsmith1992@gmail.com>

FW: Critical Environmental Area permit approvals

1 message

Mark Taylor <MTaylor@riderweiner.com>

Wed, Nov 23, 2022 at 4:09 PM

To: Gil Piaquadio <supervisor@townofnewburgh.org>, Scott Manley <councilmanmanley@townofnewburgh.org>, Joe Mattina <mattina-bldgdept@townofnewburgh.org>, Gerald Canfield <codecompliance@townofnewburgh.org>

Cc: David Smith <davidbsmith1992@gmail.com>

From: planningboard@townofnewburgh.org <planningboard@townofnewburgh.org>

Sent: Wednesday, November 23, 2022 3:06 PM

To: Mark Taylor <MTaylor@riderweiner.com>

Cc: 'Patrick Hines' <PHines@mhepc.com>; 'Dominic Cordisco' <cordisco@gmail.com>; 'Jim Campbell' <campbell-bldgdept@townofnewburgh.org>; 'Kathleen Wersebe' <kwersebe@mhepc.com>; 'Kenneth Mennerich' <kmennerich@att.net>; 'Frank S. Galli' <FFSG80@AOL.com>; 'Cliff Browne' <CBrowne@xrite.com>; 'John A. Ward' <JSWard74@msn.com>; 'David Dominick' <david.dominick10@gmail.com>; 'Stephanie DeLuca' <stephaniedeluca.pb@gmail.com>

Subject: RE: Critical Environmental Area permit approvals

Mark-the Planning Board will consider this matter for board business at our meeting of 12/15.

Thank you.

John P. Ewasutyn, Chairman

Town of Newburgh Planning Board

[21 Hudson Valley Professional Plaza](#)

Newburgh, NY 12550

(845) 564-7804 – Phone

(845) 564-7801 – Fax

Email – planningboard@townofnewburgh.org

From: Mark Taylor <MTaylor@riderweiner.com>

Sent: Wednesday, November 23, 2022 1:16 PM

To: Joe Mattina <mattina-bldgdept@townofnewburgh.org>; planningboard@townofnewburgh.org

Cc: Gerald Canfield <codecompliance@townofnewburgh.org>; Gil Piaquadio <supervisor@townofnewburgh.org>; Scott Manley <councilmanmanley@townofnewburgh.org>; Dominic Cordisco <dcordisco@drakeloeb.com>;

engineering@townofnewburgh.org; Pat Hines <PHines@mhepc.com>

Subject: RE: Critical Environmental Area permit approvals

These could potentially be even considered as a Board business item by the Planning Board without an appearance required so applicants could avoid consultant expense.

Best,

Mark

From: Mark Taylor

Sent: Wednesday, November 23, 2022 1:40 PM

To: Joe Mattina <mattina-bldgdept@townofnewburgh.org>; planningboard@townofnewburgh.org

Cc: Gerald Canfield <codecompliance@townofnewburgh.org>; 'Gil Piaquadio' <supervisor@townofnewburgh.org>; Scott Manley <councilmanmanley@townofnewburgh.org>; Dominic Cordisco <dcordisco@drakeloeb.com>; engineering@townofnewburgh.org; Pat Hines <PHines@mhepc.com>

Subject: Critical Environmental Area permit approvals

Joe, John,

John Ewasutyn referred Ken Lytle to me with regard to an application for a building permit for a garage accessory to a residence located in the Chadwick Critical Environmental Area.

Ken advised that the permit application had been referred to the Planning Board based upon the provisions of Zoning Code Section 185-22C which provides in pertinent part:

Critical environmental areas. All existing land uses and all proposed construction, land management activities and land development within any critical environmental area shall be subject to review by the Planning Board with regard to environmental performance standards that may be adopted by the Planning Board and revised from time to time and shall be considered as Type 1 actions under the State Environmental Quality Review Act (SEQRA).^[1] Such environmental performance standards may require increasing the minimum bulk standards listed in Article **IV**, Schedules of District Regulations, of this chapter.

(1)

Chadwick Lake Critical Area of Environmental Concern. The following standards shall apply to all development proposed within the Chadwick Lake Critical Area of Environmental Concern:

(a)

No land development activity or accessory use of any kind that involves the construction of impervious surfaces, sewage treatment or discharge of effluent shall occur within 200 feet of the shoreline of Chadwick Lake.

(b)

No septic tank or leaching field shall be located within 150 feet of any perennial stream that is tributary to Chadwick Lake nor on any of the following soil types as mapped in the soil survey of Orange County published by the United States Department of Agriculture, October 1981, or a more recent edition, if any:^[2]

[2]

Editor's Note: In the original copy of L.L. No. 4-1991 no soil types were listed.

(c)

Any proposed construction or land management activities within the Chadwick Lake Critical Area of Environmental Concern shall be required to submit a plan for approval by the Planning Board indicating:

[1]

The total site area to be disturbed by construction and site development and by land management activities, such areas not to exceed 20% of the gross site area.

[2]

Specific measures for controlling soil erosion and the transport of soil by storm runoff into Chadwick Lake or its tributaries.

[1]

Editor's Note: See Environmental Conservation Law § 8-0101 et seq.

Note however, that the SEQR regulations do not give municipalities authority to designate all actions as Type I actions, only Unlisted Actions. Section 617:4 state a Type I action can consist of::

any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

Section 617.14 provides:

All agencies are subject to the lists of Type I and Type II actions contained in this Part, and must apply the criteria provided in section 617.7(c) of this Part. In addition, agencies may adopt their own lists of Type I

actions, in accordance with section 617.4 of this Part and their own lists of Type II actions in accordance with section 617.5 of this Part.

The Town has by local law designated actions in the Chadwick CEA as Type I Actions pursuant to the authority granted under the above provisions both in Zoning Code Section 185-22 C and in Section 100-11.

However, it had authority only to do so with regard to Unlisted Actions, not Type II actions:

The SEQRA regulations list of Type II actions includes:

construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;

So, the Town is bound by the SEQRA regulations to treat these applications as Type II actions and cannot elevate them to Type I status.

With regard to the referral and Planning Board plan submission required under Subsection 2 C 1 and 2, the plan required to be submitted appears to be similar or equivalent to one that might be required for a stormwater permit rather than a site plan application, but more limited in scope than that required under Chapter 157.. Section 157-4, with regard to stormwater permits, does exempt developments that disturb less than 10,000 sq. ft. as well as residential developments consisting of single-family dwellings, which disturb less than one acre and not requiring construction of any new public or private road and not part of a larger development scheme, so the plan is not required to meet the same standards as for a stormwater permit and only must meet 2C 1 and 2.

Based upon the analysis above, I would advise that the Planning Board should treat these referrals as a Type II action with the only fee to be for consultants review (MHE's engineering review of the plan's adequacy), and likely handled in one appearance, with the approval limited to the plan showing the stormwater/erosion and sediment control protections afforded to Chadwick Lake and its tributaries and based on the MHE review.

I'm copying Gil and Scott in case they want to consider any legislative relief either now or as part of the Comprehensive Plan process.

Best,

Mark



David Smith <davidbsmith1992@gmail.com>

FW: Petition for Zoning Law Amendment (15789-001)

1 message

Mark Taylor <MTaylor@riderweiner.com>
To: David Smith <davidbsmith1992@gmail.com>

Thu, Nov 10, 2022 at 2:43 PM

From: John Cappello <jcc@Jacobowitz.Com>
Sent: Thursday, November 10, 2022 11:42 AM
To: supervisor@townofnewburgh.org; councilmanlobiondo@townofnewburgh.org; councilmanruggiero@townofnewburgh.org; councilwomangreene@townofnewburgh.org; councilmanmanley@townofnewburgh.org
Cc: Mark Taylor <MTaylor@riderweiner.com>; ['planningboard@townofnewburgh.org'](mailto:planningboard@townofnewburgh.org) <planningboard@townofnewburgh.org>
Subject: FW: Petition for Zoning Law Amendment (15789-001)

Dear Supervisor Piaquadio and Council members,

In follow up to our recent meetings and discussions attached please find an executed petition requesting an amendment to the zoning map for the Stewart Commons properties from B to IB or in the alternative an amendment to the zoning code to permit warehouse uses as part of a "Business Park" in the B zoning district. The reasons supporting the request are set forth in the petition as well as in a memo that I emailed to all of you late September.

I am also copying Planning Board Chair Ewasutyn as a member of the Comp Plan committee (I do not have the email of other members) in the hopes that the committee will review the petition and provide comments as necessary so we can consider this (if you all are so inclined) in as expedited a manner as possible.

Thank you for your consideration on this matter and I look forward to working with the Board and Committee on what should be an exciting project for the Town.

Have a great weekend

John Cappello

Partner

Jacobowitz and Gubits, LLP

158 Orange Ave., P.O. Box 367

Walden, NY 12586

(845) 778-2121 x 231

Fax (845) 778-5173

jcc@jacobowitz.com

www.jacobowitz.com



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3 attachments

-  **Newburgh--Stewart Commons Executed Petition for a Zoning Law Amendment.pdf**
186K
-  **Map-Section 86.pdf**
163K
-  **Survey.pdf**
2231K

TOWN BOARD: TOWN OF NEWBURGH, NEW YORK

-----X
In the Matter of the Petition

Of

Stewart Commons LLC

**PETITION FOR A
ZONING LAW
AMENDMENT**

For an amendment to the Zoning Law
of the Town of Newburgh, New York.

-----X

TO: THE TOWN BOARD OF THE TOWN OF NEWBURGH, NEW YORK

The Petitioner Stewart Commons LLC (hereinafter “Stewart Commons”) respectfully submits this petition to request one of the following actions as an amendment to the Town’s Zoning Law and/or map as follows:

1. Petitioner is the owner of property located at 245 N.Y.S. Route 17K, comprised of five (5) parcels identified on the Tax Maps as SBL 89-1-25.22, 89-1-26, 89-1-30.2, 89-1-31& 89-1-30.1 (together, the “Stewart Commons Site”). The Stewart Commons Site was formerly located in the Interchange Business (IB) Zoning District and since 2005 site is now located in the Business (B) Zoning District in the Town of Newburgh. A copy of the relevant portion of the tax map and survey of the Stewart Commons Site is attached as Exhibit “A”.

2. Warehouse uses are a permitted subject to site plan approval from the Town of Newburgh Planning Board in the IB zoning district.

3. The Business Zoning District allows the Stewart Commons Site to be developed as a business park as that term is defined by Section 185-41 of the Town’s Zoning Law. The development of the Stewart Commons Site as a business park requires site plan approval from the Planning Board. The definition of” Business Park” includes warehouses as one of the mix of uses permitted to be developed within a Business Park.

4. However, the zoning code requires that any business park only include those uses that are permitted within the underlying zoning district. Therefore, warehouses are not allowed as part of a business park within the underlying Business Zoning District.

5. As a result of the restrictive wording of the Town's Zoning Law, properties situated in the Town's Business Zoning District which could and would otherwise be developed for commercial use are limited in their viability as all uses within the definition of business park are not available without a zoning amendment.

6. Since the adoption of the 2005 Comprehensive plan and subsequent zoning amendments that rezoned the Stewart Commons site to remove warehouses as permitted use either standalone or part of a business park the development landscape in the region has changed. The evolution of the internet has ushered in an era of online shopping which has had a tremendous impact on the viability of retail store development and has allowed people to work from home which has significantly impacted the viability of office development. This trend away from retail and office development has only been exacerbated by the recent epidemic resulting in disruption of the supply chain throughout the nation.

7. Due to the changing development pattern the likelihood of developing the Stewart Commons site for retail or office use which was a real possibility in 2005 has all but disappeared in 2022 and the foreseeable future.

8. The Stewart Commons Site is, however, well situated for warehouse development. It is located on Route 17K, a state highway, at the intersection of Interstates 84 and near its intersection with I-87 (the "Thruway").

9. In addition, a review of the existing zoning map for the Town clearly demonstrates that the size of the Stewart Commons site is several times the size of virtually all the other sites located in the B zoning district and consistent with the size and proximity to major highways of the majority of sites located in the IB zoning district.

10. Given the development trends coupled with the location and size of the Stewart Commons site, Stewart Commons respectfully requests that the Town Board to reconsider the zoning of this property and either amend the zoning designation of the property back to IB or in the alternative, Stewart Commons requests that the Town Board amend the Zoning Law to delete the following language from Section 185-41(B)(1): “that are permitted in the district in which the property is situated”. By doing so, the Town would allow business parks to be developed with all of the uses customary to such uses, including warehousing.

11. In anticipation of submitting this petition, Petitioners recognized the fact that the Stewart Commons Site is adjacent to Colden Park, a residential neighborhood. Therefore, the principals of Stewart Commons met during the course of several years on several occasions with representatives of the Colden Park Homeowners Association (the “HOA”) and Colden Park residents (collectively, “Colden Park”) to solicit their input and support not only for this Zoning Law amendment, but also for the eventual development of the Stewart Commons Site

12. Among the concerns of the residents of Colden Park were the provision of a substantial buffer between any building located on the Stewart Commons Site and the properties on Windwood Drive, mitigation of traffic impacts on 17K and vicinity, mitigation of any sound emanating from the development and the appearance of the development.

13. In response to those concerns, the prospective developers of the site made additional commitments to the Colden Park Residents and the Town Board which include;

- a. To provide a proposed buffer between any warehouse development and the Colden Park Development and the place a conservation easement, restrictive covenant or deed the land to the Town to ensure that that land will only be used for buffer or parkland,
- b. To build a sound retention wall between the building and Colden Park to decrease any potential sound impact to the residents of the development.
- c. Establish a fund of \$10,000,000.00 to be used to fund road improvements in around the site, fund improvements to the buffer/ potential park that is to be offered by Petitioners and/or any other item deemed desirable by the Town.
- d. Fund the reasonable costs of the Colden Park residents to hire an appropriate consultant to review the development plan and comment on behalf of the residents

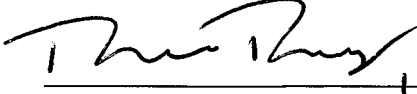
14. As the Committee formed by the Town initiates its review of and makes recommendations for updates to the 2005 Town of Newburgh Comprehensive Plan we request that they take this petition into account and make recommendations on the requested amendments in as expedient a manner as possible.

15. Stewart Commons seeks this Zoning Law amendment to allow the development of the property as detailed above. The Zoning Law amendment would be consistent with the surrounding zoning, the majority of which is IB, and community character, and subject to the recommendations outlined above, has the support of the surrounding neighborhood of Colden Park.

WHEREFORE, Stewart Commons respectfully requests that an amendment to the Zoning Law of the Town of Newburgh be adopted in accordance with the foregoing.

Dated: November 9, 2022


Stewart Commons LLC

By:  *member*
Richard Rowley, Member
Stewart Commons LLC

STATE OF NEW YORK)
) ss.:
 COUNTY OF ORANGE)

Richard Rowley, being duly sworn, deposes and says:

I am a member of Stewart Commons LLC, the limited liability company named in the within petition to amend the Zoning Code/Map of the Town of Newburgh, New York; I have read the foregoing petition and know the contents thereof and the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.



Richard Rowley

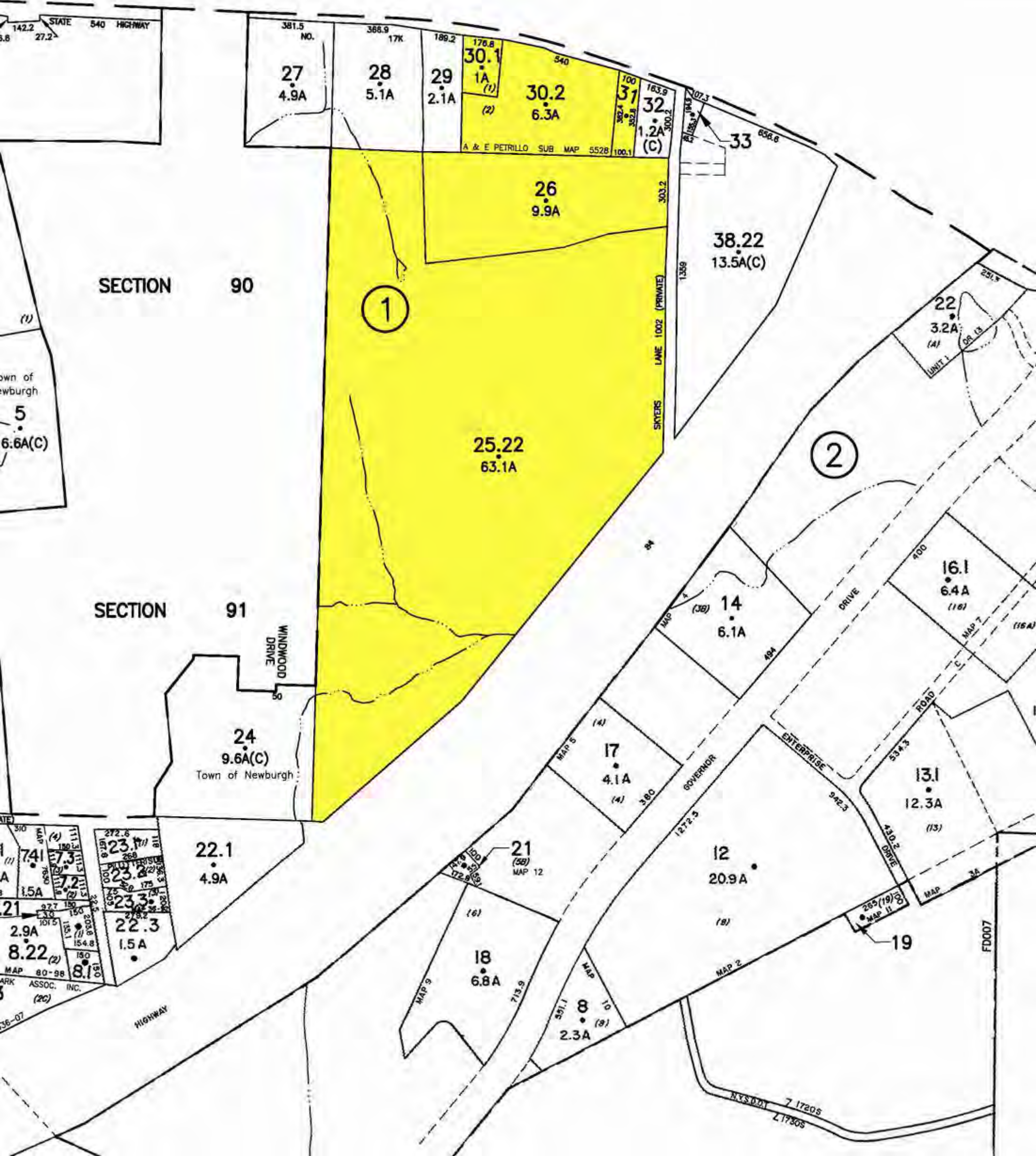
Sworn to before me this
9th day of November, 2022.



Notary Public

JENNIFER CASILLAS
 NOTARY PUBLIC, STATE OF NEW YORK
 NO. 01CA6217090
 QUALIFIED IN ORANGE COUNTY
 COMMISSION EXPIRES FEBRUARY 8, 20²⁴

SECTION 86



381.5 NO. 27 4.9A
366.9 17K 28 5.1A
189.2 29 2.1A
176.8 30.1 1A (1) (2)
540 30.2 6.3A
100 31 100.1
163.9 32 1.2A (C)
A & E PETRILLO SUB MAP 5528

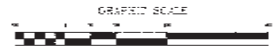
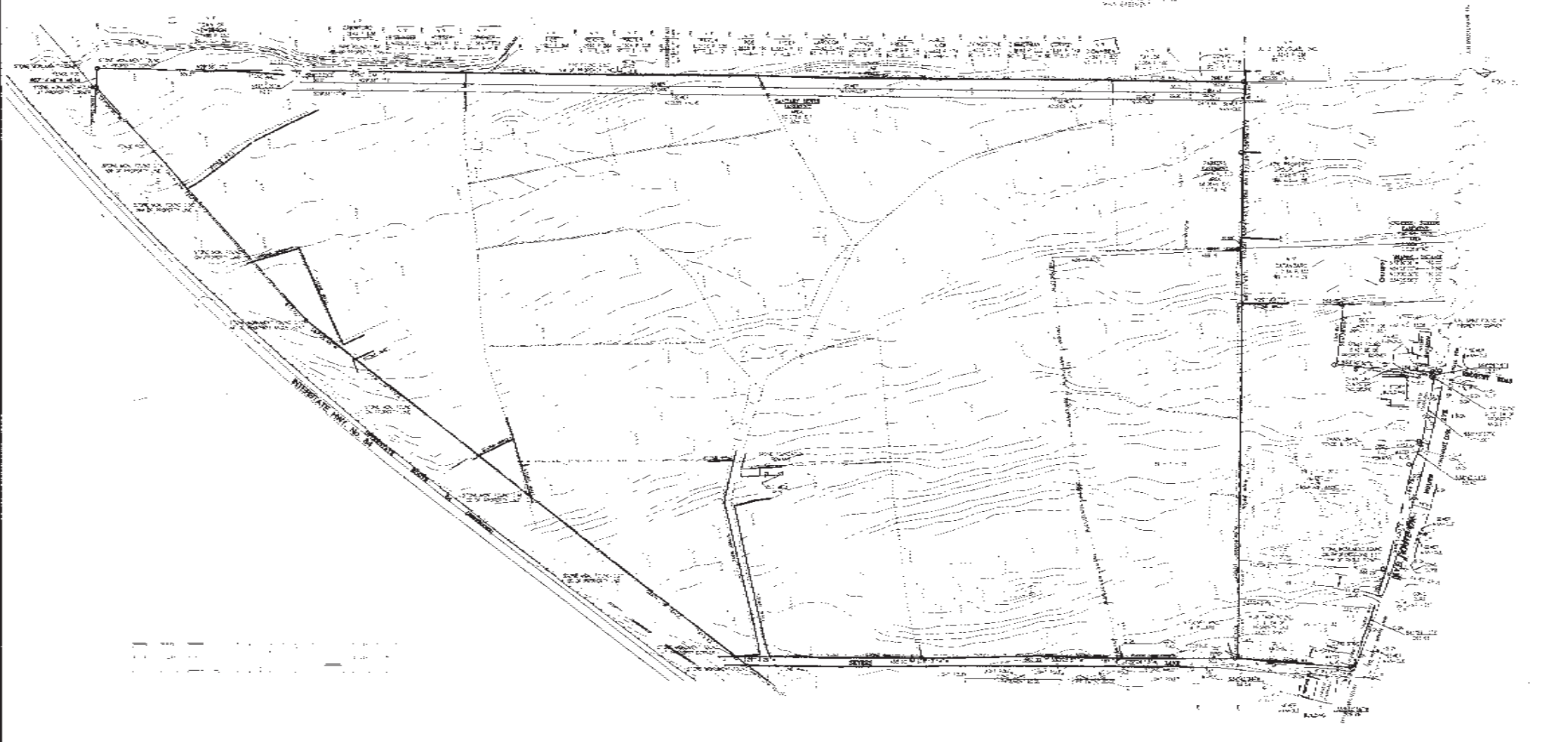
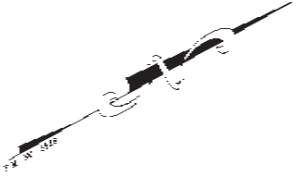
26 9.9A
25.22 63.1A
24 9.6A(C)
Town of Newburgh
WINDWOOD DRIVE

33 38.22 13.5A(C)
22 3.2A (A)
16.1 6.4A (16)
14 6.1A (3B)
17 4.1A (4)
13.1 12.3A (13)
12 20.9A (8)
18 6.8A (16)
8 2.3A (9)
19
GOVERNOR DRIVE
ENTERPRISE ROAD
400 DRIVE
430.2 DRIVE
534.3
1272.5
1272.5
713.9
7172.5
7172.5
FD007

23.1 22.1 4.9A
23.2
23.3
22.3 1.5A
21 2.9A 8.22 (2)
8.1
MAP 80-98
MARK ASSOC. INC. (2C)
36-07
HIGHWAY

NOTES:

1. THIS SURVEY IS SUBJECT TO ANY RIGHTS OF A TITLE COMPANY.
2. SURVEY MADE BY THIS FIRM AND IS NOT VALID AT THE TIME OF SURVEY UNLESS THE SURVEY IS MADE BY THIS FIRM.
3. REFERENCES TO ANY OTHER SURVEYS OR RECORDS ARE MADE BY THIS FIRM AND ARE SUBJECT TO THE SAME TERMS AND CONDITIONS AS THIS SURVEY.



LANC & TULLY ENGINEERS AND SURVEYORS, P.C.		PL. 200 875 50 00 SUITE 200, 1000 N. 10TH ST. ANN ARBOR, MI 48106-1000
SURVEY PREPARED FOR		
SCOPE DEVELOPMENT, LLC		
TOWN OF ANN ARBOR SPRING CREEK, MI 48106		
DATE	BY	CHECKED

AREAS:

AREA 1	0.0000 AC	AREA 2	0.0000 AC
AREA 3	0.0000 AC	AREA 4	0.0000 AC
AREA 5	0.0000 AC	AREA 6	0.0000 AC
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AREA 97	0.0000 AC	AREA 98	0.0000 AC
AREA 99	0.0000 AC	AREA 100	0.0000 AC

RECORDED OWNER:

SCOPE DEVELOPMENT, LLC
 312 50th Street
 Spring Creek, MI 48106
 734-241-1000

CERTIFICATION:

I, the undersigned, being a duly licensed Professional Engineer in the State of Michigan, do hereby certify that the foregoing is a true and correct copy of the original survey as shown to me by the owner of the land shown thereon.

SCOPE DEVELOPMENT, LLC

PRELIMINARY

THIS SURVEY IS SUBJECT TO ANY RIGHTS OF A TITLE COMPANY.
 SURVEY MADE BY THIS FIRM AND IS NOT VALID AT THE TIME OF SURVEY UNLESS THE SURVEY IS MADE BY THIS FIRM.
 REFERENCES TO ANY OTHER SURVEYS OR RECORDS ARE MADE BY THIS FIRM AND ARE SUBJECT TO THE SAME TERMS AND CONDITIONS AS THIS SURVEY.



David Smith <davidbsmith1992@gmail.com>

FW: Rt 9W ROW dedications

1 message

Mark Taylor <MTaylor@riderweiner.com>
To: David Smith <davidbsmith1992@gmail.com>
Cc: Gil Piaquadio <supervisor@townofnewburgh.org>

Tue, Jun 21, 2022 at 12:25 PM

Dave,

Following up on the Comprehensive Plan Committee meeting, please see the below from Ken Wersted regarding Route 9W.

Best,

Mark

From: Kenneth Wersted <KWersted@cmellp.com>
Sent: Tuesday, June 21, 2022 12:20 PM
To: Mark Taylor <MTaylor@riderweiner.com>
Subject: Rt 9W ROW dedications

Mark, I spoke with John last week and he mentioned the conversation I had with DOT about ROW and Route 9W. He's asked that I share that with you as it might relate to work that David Smith is doing. That convo is detailed in the following bullet from our February meeting with DOT. Please let me know if you or David have any questions.

- On Route 9W, a third center turn lane will be a big win. Consider requiring applicants dedicate the necessary ROW, so that NYSDOT can build a project in the future. Could take a long time, but incrementally it will help.
 - ROW dedication could take 9 months for Attorney General to review, so say 1 year for complete process. Dedicating to the Town then Town to DOT could be an option but not the preference. Prefer to be applicant to DOT; DOT would tie the action into their permit and hold the permit open until the dedication process is complete.

Ken Wersted, PE (NY, VT), PTOE

Associate

Creighton Manning | 518.689.1834 (d) | www.cmellp.com

From: Kenneth Wersted
Sent: Wednesday, February 09, 2022 12:12 PM
To: supervisor@townofnewburgh.org; phines@MHEPC.com; councilmanmanley@townofnewburgh.org; mtaylor@RIDERWEINER.com; engineering@townofnewburgh.org
Cc: 'planningboard@townofnewburgh.org' <planningboard@townofnewburgh.org>
Subject: RE: Rt 300 - Fair Share Contributions

Notes from our 2/8 (3PM) call with DOT:

- Lee Zimmer, Lance Gorney, Jason Brenner - NYSDOT
- Pat Hines, Scott Manley, Mark Taylor, Ken Wersted – Town of Newburgh
- Ken gave overview of projects on the Route 300 corridor and the Gardnertown/Rt 300 concept
- NYSDOT: Back to back left turn lanes and a right turn lane sign needed on span.
- NYSDOT: consider inflation – dollars given now may not be of the same value by the time the project is built. Getting expected funds from all contributors could result in a shortfall based on the original budget once the project is ready and out to bid. This needs to be taken into account.
- NYSDOT: DOT job costs are rising as materials and shortages become more scarce.
- All – discussed options at the Rt 52/Rt 300 intersection- tight ROW. Removing that as a restriction, what would address capacity limitations? A roundabout, even a small one, might fit without removing buildings. NYSDOT to check the volumes and capacity.
- NYSDOT: Consider improvements elsewhere; i.e. collect funds but apply to locations that can be improved in a reasonable timeframe. E.g. a project can't mitigate wetland impacts on their site so mitigation is provided elsewhere, off-site.
- NYSDOT if Rt 52 had to go to protected left turn movements, split phasing, things will really worsen.
- NYSDOT: could try to extend detection zones to monitor when there are gaps in traffic and cycle over to other approaches. Adaptive signal control might have an application here.
- NYSDOT: Town could consider two options (Poughkeepsie and Walkkill mentioned as examples)
 - Gather contributions from specific projects towards specific improvements. This is very targeted and could result in projects being idle for years while the final funding/contributing comes along, meanwhile, the cost of the project continues to increase. Contributors are limited to projects identified as having an impact.
 - Create a Transportation District, draw a line on a map, every project (big or small) contributes based on their trip generation. Develop a list of projects and rank priority. When there are enough funds for a project, initiate it. If there is enough funds for a smaller, easier project, priority could change. E.g. is it better to save up for the big project even if it takes a long time, or accomplish smaller projects sooner?
- On Route 9W, a third center turn lane will be a big win. Consider requiring applicants dedicate the necessary ROW, so that NYSDOT can build a project in the future. Could take a long time, but incrementally it will help.
 - ROW dedication could take 9 months for Attorney General to review, so say 1 year for complete process. Dedicating to the Town then Town to DOT could be an option but not the preference. Prefer to be applicant to DOT; DOT would tie the action into their permit and hold the permit open until the dedication process is complete.
- NYSDOT is in preservation mode – not looking to build new infrastructure, simply maintain what they have, so there are no plans for State improvements to Rt 9W, 300, or 52. Transportation Bill is coming but they don't know how the funds intend to be distributed. Agencies already lining up to ask for funds. Unknown whether preference would be giving to shovel ready projects; projects with a dedication process could take years.
 - Region 8 has 10% of the States bridges but has the worst rating because they have the oldest bridges.
- NYSDOT available for any follow up questions

Ken Wersted, PE (NY, VT), PTOE

Associate

Creighton Manning | 518.689.1834 (d) | www.cmellp.com

-----Original Appointment-----

From: Cisco Webex <messenger@webex.com>

Sent: Monday, February 07, 2022 10:13 AM

To: Cisco Webex; Zimmer, Lee (DOT); Brenner, Jason (DOT); Gorney, Lance (DOT); Kenneth Wersted; supervisor@townofnewburgh.org; phines@MHEPC.com; councilmanmanley@townofnewburgh.org; mtaylor@RIDERWEINER.com; engineering@townofnewburgh.org; Barrett, Karen (DOT)

Subject: FW: Rt 300 - Fair Share Contributions

When: Tuesday, February 08, 2022 3:00 PM-4:00 PM America/New_York.

Where: <https://meetny.webex.com/meetny/j.php?MTID=me274360db488fe174a6ecf76617042ef>

Hello. Pls. see call-in info below.

Karen Barrett

Program Aide - Traffic & Safety Group

New York State Department of Transportation, Hudson Valley Region

4 Burnett Boulevard, Poughkeepsie, NY 12603

(845) 437-3320 | karen.barrett@dot.ny.gov

www.dot.ny.gov





July 29, 2022

BY HAND DELIVERY AND E-MAIL

Darrin Scalzo, Zoning Board of Appeals Chairman
Town of Newburgh Zoning Board of Appeals
Town of Newburgh
21 Hudson Valley Professional Plaza
Newburgh, New York 12550

P: 845.562.9100

F: 845.562.9126

655 Little Britain Road
New Windsor, NY 12553

P.O. Box 2280
Newburgh, NY 12550

John P. Ewasutyn, Planning Board Chairman
Town of Newburgh Planning Board
Town of Newburgh
21 Hudson Valley Professional Plaza
Newburgh, New York 12550

**RE: REFERRAL OF REVISED LOCAL LAW ADDING CHAPTER 172
ENTITLED "TREE PRESERVATION AND PROTECTION" TO
THE CODE OF THE TOWN OF NEWBURGH
OUR FILE NO. 800.1(B)() (2019)**

ATTORNEYS

David L. Rider
Charles E. Frankel
Michael J. Matsler
Mark C. Taylor
Deborah Weisman-Estis
M. Justin Rider

M. J. Rider
(1906-1968)
Elliott M. Weiner
(1915-1990)

COUNSEL

Stephen P. Duggan, III
John K. McGuirk
(1942-2018)

OF COUNSEL

Craig F. Simon
Irene V. Villacci

Dear Chairman Scalzo and Chairman Ewasutyn:

Enclosed please find a revised version of the Introductory Local Law Adding Chapter 172 entitled "Tree Preservation and Protection" to the Code of the Town of Newburgh which I originally forwarded to you in 2019. The Town Board requests the submission of your Board's respective reports and comments at your early convenience. A public hearing is scheduled for the August 22, 2022 on the Local Law.

Should you have any questions in this regard, please do not hesitate to contact me.

Sincerely,

Mark C. Taylor, Attorney for the Town

MCT/sel
Enclosure

- cc: Hon. Gilbert J. Piaquadio, Supervisor *(via e-mail)*
- Town Board Members *(via e-mail)*
- Planning Board Members *(via e-mail)*
- Lisa M. Vance Ayers, Town Clerk
- James Presutti, Commissioner of Parks, Recreation and Conservation *(via e-mail)*
- James Osborne, Town Engineer *(via e-mail)*
- Gerald Canfield, Code Compliance Supervisor *(via e-mail)*
- Dominic Cordisco, Planning Board Attorney *(via e-mail)*
- David Donovan, Zoning Board of Appeals Attorney *(via e-mail)*
- Patrick Hines, McGoey Hauser & Edsal *(via e-mail)*



July 29, 2022

BY HAND DELIVERY AND E-MAIL

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Mark C. Taylor, Attorney for the Town

MCT/sel
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Dominic Cordisco, Planning Board Attorney (via e-mail)
David Donovan, Zoning Board of Appeals Attorney (via e-mail)
Patrick Hines, McGoey Hauser & Edsal (via e-mail)

INTRODUCTORY LOCAL LAW NO. __ OF 2019

**A LOCAL LAW ADDING CHAPTER 172
ENTITLED
“TREE PRESERVATION AND PROTECTION”
TO THE CODE OF THE TOWN OF NEWBURGH**

SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Adding Chapter 172 Entitled ‘Tree Preservation and Protection’ to the Code of the Town of Newburgh”.

SECTION 2 – TREE PRESERVATION AND PROTECTION

A new Chapter 172 entitled “Tree Preservation and Protection” is hereby added to the Town of Newburgh Municipal Code to read as follows:

“Chapter 172

TREE PRESERVATION AND PROTECTION

§172-1 Findings and Purpose.

A. The Town Board of the Town of Newburgh finds that trees are unique, intrinsically significant and valuable assets in and to the Town. Due to their size, species, historic association and ecology, they contribute significantly the health and general welfare of the citizens of a community. While allowing for reasonable improvement of land within the Town, it is the policy of the Town to enhance the tree population and to maintain and protect, to the greatest extent feasible, existing trees within the Town. The planting of additional trees and the preservation of existing trees in the Town provides the following benefits to the Town and its residents:

1. Trees enhance the unique physical, historical and aesthetic character of the Town.
2. Trees aid in controlling storm water run-off, stabilizing soil by preventing erosion, and sedimentation and replenishing ground water supplies.
3. Trees enhance air quality by removing carbon dioxide, generating oxygen and filtering air pollutants.
4. Trees reduce noise through buffering and screening.
5. Trees reduce energy consumption by providing shade and a windbreak effect.

6. Trees enhance the habitat and food source for birds and other wildlife, which in turn control insect populations and maintain the balance of natural ecosystems.
7. Trees enhance property values and create a desirable residential and commercial environment.
8. Trees assist in the protection of water quality.

B. The Town Board recognizes that a certain amount of trees will be lost as an inevitable consequence of development within the Town. The Town Board has determined it to be in the best interest of the Town to protect and enhance the existing tree population to the greatest extent feasible and to replace trees which are lost due to development activities.

C. The Town Board has determined that the adoption and implementation of a tree preservation local law will recognize and allow a property owner to develop his or her property in a reasonable manner while protecting the various benefits to the community which are provided through the protection and maintenance of trees within the Town, including, but not limited to the soil erosion and sedimentation, improved air quality, reduced noise pollution, energy conservation through natural insulation and shading, enhanced property values, and the preservation and maintenance of the unique physical, historical and aesthetic character of the Town.

§172-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AUTHORIZED OFFICIAL - The Town Code Compliance Supervisor or other person designated by the Town Board to administer and maintain the provisions of this chapter

BUILDABLE AREA – That portion of a lot remaining after minimum required yards under Chapter 185, Zoning, have been provided, after limitations of any pertinent environmental regulations have been applied, but excluding those portions which may be required to meet maximum lot building coverage and lot surface coverage requirements..

BUILDING AREA - The area of a property on which there is proposed the construction of physical improvements including, but not limited to, the building, deck, accessory buildings or structures, porch, patio, driveway, septic field road right of way and any utility corridor.

CANOPY COVER TREE – A tree which at maturity will achieve a canopy spread of forty or more feet in diameter.

CLEAR CUTTING OR WHOLESALE TREE CUTTING - The removal of substantially all trees from a property or area of property, whether by cutting or other means.

CRITICAL ROOT ZONE - The circular area measured outward from the tree trunk one (1) foot of radius for each one (1) inch of diameter of the tree measured four and one-half (4 ½) feet above the existing grade at the base of the tree.

DBH – Diameter of a tree at 54 inches above the existing ground level at the base of the tree.

DEVELOPMENT - Any proposed material change in the use or character of land, including but not limited to grading or re-grading, excavation, land clearing, placement or construction of any structure, the replacement or removal of any structure or any site improvements such as building additions, decks, fences and the like.

DEVELOPMENT ACTIVITY – The implementation of development.

DISTURB - Any act which causes or may reasonable be expected to cause a tree to die, including damage to the trees root system or trunk, compaction of ground within the root system of a tree, a change in the natural grade above the root system of a tree, and trenching within the critical root zone.

DISTURBANCE ZONE - Any area which would be physically altered from its natural state, including but not limited to all areas of grading, utility installation, building pads, driveways, parking areas or other structures.

DRIP LINE - An imaginary vertical line from the outermost branch tips of a tree down to the ground.

NATURAL PRESERVE - Publicly owned lands designated as park or open space or private properties approved by the Town which are set aside to preserve their natural characteristics and qualities and protected by easement or other permanent agreement acceptable to the Town.

PROTECTED TREE - Any tree having a size (circumference, height and spread) equal to or greater than fifty percent (50%) of the size identified on the New York Big Tree Champions List for such tree species.

SIGNIFICANT TREE - Any healthy tree measuring fourteen (14) inches or larger in diameter at DBH and that develops a canopy that is not invasive for deciduous trees and measuring ten (10) inches or larger in diameter at DBH for all other trees.

SPECIMEN TREE – Any tree with a trunk diameter that equals or exceeds twenty (20) inches at DBH with a sound trunk showing no extensive decay or hollow, with less than 20 percent radial trunk dieback and no major insect or pathological problem of such species as achieves a canopy spread of forty or more feet in diameter upon maturity

TOPPING – The removal of a tree’s leafy crown, creating stubs of the larger vertical leader stems.

TREE INCHES - The diameter of a Significant Tree measured in inches.

TREE PROFESSIONAL - A person who is a licensed or certified Arborist, Horticulturalist, Certified Nursery Landscape Professional, Landscape Architect, Forester, or restoration ecologist and who has a minimum of two (2) years practice in the fields of arboriculture, horticulture or restoration ecology.

VERNAL POOLS - Depressional areas that are seasonally covered by shallow freshwater for variable periods of at least two months from winter to spring but may be completely dry during the summer and fall. inhabited by many species of wildlife, and of which vegetation, fallen leaves, woody debris and protective tree canopies are important components.

§172-3 Scope.

- A. The Town strongly encourages the preservation of trees on all properties within the Town.
- B. The provisions of this chapter shall apply to the following properties:
 - 1. Any property being developed which involves an application for site plan approval where trees would be removed in the buildable areas and driveways.
 - 2. Any property being developed which involves an application for subdivision approval where trees would be removed in the buildable areas, driveways and streets;
 - 3. Any parcel or parcels of land of five (5) acres or more in size on which the owner or his agent removes or otherwise disturbs Significant Trees or Protected Trees in violation of the provisions of Section 172-4.A or in excess of the removal and disturbance thresholds set forth in Section 172-4.B and C hereof within 24 months prior to the date on which such owner or other applicant files an application to the Planning Board to develop the parcel or parcels, whether or not the applicant has obtained a clearing and grading permit to perform such work.
 - a. The owner shall be required to comply with the reforestation and restitution provisions of this Chapter as if an application identified in Subsections 172- 3B.1 or 172-3B.2 above had been submitted to the Town at the time such action was taken.

- b. Clearing and grading permits and approvals issued following the date of this Chapter's enactment shall contain a notice that submission of a subsequent application for site plan or subdivision approval for the parcels within the specified 24 month period will subject the property to this Chapter's requirements.
 - c. Parcels on which disturbance has been undertaken pursuant to a permit or final approval duly issued or granted prior to the effective date of this Chapter shall be exempt from the prior 24 month requirement with respect to the permitted activities.
- C. The provisions of this chapter shall not apply to trees located on a parcel on which a tree farm, nursery, or greenhouse is operated provided such exemption shall only apply to trees which are considered inventory for said operation and held out for sale in the regular course of business for said operation
- D. The provisions of this Chapter shall not apply to activities necessary to farm operations within Agricultural Districts to the extent the provisions unreasonably restrict farm operations.

§172-4 Tree removal/disturbance thresholds and restrictions.

- A. No person shall, prior to the issuance of a clearing and grading permit, a stormwater management plan approval or site plan, special permit or subdivision approval, conduct clear cutting or wholesale tree cutting activities on any property within the Town, unless such activity is exempt under the provisions of the applicable Chapter. A violation of this provision shall constitute sufficient grounds for the Town to refuse to grant a clearing and grading permit, stormwater approval or other development permit or approval. This provision shall not be construed to permit clear cutting or wholesale tree cutting following issuance of the applicable permit or approval except in compliance with all applicable provisions of law and permit conditions.
- B. No person causing or performing development activities in residential zoning districts (RR, AR, R-1, R-2 and R-3 under Chapter 185, Zoning) shall remove or disturb more than fifty percent (50%) of the total inches in diameter of Significant Trees, nor more than fifty percent (50%) of the total inches in diameter of Specimen Trees. Any removal or disturbance beyond these thresholds shall require reforestation or restitution as hereinafter provided.
- C. No person causing or performing development activities non-residential zoning districts (B, IB and I under Chapter 185, Zoning) shall remove or disturb more than seventy-five percent (75%) of the total inches in diameter of Significant Trees. Any removal or

disturbance beyond this threshold shall require reforestation or restitution as hereinafter provided.

- E. No person shall remove or disturb any Specimen Tree unless such tree is located within the Buildable Area on lots less than 5 acres in size or unless such tree is located within the Building Area and minimum required parking area(s) on lots 5 or more acres in size, or in rights of way in which driveways or streets are being constructed. Every effort shall be made to avoid damage to or removal of such tree or trees. The owner and applicant shall have provided the Town with evidence to establish that it is not feasible to relocate the Building Area, parking area, driveways, stormwater control facilities and other improvements based upon the physical characteristics or condition of the lot or that such relocation creates undue hardship and financial expense.
- F. A topping shall be considered a removal if performed on a Specimen Tree without prior approval of the Authorized Official or his designee. This form of pruning is not an industry accepted practice and therefore should not be used except in extraordinary circumstances.
- G. Every effort shall be made to avoid removal of trees from Vernal Pools and a surrounding buffer area at least 20 feet in width.

§172-5 Application - Tree Survey/Preservation Plan.

- A. Applications to the Planning Board for approval of a tree preservation plan shall be submitted prior to or simultaneously with applications for stormwater permits, clearing and grading permits for properties subject to this Code, subdivision approval from the Planning Board, special permit and site plan approval from the Planning Board. The application must include a tree survey and tree preservation plan. The tree survey and tree preservation plan shall be prepared and signed by a registered surveyor or Tree Professional not more than two (2) years prior to submission of the complete application and shall provide the following information:
 - 1. Location, diameter and species of all Significant Trees on the site, and an identification of all Specimen Trees and Protected Trees.
 - 2. Identification of which Significant Trees and Specimen Trees are (i) to be protected, preserved or undisturbed, (ii) to be removed or disturbed, and (iii) exempt from the calculation.
 - 3. Identification of all trees which are dead, diseased or have been damaged.
 - 4. Areas proposed to be designated as Natural Preserves where all natural vegetation, including significant trees, will be protected and preserved.

5. Proposed no disturbance zones, as identified by cross-hatching or gray-colored shading on the plan.
6. Location and dimensions of Building Areas and construction zone for each lot and proposed street layout and grading contours of the site.
7. Location of all probable Vernal Pools, their maximum size and whether spring time ground verification was performed.
8. Proposed locations and details of tree protection fencing to be installed for all trees to be preserved. No excavation or other activity shall occur within the Critical Root Zone or within the Drip Line, whichever is greater, of any tree that is to be preserved.
9. Calculation of removed or disturbed Significant Tree and Specimen Tree inches on the site divided by the total Significant Tree and Specimen Tree inches on the site (excluding dead and diseased beyond remediation trees, and invasive species, at the discretion of the Planning Board).

B. The application fee, in accordance with Chapter **104**, Fees, of the Code of the Town of Newburgh is to be paid at the time the tree preservation plan application is submitted. Reimbursement charges for the costs of professional services in accordance with **§172-8** will also be collected at that time. In the event that land development activity under an approved tree preservation plan is divided among separate owners or developers due to subdivision, lease or other arrangements, then a separate permit for each lot, lease or arrangement shall be required and an additional fee for administration and compliance inspection shall be paid at the time each permit application is submitted in such reasonable amount as the Town Board may by resolution establish and amend from time to time.

C. Within the same time frame as is applicable to the approval of accompanying subdivision plats, site plans or permits, as the case may be, the Planning Board shall approve, with or without specified conditions or modifications, or reject the tree preservation plan and notify the applicant accordingly. If the Planning Board has not rendered a decision within the time frames specified above following completed plan submittal, the Planning Board shall inform the applicant of the status of the review process and the anticipated completion date. If the plan is rejected or modified, the Planning Board shall set forth the reasons in its adopted decision.

§172-6 Reforestation/Restitution Requirement.

- A. If the amount of Significant Tree or Protected Tree inches to be removed or disturbed exceeds the specified thresholds in **§172-4**, the owner or applicant shall provide a reforestation plan, or a calculation of restitution, or a combination thereof. The

reforestation plan shall comply with the restitution schedule set forth in Table 1. Tree selection for the reforestation plan shall be of varieties which create a diversified canopy of both deciduous and coniferous species. Trees under power and other overhead utility lines shall be of varieties which at mature height will not encroach on a 10 foot clearance space for the lines.

B. If a proposed development exceeds the allowable removal/disturbance threshold specified in Subsections 172-4B or 172-4C, as applicable, the owner or developer shall, at the owner's or developer's election, either:

1. reforest appropriate areas within the site (or, upon approval of the Authorized Official, outside the site if appropriate locations within the site are not available) in accordance with the approved reforestation plan; or

2. pay restitution in accordance with the provisions hereof; or

3. provide a combination thereof.

4. For each one (1.0) tree inch diameter that is removed or disturbed beyond the threshold, owner or applicant shall replant one and one-quarter (1.25) inches of new trees or provide the Town with \$5.00 per inch of new tree diameter that would otherwise be required to be planted at the location for tree restitution at other locations. Notwithstanding the foregoing, for each one (1) tree inch diameter of a tree that is described in Subsection 172-4D, applicant shall replant two (2) inches of new trees of the same type and species or provide the Town with \$8.00 per two inches of new tree diameter that would otherwise be required to be planted for tree restitution at other locations. Payment for restitution shall be made to the Town in cash prior to the signing of plans or the issuance of the permit, as the case may be. The replanting ratios may be increased by the Town Board upon recommendation of the Planning Board for properties in reservoir watersheds.

C. Any elective payment for tree restitution shall be placed in a designated Tree Restoration Fund of the Town established by the Town Board and shall be used for reforestation projects in the Town.

§172-7. Reforestation Plan.

A. A reforestation plan shall be prepared and signed by a Certified Arborist or Certified Nursery Landscape Professional and shall comply with the following criteria:

1. The plan shall indicate the location and diameter or height of all trees to be planted.

2. No more than ten percent (10%) of the trees to be planted may be from any one plant family, unless recommended by the Tree Professional or Forester. Trees shall be selected so as to create a diversified canopy of both deciduous and coniferous species.
 3. Planting shall be of similar vegetation as found on the site, with a preference for plantings designated as native to the site.
 4. The minimum planting size for deciduous trees shall be two and one half (2 ½) inches in diameter, and the minimum planting size for coniferous trees shall be eight (8) feet in height, except that up to fifteen (15) percent of the required tree inches may be of ornamental species of a lesser size, provided the required number of replacement inches is maintained.
- B. Installation of trees shall follow generally accepted professional standards.
- C. Planting schedules shall be approved by the Authorized Official.

§172-8 Review of Tree Preservation Plans and Reforestation Plans.

- A. The tree preservation plan and any related reforestation plan or calculation of restitution shall be reviewed and evaluated by the Authorized Official. The Authorized Official may make recommendations for adjustment of locations of structures, roadways, utilities, and for replanting and other elements that may be necessary to enhance tree preservation and reforestation efforts.
- B. A tree preservation plan and reforestation plan, including the designation of any Natural Preserves, shall be considered for approval or denial by the Planning Board as part of the review of applications subject to its jurisdiction.
- C. A tree preservation plan and reforestation plan may be amended after it has been approved. The Authorized Official shall have authority to approve amendments, except that a change resulting in removal of more than five percent (5%) of the Significant Tree inches that were shown as preserved on a Planning Board approved tree preservation plan shall require further review by the Planning Board if the plan was submitted in connection with an application to that Board. As part of any amendment to a tree preservation plan, the required reforestation and/or restitution shall be increased or reduced as appropriate. Requests for amendments shall be submitted prior to removal of any trees shown as preserved on an approved plan.

D. The findings and provisions contained in § 104-2G of the Code are hereby extended to include the review of plans required under this Chapter and associated inspections. Accordingly, the reasonable and necessary expenses of services performed by competent professionals engaged by the Town in connection with the review of tree preservation plans and reforestation plans and related inspections and the review of proposed instruments protecting natural preserves shall be reimbursed by applicants in accordance with the procedures in § 104-2G . The initial deposits required to fund escrow accounts shall be established by the Town Board by resolution, and the Town Board may increase or decrease said amounts by resolution from time to time. All charges must be paid by the applicant prior to final approval of the plan.

§172-9 Performance Guarantee.

- A. Tree Guarantee. Replacement trees must be planted within twenty-four (24) months of the issuance of a permit or approval, as the case may be, unless such time is extended. The owner or applicant shall guarantee all trees planted pursuant to the Reforestation Plan for a period of one (1) year from the date of planting. If a tree planted pursuant to Reforestation Plan dies within one (1) year from the date of planting, the owner shall remove the tree and plant a replacement tree, which shall likewise be guaranteed for a period of one (1) year from the date of its planting.
- B. Following approval of the Tree Preservation Plan, but prior to signature of approved plans or issuance of a permit, as the case may be, the owner or applicant shall provide a performance security in the form of a bond or letter of credit acceptable to the Town as to form or cash to guarantee performance in accordance with the tree preservation plan and the reforestation plan, if applicable. The guarantee amount may be included as part of required security for public improvements, provided the period of such security to extends through the replacement period(s).
- C. The amount of the performance security shall be calculated as follows: Twenty-five (25) percent of the total Significant Tree and Protected Tree inches shown as preserved that are located within fifteen (15) feet of a disturbance zone multiplied by one hundred twenty five dollars (\$125.00) per inch of diameter, plus one hundred percent of the total tree inches of diameter required by the reforestation plan, if applicable, multiplied by one hundred twenty five dollars (\$125.00) per inch of diameter. The minimum performance security shall be one thousand dollars (\$1,000.00). The amount of the performance security shall be maintained at the calculated level until such time as (i) all trees on the site (preserved trees and new reforestation trees) have survived a winter season, which is defined as the period 31 October through 30 April for the purpose of this Section, and (ii) the Town has inspected the site and authorized a reduction or release.

§172-10. Tree Protection during development.

- A. Tree protection fencing shall be installed prior to commencement of development activities and shall remain in place until after the certificate of occupancy is issued for the building on the site. Tree protection fencing shall be installed and maintained in accordance with the "Tree Protection Detail" attached hereto as Appendix A-1. In addition to the tree protection fencing, a protective sedimentation fence shall be installed at the drip line of all Significant Trees or Protected Trees which are located down grade of any clearing, excavation and/or construction activity. The protective sedimentation fencing shall be installed and maintained in accordance with the "Protective Sedimentation Fence Detail" attached hereto as Appendix A-2 and Appendix A-3. No attachments, fences or wires other than those approved for bracing, guying or wrapping shall be attached to trees within the area for tree preservation. Approved bracing, guying and wrapping methods are depicted on the "Deciduous Tree Bracing, Burying & Wrapping Detail" attached hereto as Appendix A-4 and the "Evergreen Tree Bracing, Burying Wrapping Detail" attached hereto as Appendix A-5.
- B. No development activity shall occur within the area encompassed by the drip line or critical root zone, whichever is greater, of any tree that is to be preserved. No excess soil, additional fill, liquids, or construction debris shall be placed within the area encompassed by the drip line or critical root zone, whichever is greater, of any tree that is to be preserved.

§172-11. Inspections and final approval.

- A. Prior to removal of any trees and prior to issuance of any permit or prior to commencement of any development activities if no permit is required, all sites shall be staked and fenced for tree preservation pursuant to the approved tree preservation plan. A copy of the approved tree preservation plan and reforestation plan, if any, shall be submitted to the Authorized Official prior to the issuance of a permit or commencement of work. Upon staking of the site and installation of the tree protection fencing, but prior to issuance of any permits or commencement of any development activities, the owner or applicant shall contact the Authorized Official to schedule an inspection of the staking and fence installation on the site by the Authorized Official or designee or by a Town consultant. No permits shall be issued nor shall any operations commence, without first receiving authorization by the Authorized Official. In lieu of performing such inspection, the Authorized Official may accept a certification by a Tree Professional that the requirements have been met.

- B. Upon completion of the preliminary site grading operations, the owner or applicant shall contact Authorized Official on the approved tree preservation plan for an inspection by the Authorized Official, a designee or Town consultant. In the event one or more Significant Trees or Protected Trees which were shown as protected on the tree preservation plan have not been protected, no additional permits shall be issued until either a reforestation plan or amended reforestation plan has been submitted and approved or restitution paid to the Town in accordance with the requirements of Section 172-6. In lieu of performing such inspection, the Authorized Official may accept a certification by a Tree Professional that the requirements have been met.
- C. Prior to issuance of a certificate of occupancy, the owner or applicant (or builder if different from the owner or developer) shall contact the Authorized Official to schedule a final tree preservation inspection to verify the preservation of trees and the planting of any reforestation trees, as shown on the approved tree preservation plan by the Authorized Official, a designee or Town consultant. This required inspection shall be made at least five (5) working days before the certificate of occupancy is requested. Prior to issuance of a certificate of occupancy, in the event one or more Significant Trees or Protected Trees which were shown as protected on the tree preservation plan have not been protected, restitution shall be paid to the Town in accordance with the requirements of Section 172- 6. In lieu of performing such inspection, the Authorized Official may accept a certification by a Tree Professional that the requirements have been met.
- D. In addition to the above scheduled inspections, the Authorized Official or his designated representative or Town consultant shall periodically visit development sites prior to completion to monitor compliance with the tree preservation plan and reforestation plan approved for a project.
- E. Prior to issuance of a certificate of occupancy for a completed structure by the Code Compliance Department, the owner or applicant shall submit a statement certified by a Tree Professional, that the Property is in compliance with the approved Tree Preservation Plan and, if applicable, the Reforestation Plan. Notwithstanding the foregoing, in the event a delayed planting schedule has been approved as part of the Reforestation Plan due to weather conditions which would impair the health of the trees, the certificate of occupancy may be issued provided a performance security in the form of a bond or letter of credit acceptable to the Town as to form, or cash in an amount equal to one and one-half times the projected cost of the planting, including materials, labor and equipment, has been delivered to the Town. Any tree damaged during or as a result of construction shall be repaired to the satisfaction of the Authorized Official or his designee or Town consultant and in accordance with accepted ANSI A300 or International Society of Arboriculture practices. Observed tree damage must be repaired prior to issuance of a certificate of occupancy

- F. Within three years of the issuance of the Certificate of Occupancy, the Authorized Official or his designee or Town consultant shall perform a site inspection to verify the health of trees which were retained to meet the requirements of this Chapter and which may have suffered damage due to insufficient protective measures during development.
- G. Each required tree that is determined by the Authorized Official or his designee or Town consultant to be diseased or injured to the extent it is irreparably damaged shall be approved for removal. The burden of proof of the extent of the disease or injury shall rest with the owner or applicant, who must provide documentation from a Tree Professional.
- H. The owner of a property or properties subject to this Chapter shall be responsible for the maintenance of all required trees. No department or agent of the Town is in any way responsible for the maintenance of required trees on private property.
- I. Charges for inspections performed by a Town consultant may be charged against the escrow established in accordance with Chapter 104, Fees, of the Code of the Town of Newburgh.

§172-12. Enforcement of Tree Preservation and Reforestation Plan.

- A. A stop work order may be issued in the following circumstances:
 - 1. Tree removal has been undertaken in violation of this Chapter; or
 - 2. The required protective fencing has been damaged, destroyed, removed or otherwise rendered ineffective for the purpose for which it was required; or
 - 3. The person performing tree removal has failed to post the appropriate performance guarantee required by Section 172-9; or
 - 4. The necessary precautions as specified in the tree preservation plan were not undertaken before development activity or tree removal commenced, and/or disturbance to Significant Trees or Protected Trees has occurred or is likely to occur during development activity.
- B. The Stop Work Order shall be in effect until such time as the owner or permittee complies with the appropriate regulations or, in the case of existing or likely disturbance to significant trees, takes corrective action acceptable to the Town to mitigate any damage to such significant trees. The fee for inspections required for

issuance of an order to remove a Stop Work Order shall be in the amount of Seventy Five Dollars (\$75.00) per inspection. Notwithstanding the payment of the aforesaid fee, the removal of one or more Significant Trees, when the requirements of this Chapter have not been met is a violation of the provisions of this Chapter.

§ 172-13 Appeals.

A. The Zoning Board of Appeals, as established by Chapter 185 of the Town of Newburgh Code, shall hear and decide appeals. The procedures set forth in Section 185-55 shall be followed.

B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made in the enforcement or administration of this chapter or when it is alleged that failure to grant a variance will result in exceptional hardship to the applicant or results inconsistent with the purposes of this chapter. Appeals shall be filed with the Zoning Board of Appeals within 30 days of the date of the requirement, decision or determination.

C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and whether unnecessary hardships or results inconsistent with the general purpose of this chapter or certain provisions thereof will result from the enforcement of those standards.

E. Upon consideration of the factors of Subsection D above and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of appeals as it deems necessary to further the purpose of this chapter.

F. The authorized official shall maintain the records of all appeal actions, including technical information.

G. Variances shall only be issued upon a determination that the variance is the minimum necessary to afford relief.

H. Variances shall only be issued upon receiving written justification of:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) A determination that the granting of a variance will not result in unnecessary destruction of vegetation, additional threats to property, the environment or public safety, or extraordinary public expense or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

§172-14 Penalties for offenses.

Any person who shall violate any provision of this chapter shall be guilty of a violation as defined in Article 10 of the New York State Penal Law, and shall, upon conviction, be subject to a fine of not more than \$250 or to imprisonment for not more than 15 days, or both such fine and imprisonment, for the first offense. Any subsequent offense within a period of three (3) years shall be punishable by a fine of not more than \$500 or imprisonment for a period of not more than 30 days, or both. Each week's violation shall constitute a separate and distinct offense.

§172-15 Civil Proceedings.

- A. Compliance with this Chapter may be compelled and violations restrained by order or by injunction of a court of competent jurisdiction.
- B. Any person who violates any provision of this Chapter shall also be subject to a civil penalty of not less than \$250 dollars for the first violation and not more than \$500 for each subsequent violation, to be recovered by the town in a civil action. Each week's continued violation shall be for this purpose a separate and distinct violation for which civil penalties may be imposed. In the event the penalty sought is within the monetary jurisdiction of the Town Justice Court, as established in Article 18 of the Uniform Justice Court Act, such action to recover such penalty may, as determined by the attorney representing the town, be commenced as a small claim pursuant to the provisions of Article 18 of the Uniform Justice Court Act. In the event the town takes legal action to enforce this Chapter, the violator may be responsible for any and all necessary costs relative thereto, including attorneys' fees."

SECTION 3 - SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

SECTION 4 - CONFLICT WITH OTHER LAWS

Where this Law differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective of the Town and the public shall apply.

SECTION 5 - EFFECTIVE DATE.

This Law shall become effective upon filing with the New York State Secretary of State.

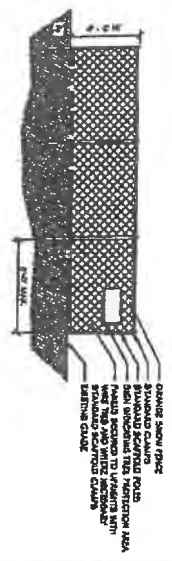
SECTION 6 - AUTHORITY.

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town Law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

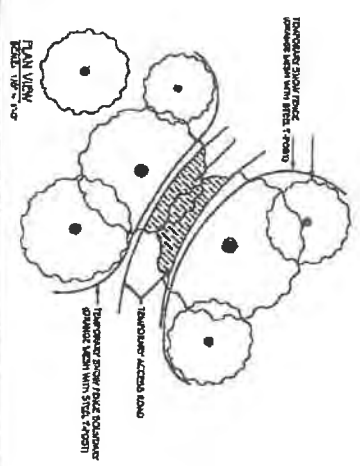
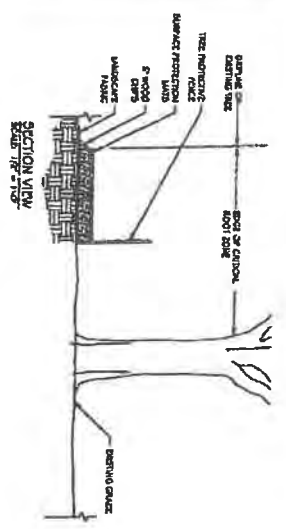
Appendix A-1

Tree Protection Detail

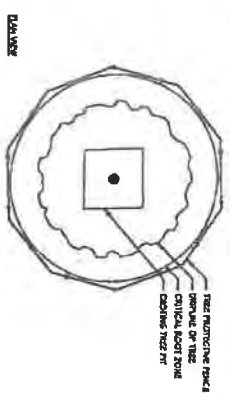
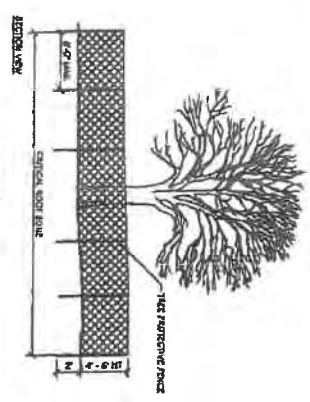
1 TREE PROTECTIVE FENCE
SCALE: 1/4" = 1'-0"



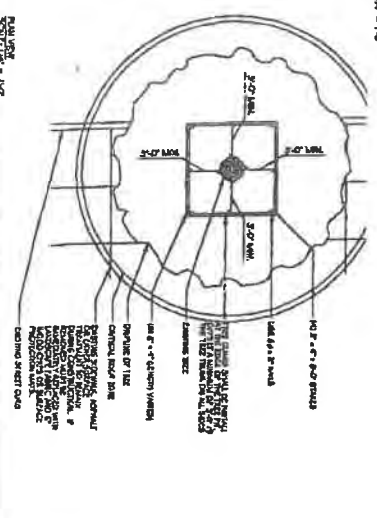
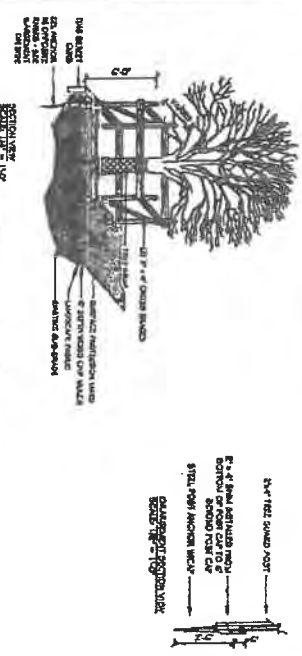
2 TREE PROTECTIVE FENCE WITH GROUND PROTECTION
SCALE: AS SHOWN



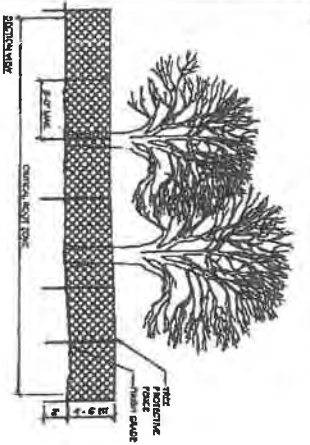
3 TREE PROTECTIVE FENCE AT CRITICAL ROOT ZONE
SCALE: 1/4" = 1'-0"



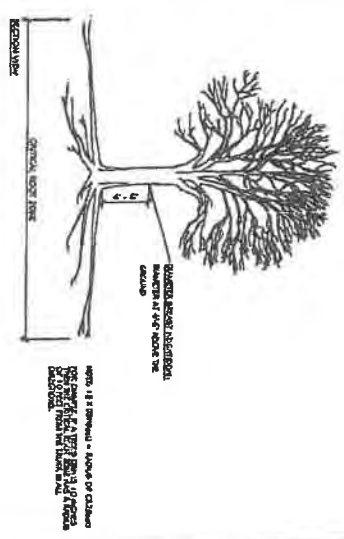
4 TREE GUARD WITH CRITICAL ROOT ZONE GROUND PROTECTION
SCALE: AS SHOWN



5 TREE PROTECTIVE FENCE FOR GROVES
SCALE: 1/4" = 1'-0"

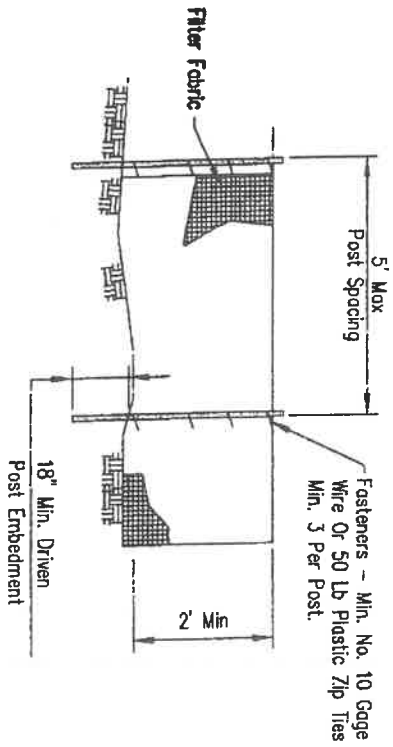


6 CALCULATING CRITICAL ROOT ZONE
SCALE: 1/4" = 1'-0"

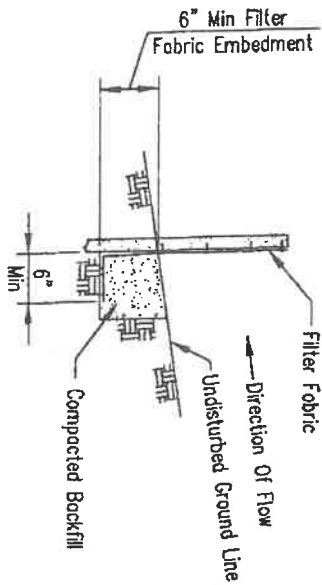


Appendix A-2

**Protective Sedimentation Fence Detail
Part 1**

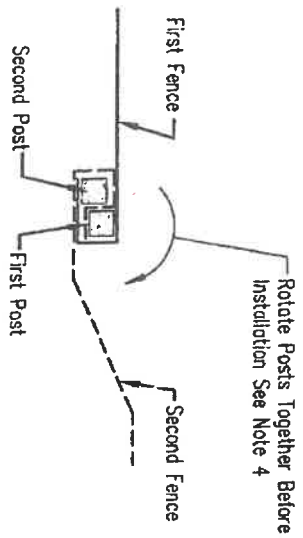


ELEVATION



FABRIC ANCHOR DETAIL

- NOTES:**
1. Temporary silt fence shall be installed prior to any grading work in the area to be protected. Fence shall be maintained throughout the construction period and removed in conjunction with the final grading and site stabilization.
 2. Filter fabric shall meet the requirements of material specification S92 Geotextile Table 1 or 2, Class 1 with equivalent opening size of at least 30 for nonwoven and 50 for woven.
 3. Fence posts shall be either wood post with a minimum cross-sectional area of 1.5" X 1.5" or a standard steel post.
 4. When splices are necessary make splice at post according to splice detail. Place the end post of the second fence inside the end post of the first fence. Rotate both posts together at least 180 degrees to create a tight seal with the fabric material. Cut the fabric near the bottom of the posts to accommodate the 6 inch flap. Then drive both posts and bury the flap. Compact backfill well.



SPLICE DETAIL - PLAN VIEW

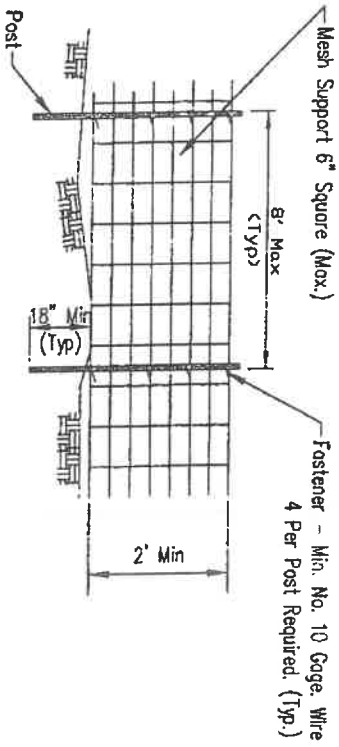
SILT FENCE

Design	Drawn	Checked	Approved	Date
	M. GUINONES			6/1/14

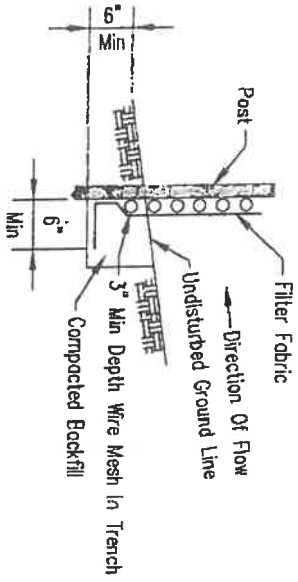
United States Department of Agriculture
 Natural Resources Conservation Service
 File No. L-ENG-49
 Drawing No. 1 of 1
 Date

Appendix A-3

**Protective Sedimentation Fence Detail
Part 2**



ELEVATION



FABRIC ANCHOR DETAIL

- NOTES:
1. Wires of mesh support shall be minimum gage no. 12.
 2. Temporary sediment fence shall be installed prior to any grading work in the area to be protected. They shall be maintained throughout the construction period and removed in conjunction with the final grading and site stabilization.
 3. Filter fabric shall meet the requirements of material specification 592 Geotextile Table 1 or 2, Class 1 with equivalent opening size of at least 30 for nonwoven and 50 for woven.
 4. Fence posts shall be either wood post with a minimum cross-sectional area of 3.0 sq. in. or a standard steel post.

Designed	M. QUINONES	4/1/94
Drawn		
Checked		
Approved		

SILT FENCE WITH WIRE SUPPORT

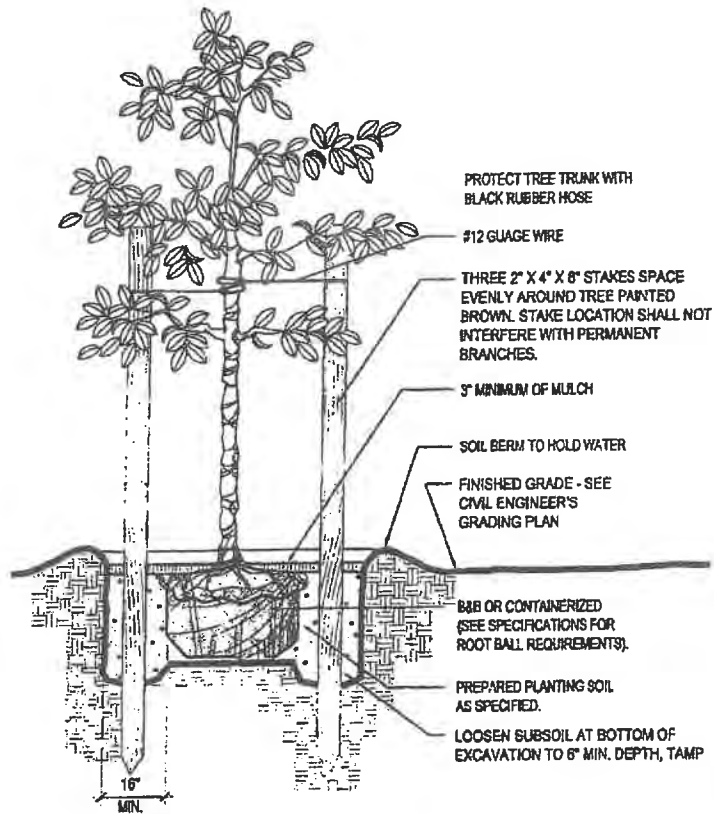
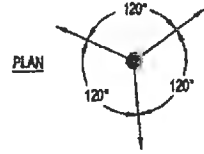

 United States Department of Agriculture
 Natural Resources Conservation Service

Project No. IL-ENG-50
 Drawing No. 1 of 1

Scale of

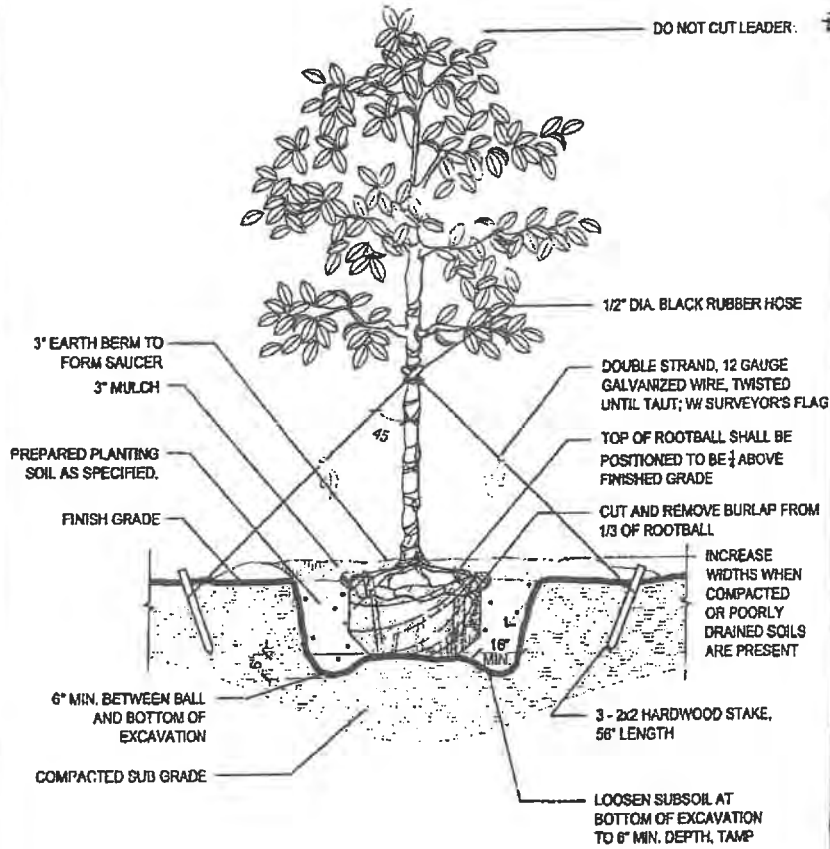
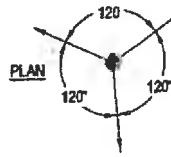
Appendix A-4

Deciduous Tree Bracing, Burying & Wrapping Detail



2 SMALL TREE <3" CAL. PLANTING DETAIL - SECTION

1"=1'-0"

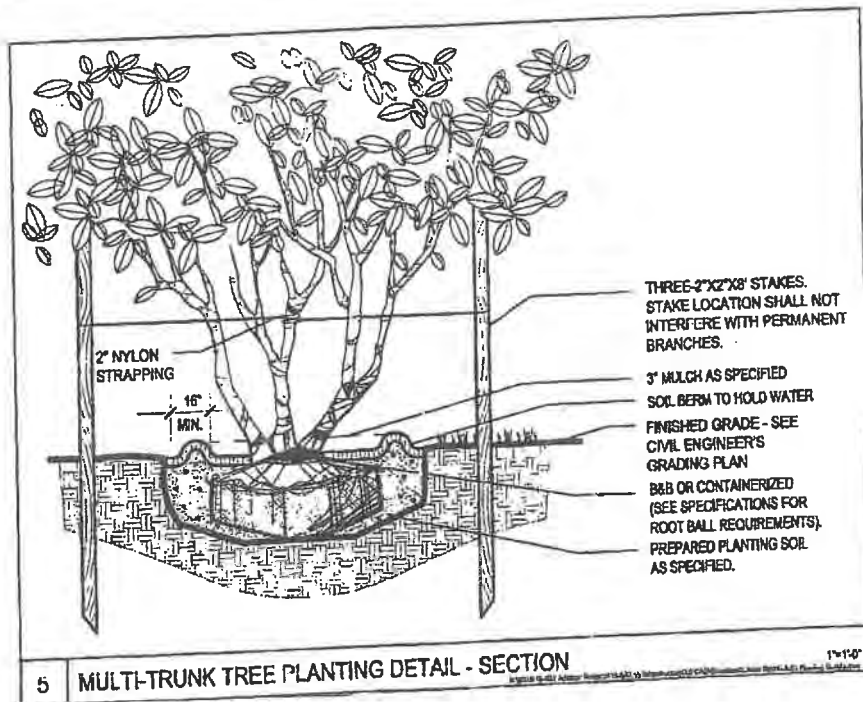
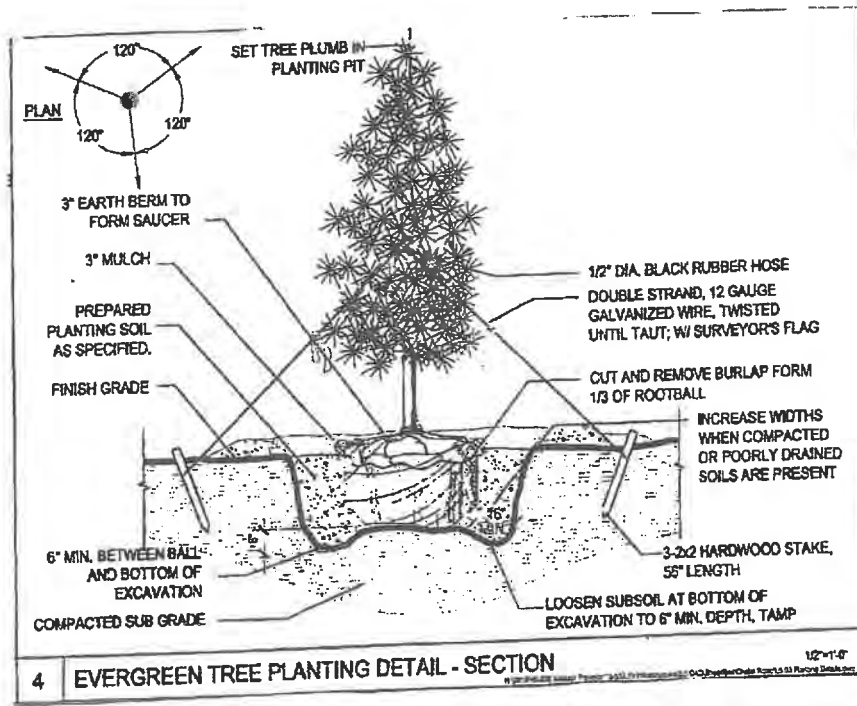


1 LARGE TREE 3" ≥ CAL. PLANTING DETAIL - SECTION

1/2"=1'-0"

Appendix A-5

Evergreen Tree Bracing, Burying & Wrapping Detail





David Smith <davidbsmith1992@gmail.com>

FW: Electric Vehicle Charging Stations

8 messages

Mark Taylor <MTaylor@riderweiner.com>

Tue, Aug 10, 2021 at 6:10 PM

To: "davidbsmith1992@gmail.com" <davidbsmith1992@gmail.com>

Dave,

Gil suggested this may be an appropriate matter to address in the Comprehensive Plan revisions.

Best,

Mark

From: Mark Taylor**Sent:** Sunday, August 08, 2021 6:29 PM**To:** Gil Piaquadio <supervisor@townofnewburgh.org>**Cc:** Scott Manley <councilmanmanley@townofnewburgh.org>; Gerald Canfield <codecompliance@townofnewburgh.org>**Subject:** Electric Vehicle Charging Stations

Gil,

The inclusion of Electric Vehicle Charging Stations as a permitted accessory use was raised in the applicant's comments on the East Coldenham Hamlet Overlay District zoning amendment.

I am addressing the comment in a suggested revision to the Table of Uses for the overlay district, but you may want to consider a more comprehensive zoning amendment to address these in the future. This could be a possible work session agenda item. I'm aware they've been installed in the Wal-Mart parking lot, but I'm not sure how Jerry decided to treat them.

The attached guidebook includes a pretty good discussion and several samples of zoning amendments from around the country.

Best,

Mark



David Smith <davidbsmith1992@gmail.com>

FW: Overlook Farms, Rt 9W - Town of Newburgh Planning Board (# 2019-23) / Request for Senior Housing Density Modification

Mark Taylor <MTaylor@riderweiner.com>

Fri, Aug 26, 2022 at 11:49 AM

To: Scott Manley <councilmanmanley@townofnewburgh.org>

Cc: Betty Greene <councilwomangreene@townofnewburgh.org>, Paul Ruggiero <councilmanruggiero@townofnewburgh.org>, Anthony LoBiondo <councilmanlobiondo@townofnewburgh.org>, David Smith <davidbsmith1992@gmail.com>, "supervisor@townofnewburgh.org" <supervisor@townofnewburgh.org>

Scott,

Per our discussion, attached the study submitted by Farrell to Gil in support of the Overlook Farms senior density bonus request.

Best,

Mark

From: schutzmanlaw@aol.com <schutzmanlaw@aol.com>**Sent:** Sunday, August 21, 2022 10:12 AM**To:** supervisor@townofnewburgh.org**Cc:** councilmanmanley@townofnewburgh.org; Mark Taylor <MTaylor@riderweiner.com>; dcordisco@drakeloeb.com; zags1413@gmail.com; g.pancost@farrellbuilding.com; tom@tomanarumo.com**Subject:** Fwd: Overlook Farms, Rt 9W - Town of Newburgh Planning Board (# 2019-23) / Request for Senior Housing Density Modification

,

Dear Supervisor Piaquadio:

I am writing to you as counsel for Farrell Communities at Overlook Ponds LLC, the Owner and Applicant in respect of its above referenced application for Site Plan approval currently pending before the Town of Newburgh Planning Board.

By way of background on July 7, 2022 the Town of Newburgh Planning Board held and closed a public hearing respecting Applicant's above referenced Site Plan application respecting its Overlook Farms development project, and at which time the Planning Board approved the Applicant's request for referral to the Town Board for its due consideration of a senior housing density modification; this with respect to the planned construction of a total of 203 market rate residential apartment housing units of which 23 residential units would be designated for senior market rate housing in accordance with the requirements of the Town of Newburgh Code Section 185-48.

Further to the Town Board's request my client has undertaken an independent review and study of the need for senior housing in the Town of Newburgh. In support of the need for such senior housing I have enclosed the report of Capacity Consulting dated August 19, 2022, entitled "Town of Newburgh and Regional Areas - Senior Living Real Estate Market Analysis".

I am advised that the Town Board may have scheduled this matter for discussion and consideration at tomorrow's Town Board meeting (Monday, August 22, 2022). Notwithstanding my client requests that in light of certain summer scheduling conflicts that if discussion is scheduled for tomorrow that instead the Town Board adjourn this matter for discussion and its due consideration to take place at its September 2022 (4th Monday) meeting.

Thanking you and the Town Board members in advance for your due consideration hereof, I am

Sincerely yours, Stan

Stanley A. Schutzman, Esq.

STANLEY A. SCHUTZMAN, P.C.

Email: schutzmanlaw@aol.com

Assistant: Diana E. Frailey

Email: fraileyd@aol.com

Phone: (845) 600 - 8LAW (8529)

Facsimile: (845) 600 - 1LAW (1529)

Rockland County Office:

61 S. Main Street
New City, N.Y. 10956

Dutchess County Office:

P.O. Box 969
Poughkeepsie, N.Y. 12602

This e-mail message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Diana E. Frailey immediately by return e-mail and please destroy all copies of this message and any attachments. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

Hi Stephen,

Attached is the final report: Senior Living Real Estate Market Analysis.

Please let me know if you have trouble opening the file.

Have a great weekend!

Best,

Martyna

Martyna Triggs | Senior Market Analyst

martyna@capacitygroupusa.com

908-510-3299



Senior Living Real Estate Market Analysis.pdf

6664K

The Town of Newburgh and Regional Area Senior Living Real Estate Market Analysis

August 19, 2022

Stephen Zagoren, CDO
Farrell Organization
P.O. Box 14
2317 Main St.
Bridgehampton, NY 11932
Zags1413@gmail.com
(631) 766-0023

Martyna Triggs | Senior Analyst
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Capacity Consulting
210 East Main Street, Suite 306
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Executive Summary

Summary

The senior landscape in the Town of Newburgh and regional area is expected to grow substantially as the population ages and Baby Boomers reach retirement. Demand for accessible, senior apartments catering to the active adult is strong in the Hudson Valley region, but supply is limited.

Note, the discussion in this report revolves around seniors seeking to downsize to an apartment with luxury amenities. While the demand for senior subsidized housing in the region is considered, it is not the basis for our active adult community demand analysis due to demographic differences.

Orange County and the Town of Newburgh surrounding region lacks 55+ active adult apartments to meet current demand. Due to inflation, rising costs of living, and general economic uncertainty, one-third of seniors will seek simpler lifestyles to weather their current life stage.

Regional area around the Town of Newburgh has about 8,095 NON-income restricted housing units specifically indicated for adults over the age of 55 that include independent living, active adult communities, and skilled nursing facilities.

Active Adult Community Supply & Demand Outlook

About 34,000 seniors in Orange County are considering a move to an age-restricted active adult community in the future.

There are 8,095 non-income restricted housing units in Orange County. Only 612 are apartment units.

Orange County's 65+ cohort increased 41.7% between 2010 and 2021.

By 2030, 35% of the Mid-Hudson Valley's population is projected to be over 55. Currently it is 30%.

Active Adult Communities

The term "active adult" (AA) was coined to describe 55+ communities that focus on lifestyle preferences rather than health care services. Most of these active adults desire a low-maintenance lifestyle within a resort-like setting that is often more affordable than conventional seniors housing alternatives.

The majority of these units – 6,197 – are designed for independent or active lifestyles and do not include comprehensive healthcare in addition to housing. Despite this prevalence of 55+ housing units, there are only a total of 612 apartment units in 55+ communities available in Orange County that are not income restricted.

According to AARP 2021 "Home and Community Preferences Survey," one-third of adults 50 and older say they may choose to live in an age-restricted active adult community that could provide various

amenities for a fee (32%).¹ One-third of Orange County's 50+ population is about 34,000 individuals, and one-third of the Town of Newburgh's 50+ population is about 3,452.

The Town of Newburgh does not need a landslide of new residents to make a substantial impact. Due to their small housing base, a small influx of 50 households would make a major impact.

Despite these prevalent needs in the region, there is an overall misalignment between the aging population and appropriate housing. Hudson Valley Patter for Progress has been highlighting

the disparity between the region's aging population and providing adequate housing to meet the current and future demand. While they are primarily highlighting the need for affordable senior housing, the overall growing population of seniors in the region is a concern.

Hudson Valley consumers are struggling with an affordability crunch as they juggle rising home prices, interest rates, and inflation outpacing income growth. Many seniors are attempting to protect their assets by selling their home and downsizing to a smaller, lower cost living situation.

Senior Living Inventory

In total, there are an estimated 8,095 housing units specifically indicated for adults over the age of 55 that are not rent controlled in and around the Newburgh area, including independent living, active adult communities, and skilled nursing facilities. The majority of these units – 6,197 – are designed for independent or active lifestyles and do not include comprehensive healthcare in addition to housing. Despite this prevalence of 55+ housing units, there are only 612 apartment units in 55+ communities available in Orange County that are not income restricted.

Several new construction projects have broken ground to provide lower-income seniors with affordable housing. However, these projects do not include active adult options for seniors downsizing from their current lifestyles.

Demographic Increases

In the Town of Newburgh, 33.3% of the population is currently 55+ years old or 10,357 individuals of the 31,985 residents. According to the 2020 Decennial Census, its population has increased about 14% since the last census.

Orange County's 55+ age cohort increased 38% (or by 39,307 people) between 2000 and 2020. In 2000, there were 62,821, and in 2020 there are 102,128 individuals 55+. Orange County has the largest 55+ population of the Mid-Hudson Valley counties.

In the Hudson Valley, adults 55+ are projected to comprise 35% of the region's population by 2030, a 17% increase from 2017. Currently, it is 30%.

Baby Boomers began turning 65 in 2011 and by 2030, the 65+ population will be 21% of the total US population, a 50% increase over 2020.

Demand

The demand for housing in Orange County and the Hudson Valley region is seeing a more stabilized, balanced market in contrast to the frenzied market of 2021. As mortgage interest rates are rising to their highest point in 12 years, homebuyers are rethinking their needs. Real estate agents are also observing longer cycles for their customers to close.

However, there is still a shortage of housing across the region despite the normalizing market. Newburgh-based Hudson Valley Pattern for Progress says the region is in a housing crisis which the pandemic has only heightened. The Hudson Valley area lacks a balanced supply of housing at all levels – including affordable, workforce, and market rate housing.

Supply

The Town of Newburgh's total vacancy rate was 7.6% for 2020, Balmville was 4.7%, Gardnertown was 10.4%, and Orange Lake was 5.3%. In comparison, the vacancy rate in 2020 for Orange County was 9.6% and 5.8% for the United States.

The national rental vacancy rate is 5.8%, according to the U.S. Census Bureau. According to economists, a healthy rental vacancy rate typically hovers around 7 to 8%.

The period between 2010 and 2019 marked a spike in new residents for the Town of Newburgh at 3,767, an increase of 22%. More specifically, new renter-occupied units increased 79% from 2010 to 2019. More residents are choosing to rent versus own.

Active Adult Outlook

The Hudson Valley real estate market is cooling off and entering a more balanced market in comparison to 2021 thanks to higher interest rates and more picky, conservative homebuyers. However, homes are still priced higher than pre-pandemic trends and are still selling albeit at a more moderate pace.

The rental market directly correlates with the housing market. As the housing market is becoming more balanced, prospective homebuyers are switching to rental options as the cost of owning a home is out of their reach.

The Hudson Valley has been struggling with its apartment rental supply for years even before the pandemic. More specifically, purposeful active adult living for baby boomers is becoming more desirable to the demographic. *The New York Times* states that older Americans are looking for a variety of rates and services.

Methodology

Analyzing the active adult housing market in the Town of Newburgh, Orange County, and Hudson Valley required an investigation of demographics, migration patterns, population trends, and the current housing market include vacancy rates.

Because the Active Adult (AA) sector is in its infancy, it has not been separately tracked but rather data has been lumped into the senior housing (SH) or multi-family (MF) category. As the sector matures and grows in size and transaction volume, data mining organizations will develop a clear and separate data set for the sector.

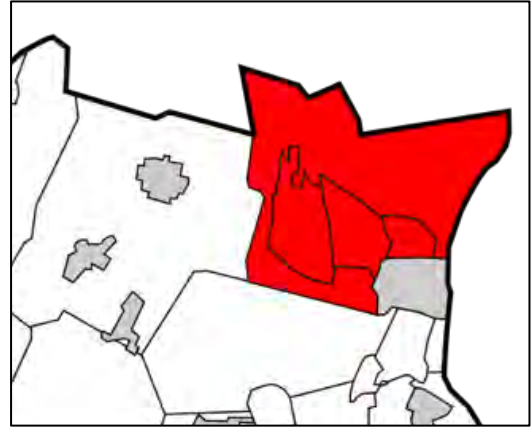
The following regional departments and county offices were contacted for an interview:

- Orange County Chamber of Commerce
- Orange County Department of Planning
- Orange County Partnership for Economic Development
- Orange County Office for the Aging
- Hudson Valley Pattern for Progress
- National Investment Center for Seniors Housing & Care (NIC)

Background

Town of Newburgh

The Town of Newburgh is located at the northeastern extremity of Orange County, the fastest growing of New York State's 62 counties, and the only County in New York which borders both the Hudson and Delaware Rivers. The Town of Newburgh is a county subdivision and contains the Hamlets of Balmville, Gardnertown, and Orange Lake. These hamlets are considered Census Designated Places (CDPs) and are individually tracked by the Census Bureau. The Town also surrounds on two sides the City of Newburgh, which is a *separate municipality*.



The Town of Newburgh is located approximately 60 miles north of New York City. The Town is 45 square miles and includes part of Stewart International Airport. The Town is strategically located at the junction of Interstate 84 and New York State Thruway Interstate 87. Other major arteries which cross the Town of Newburgh are New York State Highways 9W, 17K, 32, 52, and 300. State Highway 207 skirts the southeast corner of the Town.

What is an Active Adult Community?

Active adult communities focus on lifestyle preferences rather than health care services. The communities are a rapidly growing niche segment of the residential real estate market and outsized demand is expected over the next 10 years.

Active adult communities cater to empty nesters and retirees aged 55 and greater by providing a low-maintenance lifestyle within a resort-like setting that is often more affordable than conventional seniors housing alternatives. Typically, the average age in the communities is in the 70s, notwithstanding the 55-plus restriction labeling. Baby boomers view active adult communities as a viable alternative to traditional independent living options, which typically offer a continuum of services better suited for less active seniors who require a more detailed focus on health care, meals and housekeeping.

While amenities vary, they can include a fitness center, walking/jogging trails, parks, a clubhouse, pool, tennis courts and golf. Active adult communities also offer:

- Financial flexibility—After selling the family home, residents can rent at the communities without the typical homeowner expenses such as property taxes, mortgage interest and maintenance.
- Lifestyle-driven experience—The communities cater to older adults' desire for a social and healthy lifestyle by providing organized events, fitness and nutrition classes, arts and crafts programs and continuing education courses.

Consumer Profile

Residents choosing to live in adult communities share the following straight:

- The target Seniors age cohort is 65 to 82. Average age is 74/75.
- Single or widowed
- Retired, have a fixed, steady income, and are looking forward to enjoying the rest of their lives before requiring extra care services
- Move closer to their families
- Enjoy freedom and flexibility of renting
- Looking for affordability because they've been priced out of the market in active-adult communities
- Don't want to buy a house and would rather sell their home to use their home equity to travel or give to their kids
- Lost lots of equity during the housing crash and haven't forgotten the experience, so they would rather take their cash now and lease
- Love no being concerned with property values, homeowner's insurance, and property taxes

Active Adult and Senior Living Inventory

In total, there are an estimated 8,095 housing units specifically indicated for adults at or over the age of 55 that are not rent controlled in and around the Newburgh area, including independent living, active adult communities, and skilled nursing facilities. Most of these units – 6,197 – are designed for independent or active lifestyles and do not include comprehensive healthcare in addition to housing. Despite this prevalence of 55+ housing units, there are only a total of 612 apartment units in 55+ communities available in Orange County that are not income restricted.

Independent and Active Adult Facilities 55+

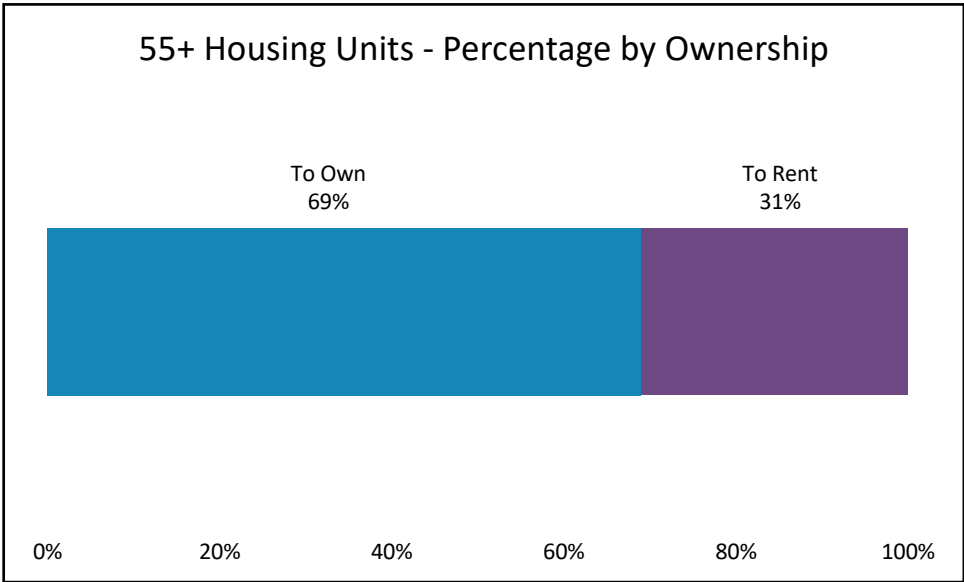
Community Name	County	Type	Units	Monthly Rent	Total Cost	Wait List
Blackburne Farm Townhomes	Orange	Single-Family	29		\$400,000 to \$500,000	YES
Bluestone Commons	Orange	Apartments	46	\$1,200 to \$1,900		YES
Christie Place	Westchester	Condominiums	42		\$800,000 to \$1,500,000	NO
Eden Park	Rockland	Single-Family	34		\$500,000 to \$700,000	YES
Farrell Communities at Gardnertown	Orange	Apartments	164	\$2,250 to \$2,325		NO
Glassbury Court at Hunterbrook	Westchester	Single-Family	90		\$500,000 to \$700,000	NO
Heritage Hills	Westchester	Single-Family Condominiums	2,600		\$350,000 to \$700,000	NO
Hudson Pointe Apartments	Orange	Apartments	85	\$1,600 to \$1,850		NO
Idlewild Creek Apartments	Orange	Apartments	215	\$1,599 to \$2,499		NO
Jefferson Village	Westchester	Condominiums	1,000		\$400,000	NO
Regency at Fishkill	Dutchess	Condominiums	164		\$250,000 to \$500,000	NO

Regency at Wappinger	Dutchess	Single-Family	225		\$500,000 to \$650,000	NO
Reserve at Lakeside	Orange	Apartments	102	\$2,101		NO
Stoneleigh Woods at Carmel	Putnam	Single-Family	68		\$400,000 to \$500,000	YES
The Hollows at Blue Hill	Rockland	Single-Family	126		\$500,000 to \$800,000	YES
The Residences at Butterfield	Putnam	Condominiums	49		\$500,000 to \$700,000	YES
The Retreat at Carmel	Putnam	Single-Family	101		\$700,000	NO
		Condominiums	211		\$400,000	NO
The Views at Pomona	Rockland	Condominiums	56		\$200,000 to \$500,000	YES
Trump Park Residences	Westchester	Condominiums	141		\$450,000 to \$600,000	YES
Villas at Seminary Hill	Putnam	Condominiums	50		\$200,000 to \$400,000	YES
Warwick Grove	Orange	Single-Family	192		\$600,000	NO
		Condominiums	23		\$400,000	YES
Wildflowers at Walkkill	Orange	Single-Family	283		\$440,000	YES
Wolfe Landing	Rockland	Single-Family	43		\$500,000 to \$700,000	NO
Woodcrest at Jacobs Hill	Westchester	Condominiums	58		\$200,000 to \$400,000	YES

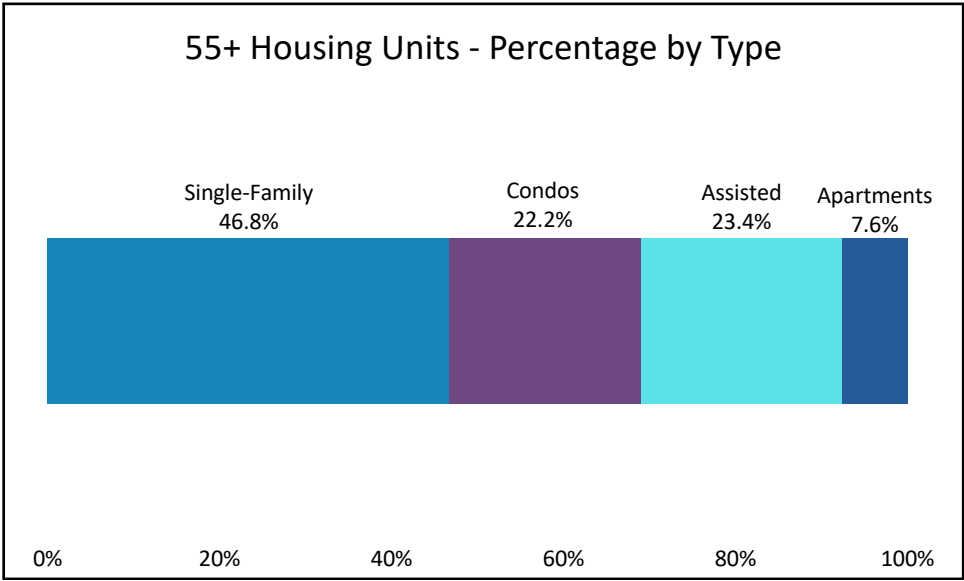
Assisted Living Facilities 55+

Community Name	Units	Monthly Rent
Braemar Living at Walkkill	200	\$4,250
Promenade at Middletown	115	\$3,250
The Eliot Erie Station	96	\$2,700
Glen Arden Inc.	216	\$4,200
The Sentinel of Port Jervis	160	\$2,500
Mt. Alverno Center	85	\$5,400
Hedgewood Home for Adults	192	\$3,270
Hope Gardens Respite and Long Term Care	245	\$4,977
New Windsor Country Inn	86	\$2,750
The W Senior Living at Goshen	120	
Carlucci Home	23	\$4,500
Valley View Center	360	\$3,250

The majority – 69% of 55+ housing is owned units, including condominiums and single-family homes. The remaining 31% of housing units are rentals, but these also include assisted living facilities, which may require a large down payment as an entrance fee. Assisted living facilities in Orange County can command entrance fees as high as \$400,000 per unit².



Single-family housing is the most prevalent in the 55+ communities, representing 46.8% of the area inventory. Condominiums and assisted living facilities account for 22.2% and 23.4% respectively, sharing a similar percentage of the inventory. Independent and active-adult apartments make up only 7% of the totality of 55+ housing units in and around the Newburgh area, presenting an area of opportunity and need.

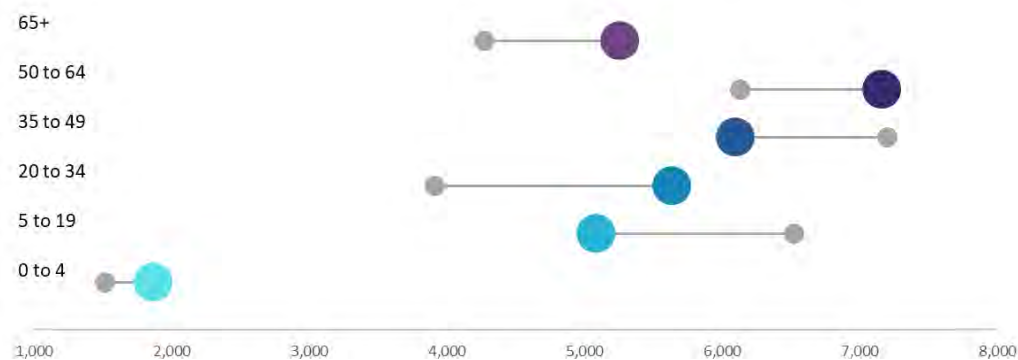


Demographics

Newburgh

The Town of Newburgh, or Newburgh Town according to the U.S. Census, has a population of 31,985, and its residents skew older. About 10,357 or 33.3% of the population is 55+ years old. The Town has a total of 12,406 housing units: 11,355 are occupied and 661 are vacant. 5,258 housing units are owner-occupied by 55+ year old individuals. 720 are renter-occupied housing units by 55+ year old individuals.

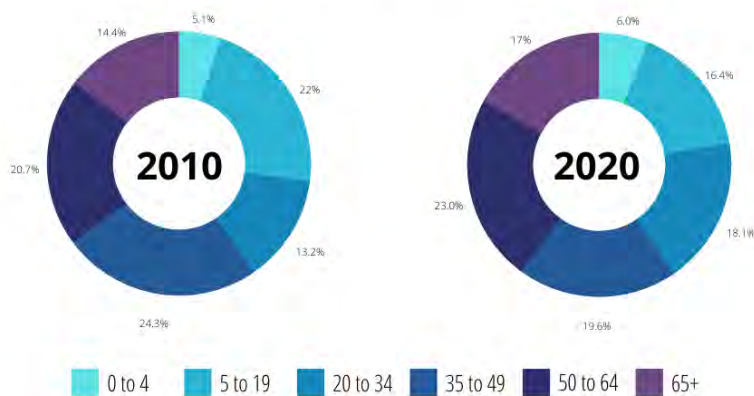
NEWBURGH POPULATION BY AGE



Among six age groups — 0 to 4, 5 to 19, 20 to 34, 35 to 49, 50 to 64, and 65 and older — the 20 to 34 group was the fastest growing between 2010 and 2020 with its population increasing 44%. The 5 to 19 age group declined the most, dropping 22% between 2010 and 2020.

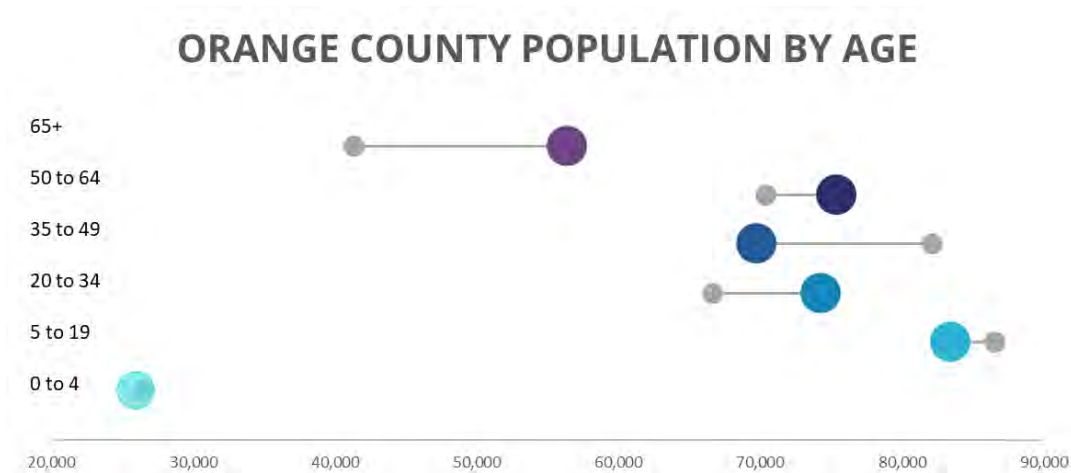
Newburgh has also seen growth in children under the age of five. However, 35- to 49-year-olds and 5- to 19-year-olds have declined, indicating that established families are moving away from the town while those just starting are finding their place there. The population over the age of 50 is growing steadily at a rate of 16.3%. The population growth past 65 years is 23%, indicating that Newburgh residents are choosing to age in place.

AGE MAKEUP OF NEWBURGH



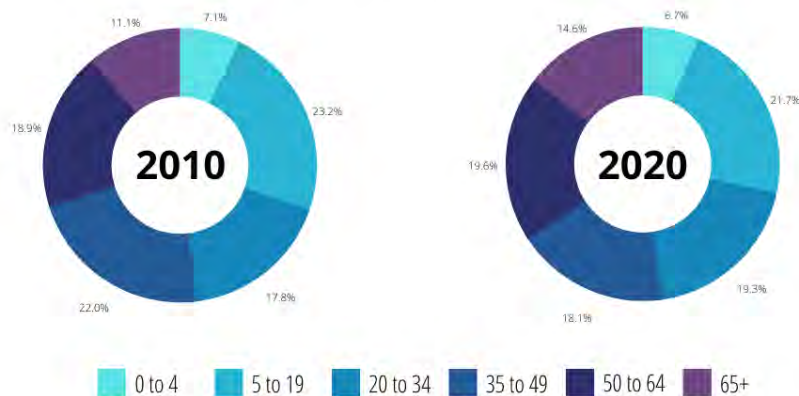
Orange County, New York

Orange County, New York according to the U.S. Census, has a population of 382,077, and its residents skew older. About 102,128 or 26.5% of the population is 55+ years old. The county has a total of 146,879 housing units: 135,746 are occupied and 11,133 are vacant. 45,990 housing units are owner-occupied by 55+ year old individuals. 14,535 are renter-occupied housing units by 55+ year old individuals.

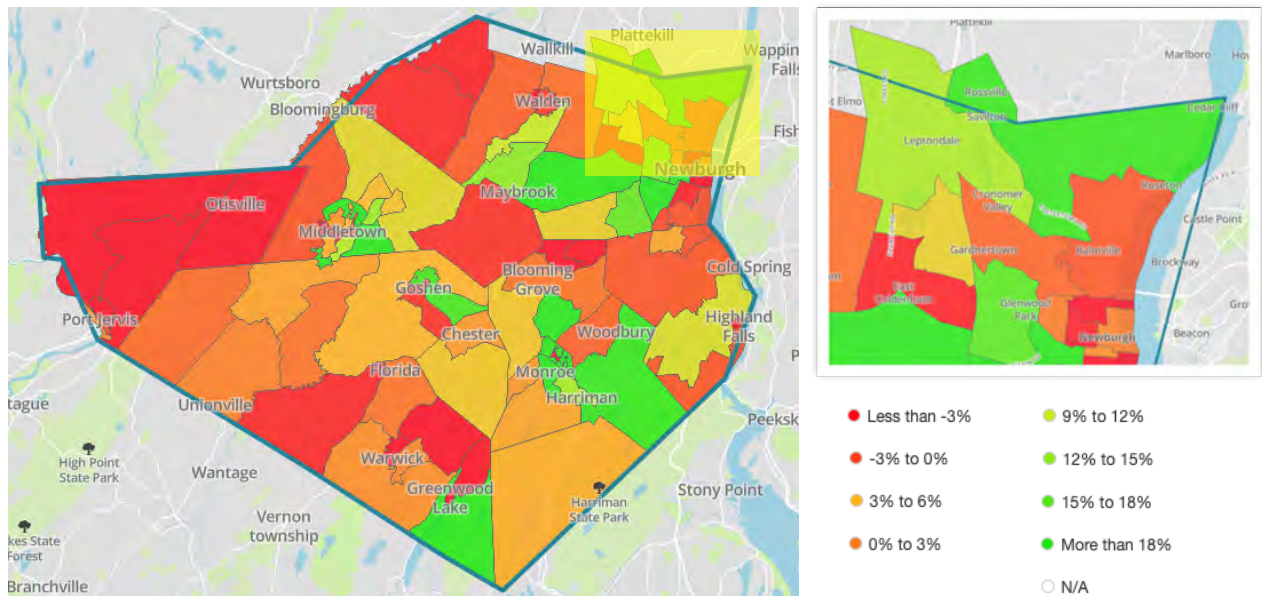


Among six age groups — 0 to 4, 5 to 19, 20 to 34, 35 to 49, 50 to 64, and 65 and older — the 65+ group was the fastest growing between 2010 and 2020 with its population increasing 36.4%. The 35 to 49 age group declined the most dropping 15.1% between 2010 and 2020. There was also growth in adults between the ages of 20 and 34. However, 35- to 49-year-olds and children of all ages have declined. The population over the age of 50 is growing steadily at a rate of 18%. The population growth past 65 years is 36%, indicating that Orange County residents are choosing to age in place.

AGE MAKEUP OF ORANGE COUNTY



According to the 2020 Decennial Census, Orange County's total population increased 7.6% since the last decennial census in 2010. The far northeast region of Orange County experienced a 17.2% population increase, displayed in the map below in bright green above Balmville. The map to the right of the county map is a closer look at the census tracts located in the northeast region.³



Hudson Valley

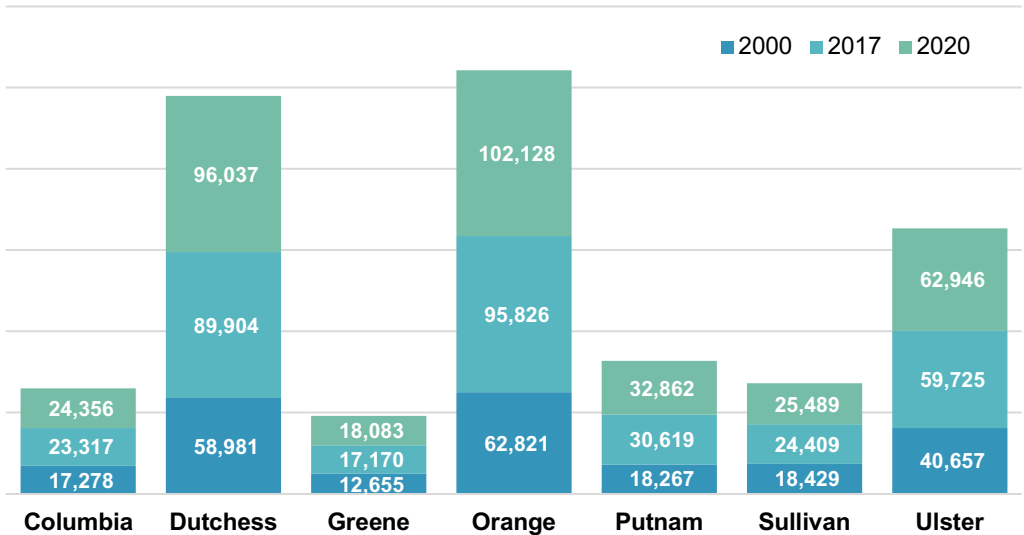
As the chart below shows, the population aged 55 and above has grown significantly in every Mid- Hudson Valley County since 2000. This trend is explained in large part by the baby boomer generation moving into older age cohorts. The baby boomer generation is typically defined as people born after World War II, between 1946 and 1964. Under this definition, people in the baby boomer generation in 2017 were aged 53 to 71.

**Mid-Hudson Valley
Population Aged 55+: 2000-2020**

	2000		2017		2020		Change	
	Count	% of Total County Population	Count	% of Total County Population	Count	% of Total County Population	Count	% Change
Columbia	17,278	27%	23,317	38%	243,56	41%	7,078	29%
Dutchess	58,981	21%	89,904	30%	96,037	33%	37,056	39%
Greene	12,655	26%	17,170	36%	18,083	38%	5,428	30%
Orange	62,821	18%	95,826	25%	102,128	27%	39,307	38%
Putnam	18,267	19%	30,619	31%	32,862	33%	14,595	44%
Sullivan	18,429	25%	24,409	32%	25,489	34%	7,060	28%
Ulster	40,657	23%	59,725	33%	62,946	35%	22,289	35%
HV Total	229,088	21%	340,970	30%	361,901	34%	132,813	37%
NYS	4,136,339	22%	5,547,153	28%	5,806,129	30%	1,669,790	29%
US	59,266,437	21%	88,479,909	28%	94,464,256	29%	35,197,819	37%

The Mid-Hudson Valley has a higher percentage of people aged 55 and above (37%) than both New York State (29%) and the United States (37%). Among Mid-Hudson Valley counties in the study area, Columbia had the highest percentage of people aged 55 and above in 2020 (41%). Greene County was not far behind with the second largest percentage of county population aged 55 and above in 2020 (38%). Putnam County experienced the greatest percentage increase in people aged 55 and above, rising by 44% from 2000 to 2020. Orange County was not far behind at a 38% increase from 2000 to 2020.

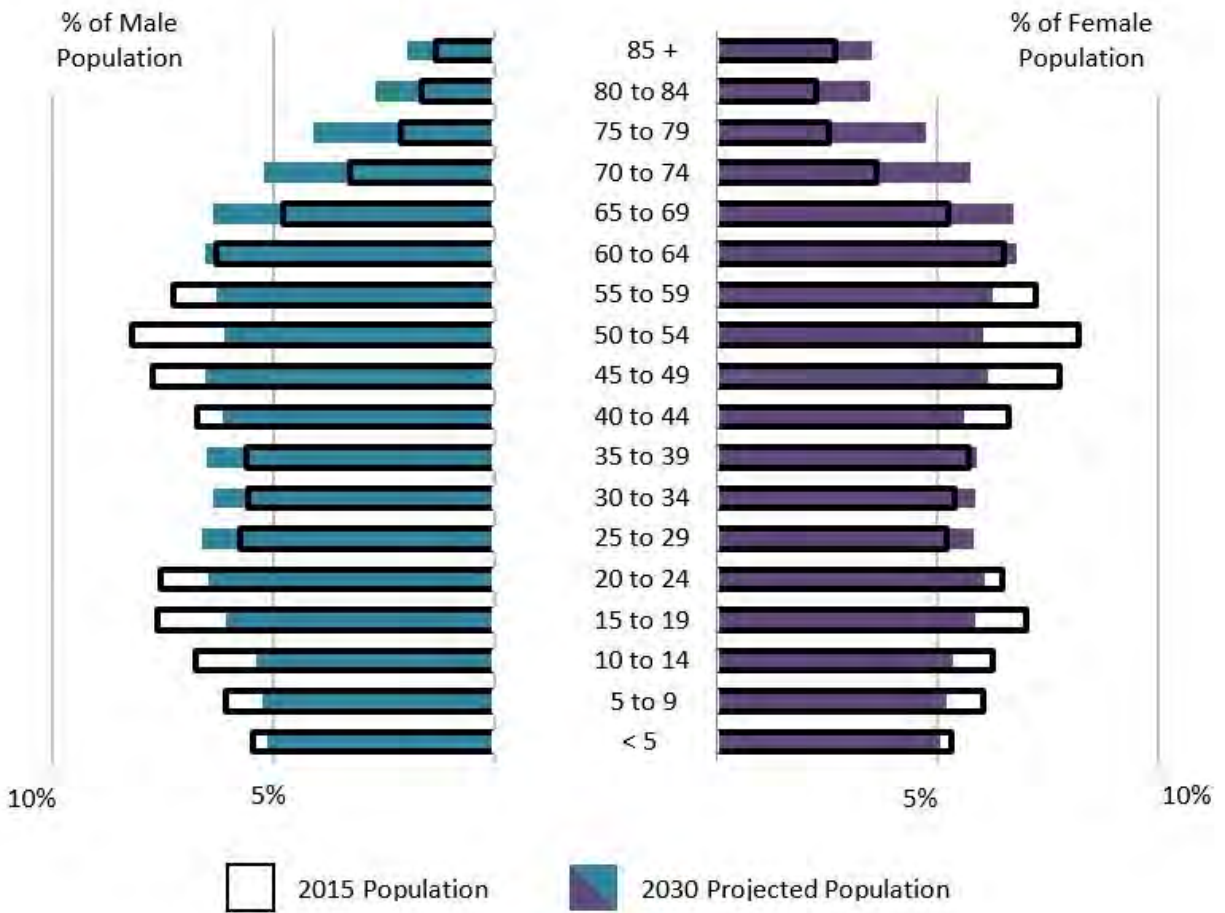
Hudson Valley Population Aged 55+: 2000-2020



Source: Census, 2020; American Community Survey, 2017; Census, 2020

The result of a projected continued population increase in the oldest age cohorts is clearly seen in the below age pyramid for the Mid-Hudson Valley. An age pyramid is a visual representation of the age distribution within a population. This age pyramid shows the 2015 population of the Mid-Hudson Valley compared to the 2030 population as projected by the Pattern for Progress model. Similar to the trend seen from 2000 to 2017, the population aged 55 and above is projected to make up an increasing share of total population. **By 2030, 35% of the Mid-Hudson Valley’s population is projected to be over 55. Currently it is 30%.**

Mid-Hudson Valley Age Pyramid 2015 vs. 2030 Projection⁴

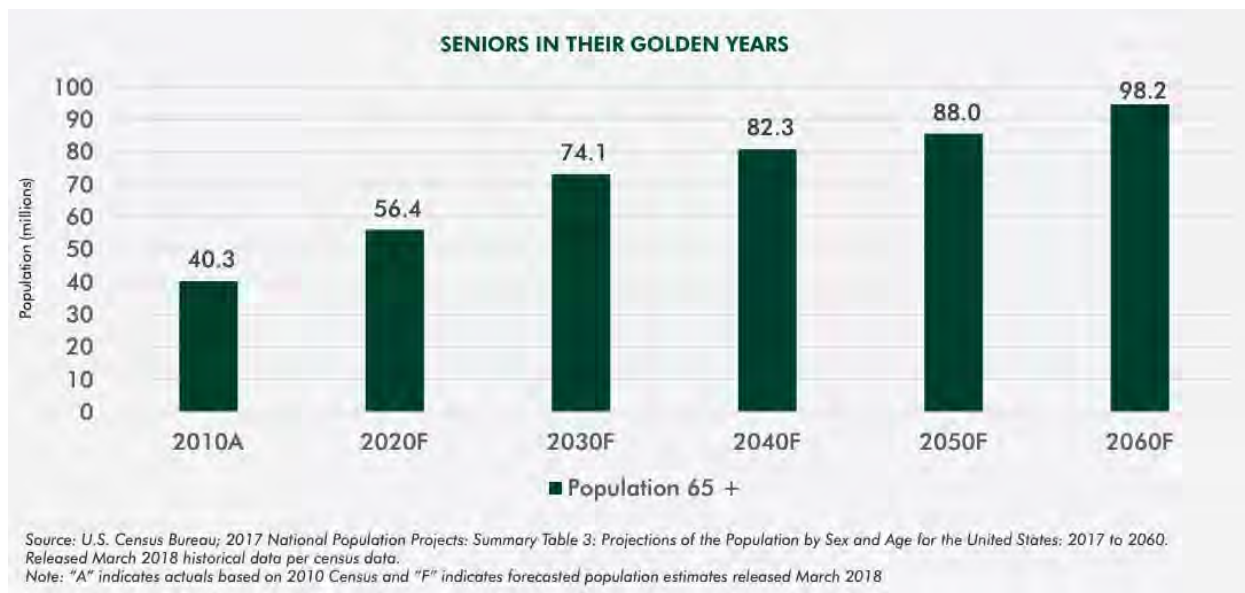


United States

The baby boomers (post-World War II babies) began turning 65 in 2011 and by 2030, the remainder will also reach age 65 and account for approximately 21% of the total United States population.

By 2050, the 65-plus age group is estimated to exceed 85.6 million, a more than 50% increase over its estimated 2020 population (56.1 million). The same figure for 85-plus group is even higher. By 2050, the 85-plus age group is estimated to exceed 18.5 million, a 177% increase over its estimated 2020 population (6.7 million). Additionally, by 2035 the 65-plus age group is estimated to be larger than the population under age 18. By 2035, there will be 78.0 million people 65 years and older compared to 76.7 million under the age of 18.⁵

One of the primary drivers in trends for the aging population is mortality rates. Survivorship rates have shown consistent improvement for many decades. In the United States in 1972, the average life expectancy of a 65-year-old was 15.2 years. By 2017, the most recent available data, this metric increased by 5.2 years to approximately 20.4 years. Additionally, it is estimated that about one out of every four 65-year-olds will live to be 90 years old, with one of every 10 expected to live past 95 years of age.⁶



Market Supply & Demand

Market Summary (2022 Q2)

The second quarter of 2022 marked a turning point in the U.S. housing market, as rising inflation, skyrocketing sales prices, and surging mortgage interest rates finally caught up to market participants. Mortgage rates exceeded expectations and hit a 14-year high in June, having jumped nearly 3% since January, while national existing-home sales prices topped \$400,000 for the first time ever. Buyer demand has cooled rapidly amid the rising costs of home ownership, as many Americans have lost mortgage eligibility or are now unable to afford a home in the current economic climate.

As market dynamics shift, talks of a housing correction have intensified. Although opinions are mixed on where the market is headed, many economists agree that the housing boom of the last two years has peaked. Mortgage applications are down considerably from this time last year, while undeterred buyers are having to pay significantly more per month to own a home. As a result, home sales continued to decline nationwide in Q2, largely returning to pre-pandemic levels, according to Lawrence Yun, Chief Economist at the National Association of REALTORS®. With demand moderating, housing supply has been improving in recent months, a sign the market is transitioning toward a more balanced market.

"Upward pressure on housing prices brings upward pressure on rent," says Jerry Howard, the chief executive officer of the National Association of Home Builders (NAHB). Many renters have opted to continue renting and wait out the housing market's inflated prices, but now many cannot afford to move elsewhere. According to data released in June from real estate brokerage company Redfin, rents have increased by double-digit percentages in the past year across the country due to limited rental availability.

The national rental vacancy rate is 5.8%, according to the U.S. Census Bureau. The average in the Northeast is 4.95%. A healthy rental vacancy rate typically hovers around 7 to 8%. Other economists recommend 5% for a healthy market. A rental vacancy rate of above 12% is considered high, and above 20% is considered hyper-vacancy.

Town of Newburgh

Supply & Demand

The Town of Newburgh combines the CDPs of Balmville, Gardnertown, Orange Lake, and the surrounding area. The data collected in this section does not reflect the City of Newburgh. The Town of Newburgh has a vacancy rate of 7.6% from a total of 12,406 units (11,745 occupied units and 661 vacant). The homeownership rate is 82.0%, and the median gross rent is \$1,612.

Balmville has a total of 1,200 occupied housing units with 83 vacant units. The homeownership rate is 83.3%. Balmville also has the lowest vacancy rate in the Town of Newburgh at 4.7% in 2020. The median gross rent is \$2,034.

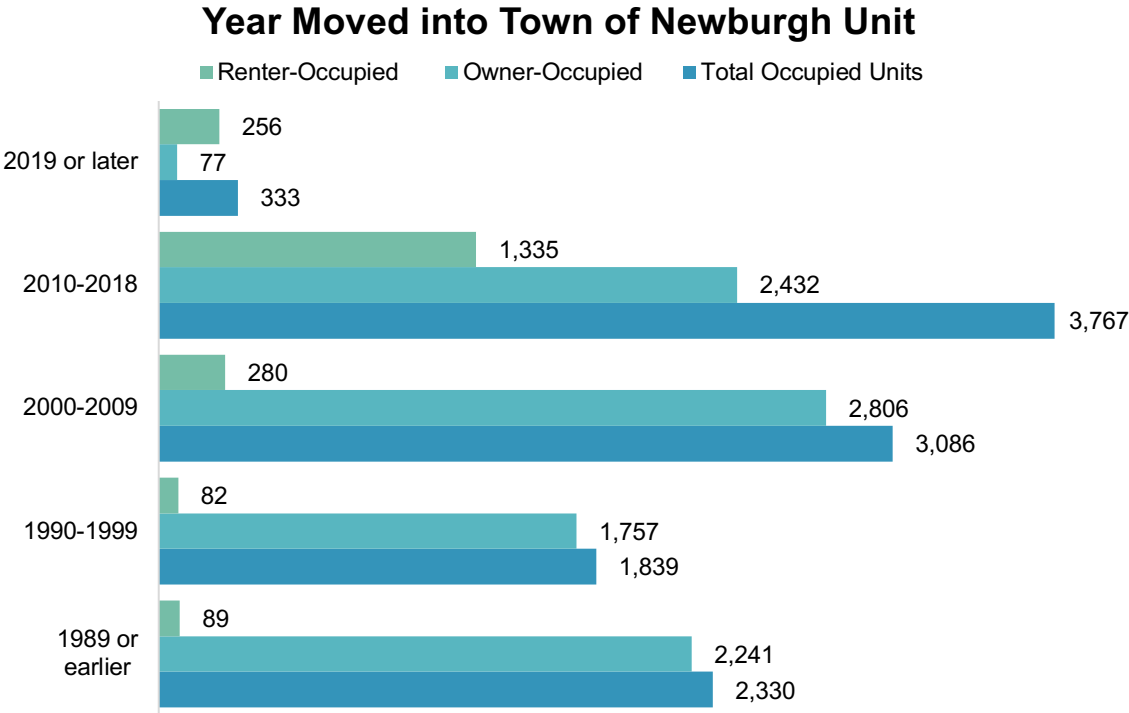
Gardnertown has a total of 1,618 occupied housing units with 118 vacant units. The homeownership rate is 78.8%. Gardnertown also has the lowest vacancy rate in the Town of Newburgh at 10.4% in 2020. The median gross rent is \$1,575.

Orange Lake has a total of 3,574 occupied housing units with 198 vacant units. The homeownership rate is 88.8%. Orange Lake also has the lowest vacancy rate in the Town of Newburgh at 5.3% in 2020. The median gross rent is \$1,538.

The chart below contains total figures of individuals who have moved into the Town of Newburgh for both owner-occupied and renter-occupied units. The data presented is in increments of 10 years between with the exception of the most recent data: 2019 or later. There is no further detailed data before 1989.

The period between 2010 and 2019 marked a spike in new residents for the Town of Newburgh at 3,767, an increase of 22% or 681 residents from 2000 to 2009. During the 2010 to 2019 period, owner-occupied units decreased 15% while new renter-occupied units increased 79%.

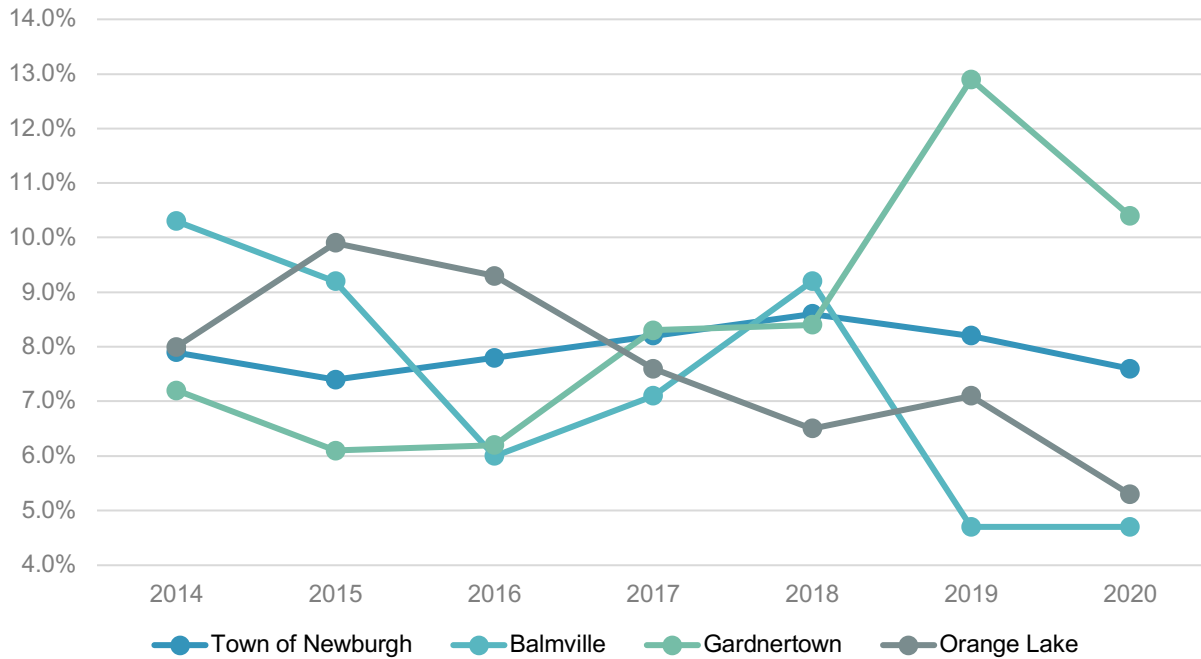
Data for 2019 or later is displaying a significant increase in renter-occupied movers versus owner-occupied movers. This data is limited to pre-pandemic numbers.



The chart below plots vacancy rates for the Town of Newburgh and its CDPs. The Town’s total vacancy rate was 7.6% for 2020, Balmville was 4.7%, Gardnertown was 10.4%, and Orange Lake was 5.3%. In comparison, the vacancy rate in 2020 for Orange County was 9.6% and 5.8% for the United States.

Note, all four regions have experienced a decline in vacancy from 2019. Additionally, the Covid-19 pandemic’s effects are not represented in the chart or yet by the Census Bureau. The market trends section examines the most recent developments for the Town of Newburgh.

Town of Newburgh and CDPs Vacancy Rate



Source: Census, 2020 ACS 5-Year Estimates Data Profiles

Orange County

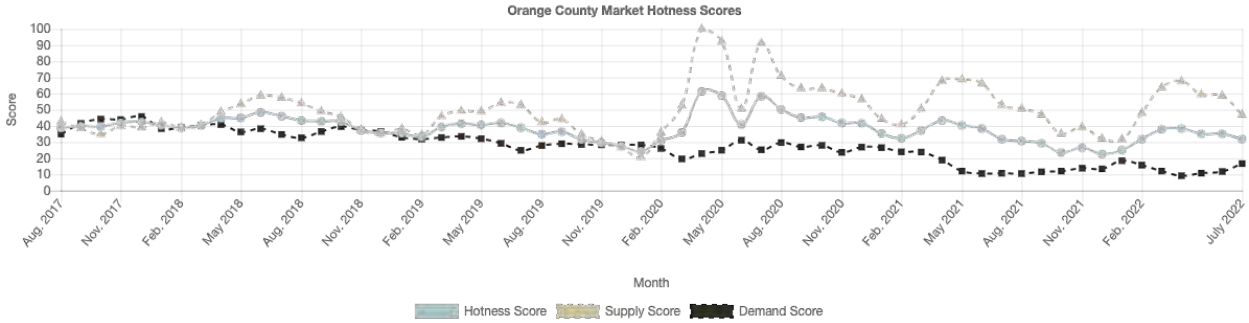
Supply & Demand

Orange County gained 28,497 people, or 7.6%, between 2010 and 2020, according to the 2020 Decennial Census. That number may actually be greater, considering the state of the real estate market in the county since the COVID pandemic shut down metropolitan areas and forced urban dwellers to consider less crowded conditions in the Hudson Valley. Most of the growth in the county occurred in the southern and eastern communities.

More precisely, between 2018 and 2019 the population of Orange County, NY grew from 381,951 to 384,940, a **0.783%** increase and its median household income grew from \$75,825 to \$84,458, a 11.4% increase.

The most concentrated sections in the county are the Town of Palm Tree (32,954), Middletown (30,345) and Town of Wallkill (30,486), the City of Newburgh (28,856), Town of Newburgh (31,985), and Town of New Windsor (27,805).⁷

The Times Herald-Record’s database contains the latest available information about the real estate trends obtained from Realtor.com. It shows how hot each market is across the state, the number of recent sales, sales trends and a report on inventory trends locally, statewide and nationally. As of July 2022, Orange County’s supply score is 46.92 compared to last year’s score of 52.89. The County’s demand score is 16.68 compared to last year’s score of 10.72. Currently, the county is in a buyer’s market with houses on the market at a median of 37 days.



In July 2022, the median listing home price in Orange County, NY was \$400K, trending up 11.4% year-over-year. The median listing home price per square foot was \$221. The median home sold price was \$398.8K. The sale-to-list price ratio was 104.94% which means homes in Orange County, NY sold for 4.94% above asking price on average in July 2022.⁸

Median Listing Home Price vs. Median Home Sold Price



Hudson Valley

Supply & Demand

In Putnam, Dutchess, Orange and Ulster counties, inventory is at new lows, with each county recording fewer than two months’ worth of inventory at the conclusion of the first quarter of 2022, according to the Hudson Gateway Association of Realtors (HGAR). This means that if no new homes were listed for sale, the available homes on the market would sell out in less than two months.

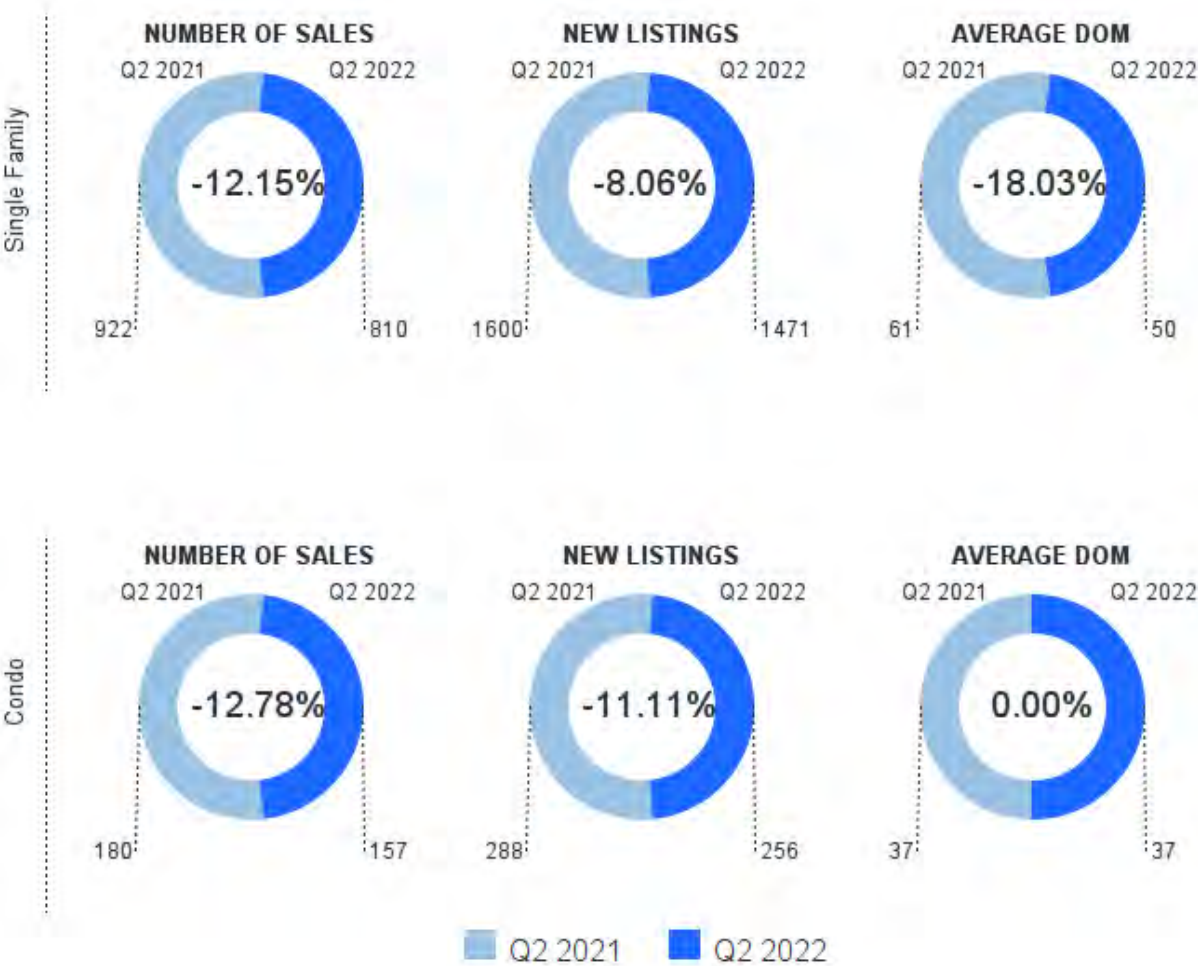
Residential sales in the first quarter of 2022 in Westchester, Putnam, Rockland, Orange, Sullivan, and the Bronx were down from the historic peaks of 2021 but still posted strong results when compared with 2019 and 2020.

Residential sales, which include single-family homes, condominiums, co-operatives and 2-4 family multi-family homes, decreased 11.6 percent in Rockland County – nearly twice as steep a decrease as 6.3 percent in Westchester County. But not as severe as a 28.1 percent drop in Putnam County, 14.7 percent in Orange County, and a 19.8 percent in Sullivan County in first quarter 2022 compared to same time last year, according to OneKey MLS, LLC.

Westchester, however, saw an increase in the number of condominium transactions which saw a 27.8 percent comparing 2022 sales to 2021 sales.⁹

The chart below provided by Coldwell Banker Village Green Realty in their Local Experts Quarterly: Real Estate Report for Orange County in Q2 2022. Sales for both single family and condos have decreased since this time last year. New listings have also decreased. However, the average days on the market have decreased from 61 in 2021 to 50 in 2022. Therefore, the market still favors the seller while it continues to balance out.

**Orange County | Q2 2022
Real Estate Snapshot – Change since last year¹⁰**



United States

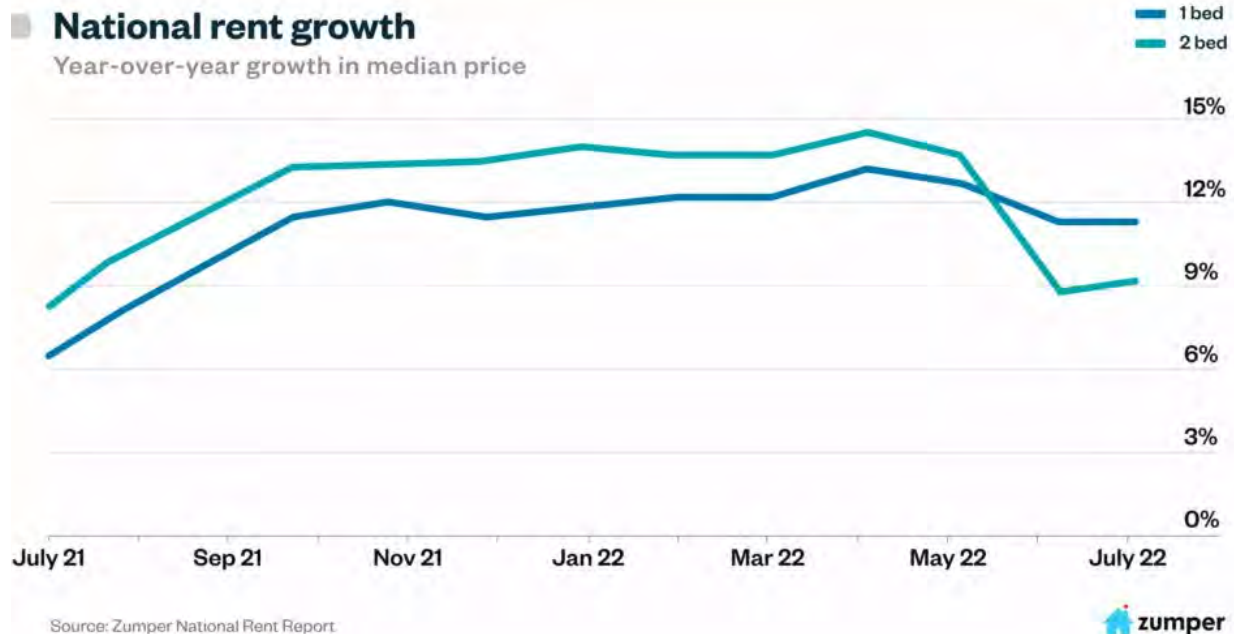
Supply & Demand

The U.S. economy is facing a web of uncertainties, strains and unprecedented events. The U.S. Consumer Price Index is at its highest since November 1981, while wages lag far behind. As Consumer Packaged Goods companies and property owners make clear their intention to continue raising prices, home-buying demand is decreasing, even as the country faces an ongoing housing shortage. Thanks to rapidly increasing interest rates, many would-be buyers are opting out of the market, creating additional demand for rentals. However, renters are holding out for deals, choosing more affordable neighborhoods, bringing in roommates and even moving back in with parents to save money.

The Census Bureau identifies the national rental vacancy rate is at 5.8%. According to the National Multifamily Housing Council (NMHC), the U.S. needs to build 4.3 million more apartments by 2035 to meet the demand for rental housing. This includes 600,000 units (total) to fill the shortage from underbuilding after the 2008 financial crisis.

The NMHC reports that there has been an increase of 60% in the number of adults aged 45 or older renting in the last decade. Additionally, 20% of U.S. households are married couples with children, which reduces the demand for traditional homes.

Underproduction of housing has translated to higher housing costs – resulting in a decline of 4.7 million affordable apartments (monthly rents less than \$1,000) from 2015-2020. Zumper' July National Index shows a return to substantial price increases. Nationally, median one-bedroom rent is now \$1,450, representing a 2% increase over last month and an 11.3% year-over-year jump. July's two-bedroom median is \$1,750, a 2% increase month-over-month and 9.3% increase year-over-year.¹¹



Future Outlook

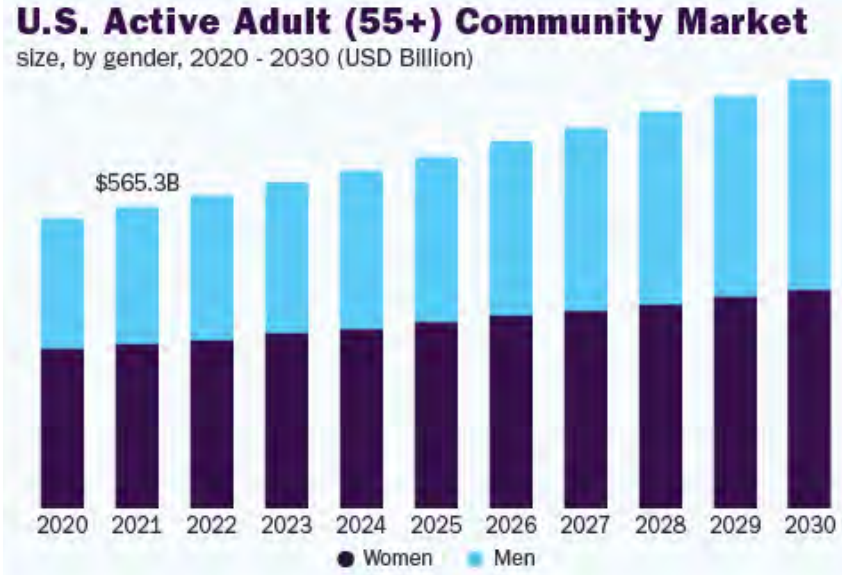
The US rental market is undersupplied, and since housing prices are reaching ever higher, more Americans will be forced to turn to renting. Most will believe their rental will be a short-term transition but without new construction seriously increasing pace, their tenancy might be much longer.

In the National Association of Realtors 2021 Home Buyer and Seller Generational Trends report, baby boomers are the largest share of sellers at 43%. When selling, Younger and Older Boomers trade for a home that has a difference of less than 100 square feet, essentially trading a similar sized home. Baby Boomers are selling to move closer to friends and family, due to retirement, or because their home is too large. Younger Boomers have owned their home typically 14 years before selling, while Older Boomers owned their home 16 years before selling.¹²

More seniors are turning to rental opportunities to downsize from their current homes, simplify their lives, and/or to move closer to their children and grandchildren. Within the U.S., the population of seniors 55+ is projected to grow 8% between 2020 to 2025 with a median income growth of 10% between the same years. By 2030, seniors 65+ will account for approximately 21% of the total United States population. By 2050, the 65-plus age group is estimated to exceed 85.6 million, a more than 50% increase over its estimated 2020 population (56.1 million).

The U.S. active adult (55+) community market size was valued at USD 565.3 billion in 2021 and is anticipated to expand at a compound annual growth rate (CAGR) of 4.01% from 2022 to 2030. Increasing demand from baby boomers, reduction in the stigma of retiring, and growing interest of investors in senior living facilities are driving the market.

The living preferences of baby boomers are changing, as this population wants to stay independent and lead an active lifestyle. Thus, post-retirement they prefer to relocate to communities that have residents with shared values and not senior living or assisted living facilities.¹³



Work Cited

- ¹ <https://livablecommunities.aarpinternational.org/>
- ² <https://www.recordonline.com/story/news/2001/10/07/life-at-glen-arden-isn/51173953007/>
- ³ <https://data.recordonline.com/census/total-population/total-population-change/orange-county-new-york/050-36071/>
- ⁴ <https://www.hvoutofalignment.com/briefs/silver-tsunami>
- ⁵ https://www.cbre.us/-/media/cbre/countryunitedstates/media/files/services/senior-housing/activeadult_the-goldenerav2.pdf
- ⁶ Social Security Administration, Retirement & Survivors Benefits: Life Expectancy Calculator, 2019.
- ⁷ <https://www.chroniclenewspaper.com/news/local-news/orange-county-s-population-soars-DF1755234>
- ⁸ https://www.realtor.com/realestateandhomes-search/Orange-County_NY/overview
- ⁹ <https://rcbizjournal.com/2022/04/10/housing-market-finally-settling-but-rising-house-prices-continues-to-make-hudson-valley-unaffordable-for-many/>
- ¹⁰ <https://mce.cbprospectsquare.com/MCE/prj/cwb/links/qr/mtmain.asp?et=QR&ak=92997&makey=99426>
- ¹¹ <https://www.zumper.com/blog/rental-price-data/>
- ¹² <https://www.nar.realtor/sites/default/files/documents/2021-home-buyers-and-sellers-generational-trends-03-16-2021.pdf>
- ¹³ <https://www.grandviewresearch.com/industry-analysis/us-active-adult-community-market>

Planning & Development Advisors



Creating value by unlocking opportunities

November 13, 2019

Hon. Gil Piaquadio, Supervisor and
Town Board Members
Town Hall
1496 Route 300
Newburgh, NY 12550

Re: Senior and Affordable Housing

Dear Supervisor Piaquadio and Town Board Members,

On behalf of Planning & Development Advisors (PDA), thank you for providing this opportunity to assist the Town of Newburgh in the review of the Town's Zoning Code relative to senior housing and affordable/workforce housing and the density bonus provisions associated with each. This technical memo evaluates: 1) the changing demographic conditions in the Town and County particularly with age cohorts 55 and over; 2) an evaluation of the Town's existing Sections 185-47 and 185-48 (Affordable Housing and Senior Housing, respectively (included as an appendix item as part of this submission)) in comparison to other code provisions in communities comparable to the Town of Newburgh. With respect to senior housing, there continues to be an increasing societal need and demand for quality facilities to provide specialized housing for individual who require some assistance with daily living, specially including senior citizens. While some senior housing models are designed to allow residents to "age in place", some communities (e.g., the Town of Greenburgh) have taken this concept to also allow for a resident to "age in place" within the community itself, meaning that the community provides the opportunity for a variety of senior housing options to exist. The specialized housing designed to serve seniors provides significant benefits to the community as the senior population forms a stable part of the community, generates limited traffic on area roadways, does not utilize school resources, and can serve as a source of sustained support of local businesses. Beyond the specialized housing market, a recent Wall Street Journal article (see attached) notes that "aging in place" technology including sensors that respond to a variety of medical conditions, facial recognition for identifying visitors, and houses with malleable fixtures that can be adjusted as residents age create opportunities for seniors to stay in their existing residences longer.

Table 1, Selected Demographic Conditions/Trends highlights and provides a comparison of the aging of the population for the Town, County and State. As noted in the recently published article (refer to Appendix of this report) this is not an uncommon phenomenon in New York State. Recent work by this office in the Town of Cortlandt, NY revealed that the population in that community is now more than one-third age 55 plus. It is important to note that the Town of Newburgh consistently has a greater percentage of its population age 55 plus compared to both Orange County and New York State. The 55+ age cohort is an important distinction because it marks a threshold that a housing community can legally restrict the age of occupants.

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Table 1
Selected Demographic Conditions/trends

Community	Year	Age 55+	Total Population	% of total population
Town of Newburgh	2000	6,191	27,568	22.4
	2010	8,077	29,801	27.1
	2017	9,316	30,697	30.3
Orange County	2000	62,821	341,367	18.4
	2010	83,032	372,813	22.2
	2017	95,826	378,174	25.3
New York State	2000	4,136,339	18,976,457	21.7
	2010	4,921,611	19,378,102	25.3
	2017	5,547,153	19,798,228	28.0

Source: US Census Bureau

The petition submitted on behalf of the Polo Club¹ application references a study by Harvard University related to population projections and housing needs for seniors and cites the growing demand for senior related housing. That study highlights trends that this office has been observing for a number of years as we have reviewed senior housing projects (e.g., Kendal on Hudson approved in 2002) or have been part of the development team (the Club at Briarcliff originally approved 2003). Our more recent efforts reviewing a Brightview Senior Living proposal in the Town of Greenburgh and promoting a zoning change in the Town of Cortlandt for active senior housing further reinforces the trends observed earlier. From our own findings we can concur with the aforementioned Harvard Study that seniors typically: want to age in place and continue to live close to family, friends and support network that they have developed over the years; and, want to downsize to a residential unit that is more mobility friendly (e.g., single level, access to elevator). With respect to the concept of aging in place, this is often a term used for facilities that allow a resident to transition from independent living, to assisted living to skilled nursing as their health and abilities dictate. As noted above, the Town of Greenburgh has adopted the aging in place concept to include the entire community and are in the process of amending their zoning code to allow for a broader spectrum of senior housing products.

Currently the R-2 R-3 B and IB Zoning Districts provide for a bonus provision for affordable housing, the R-3, B and IB provide for a bonus provision for senior housing and assisted care, with Town Board authorization required for modifications to density, lot dimensions and building setbacks in addition to site plan review, and nursing homes are permitted in the AR, R-2 and R-3 Districts all allowed subject to site plan review. (All units in a project in the B or IB, except existing, would have to be affordable and/or senior, so the term “bonus” is somewhat of a misnomer for those Districts even though used in the Code.) It is noted that the Town of Newburgh currently includes senior housing as a multi-family or active adult product. The Town’s Comprehensive Plan² includes a recommendation for updating the definition of senior housing and identifying appropriate location for development. In addition to senior citizen housing and senior assisted-care facility, there are other forms of senior housing which are not currently identified in the Town’s zoning code, including:

¹ Correspondence from Daly & Weinberg, PLLC received by the Town of Newburgh May 7, 2019

² Town of Newburgh Comprehensive Plan Update, October 2005, page II-44, III-61, IV-6

Senior multi-family/active adult: age restricted apartments.

Independent living: age restricted apartments, house keeping services, prepared meals offered daily, activities, programming, transportation services.

Assisted Living (comparable to the current assisted-care facility): age restricted apartments, house-keeping services, prepared meals offered daily, activities, programming, transportation services, assistance with activities of daily living (bathing, dressing, medications).

Assisted Living (Memory Care): age restricted apartments, house-keeping services, prepared meals offered daily, activities, programming, transportation services assistance with activities of daily living (bathing, dressing, medications), secure neighborhood 24/7 with lower staff to resident ratios (more staff as compared to assisted living) to support residents with dementia.

Skilled nursing (Nursing Home of Convalescent Home): age restricted apartments, house-keeping services, prepared meals offered daily, activities, programming, transportation services assistance with activities of daily living (bathing, dressing, medications), licensed for higher acuity residents that need more significant care.

Continuing Care Retirement Community (CCRC): a community offering a full range of housing and services ranging from independent living to skilled nursing.

Table 2 below, provides a summary of the number and type of senior related housing communities within the Town.

**Table 2
Summary of Existing Senior Housing Resources**

Name	Address	Type of housing	# units/ beds	rental/ owner	Income Guide	Amenities	Zoning District & Density Bonus Sought
Senior Horizons	353-355 South Plank Road	Active adult 55+	70 units	rental	1 person \$40,620 2 person 46,380	Secure entry, on-site laundry facilities, libraries, community room, planned activities, beauty salon, fitness room	B
Lakeside Senior Housing	Lakeside Road	Active adult 55+	102 units	rental		community room, exercise room	IB/102
Stewart Woods	Stewart Avenue	Active adult 55+	42 units			Fully equipped fitness center, TV lounge and billiards room, Library and media center, Social activity room, Private projection screen home theatre, Dog run. Walking trails to shopping and Shortline Bus Terminal.	IB/42
Gardnertown Commons	Gardnertown Road	Active adult 55+	20 units	rental			R-3/20
Meadow Hill Expansion (fka, Golden Vista)	Meadow Hill Road	Active adult 55+	21 units	rental			R-3/21
Saphire Nursing at Newburgh	172 Meadow Hill Road	Skilled Nursing	190 beds	rental		personal laundry, formal dining room, beauty & barber shop, social and recreation programs	R-3/NA

Compiled by Planning & Development Advisors with input from the Town of Newburgh Code Compliance Department

In summary, the Town of Newburgh has a total of 255 approved units of active senior housing (55+) 185 units, or 72 percent were derived through the Town’s bonus provision legislation, 144 of those units are located in the IB District pursuant to that legislation. In addition, the Town of Newburgh Planning Board is currently entertaining two site plan applications (The Polo Club and Hudson Place at Overlook Farm) that include bonus provisions. At some point the Town will likely be approached by senior housing providers that develop the more specialized senior housing product (independent living and assisted living). These specific types of senior housing typically have lower impacts to the community but provide fiscal benefits to the school district with no impacts.

The question of whether the Town should consider continuing the existing bonus provisions for active senior housing should be tempered with a better understanding of the number of units to existing population. The Governor’s Smart Growth Cabinet prepared a Retirement Housing Zoning overview³ which identifies different zoning techniques for implementing zoning to create senior housing. As part of that publication, several towns that have implemented Golden Age Housing (i.e., senior multi-family/active adult) were identified. Table 3 below provides a comparison of the population age 55+ to the number of senior multi-family/active adult units. As indicated in Table 3 the Town of Newburgh has a higher ratio of senior multi-family/active housing to population. This might be an indicator that the Town may not need to continue to rely on the bonus provision in the Code to continue to develop senior multi-family housing associated with non-age restricted housing or **could** reduce the current bonus provided. Further, it is noted, that the existing ordinance includes a bonus of assisted-care units. As noted below, it is unlikely that a senior housing provider would include an assisted living component as part of a bonus program because of the specialized services required for that particular housing option and the economies of scale necessary create such a facility.

Table 3
Comparison of units to population

Community	Population 55+	# Senior housing MF/Active	Ratio (unit to population)
Town of Newburgh	9,316	255	1:36
Town of Oyster Bay	97,355	1,400	1:69
Town of Hempstead	225,744	1,260	1:179

Source: US Census Bureau, Town of Oyster Bay, Town of Hempstead, Town of Newburgh, compiled by Planning & Development Advisors

One issue the Town may want to consider regarding the senior housing bonus provision is whether to keep the provision but clarify that it would be targeted to affordable senior housing (active senior 55+). The Town’s Code presently uses size restrictions on senior units to encourage affordability (the size of units are the same as that for affordable units), but this may not be the most effective technique given that seniors are typically living on more limited or fixed incomes. As noted in Table 2, there is currently one facility (Senior Horizons) with 70 units that provides that resource within the Town.

It is important to note, that there needs to be a distinction with respect to the provision of senior housing and the provision of affordable senior housing. Recently some communities like the Village of Irvington and the City of White Plains have instituted affordable housing provisions as part of the development of senior housing projects in those communities, regardless of the type of senior housing being proposed. Senior housing providers have indicated that it is problematic for senior housing developments that include services (e.g.,

³ <https://aging.ny.gov/LivableNY/ResourceManual/PlanningZoningAndDevelopment/II2m.pdf>

independent living, assisted living) to include an affordable component given the more service intensive the use compared to a more traditional age restricted or active adult product.

Affordable/workforce Housing

With respect to affordable housing⁴, it does not appear that the Town has any current, or at least limited, developer interest in the use of the bonus provision to advance affordable housing construction. The Code does not require the mandatory inclusion of affordable housing but leaves it to the discretion of the developer to decide whether to opt in or not. Many communities that have identified the provision of affordable housing as part of an overall housing strategy (these are typically communities just outside of New York City (Westchester County, Nassau and Suffolk Counties although there are others see attached) have adopted inclusionary affordable housing ordinances that require a certain percentage (typically 6 to 10%) of the overall development program be affordable housing based on a percentage of area median income (AMI). The Comprehensive Plan Update (page III-44) does reference the potential for mandatory inclusion of affordable units into larger market rate single family and multi-family projects with priority for Town residents and employees.

With respect to the existing code, the current Affordable Housing section ties the aggregate income limit to the median annual Town-paid salaries of all full-time employees. Input from the Town Accountant indicates that the mean average for all full-time employees in the Town is approximately \$63,000. Based on the current Code requirements, maximum yearly rents, excluding utilities, for a middle-income dwelling unit shall not exceed 25% of the aggregate family income and the maximum gross sales price shall not exceed 2.5 times the aggregate family income. In this case, using current standards approximately \$15,750 annually would be devoted to paying rent, equivalent to \$1,312.50 per month. An affordable for sale product would not exceed \$157,500 (\$63,000 x 2.5).

Based on information from the New York State Affordable Housing Corporation⁵ (AHC), a sliding scale based on family size and income could also be used as a benchmark that might be more effective in addressing the creation of affordable housing opportunities. A typical standard used for creating affordable housing is a target income of 80% of AMI, with a sliding scale based on the size of the household. The current Orange County AMI is approximately \$96,600, based on the AHC threshold, a four-person household income limit would be \$77,280. The Town of Newburgh's eligibility threshold is much lower (\$63,000 v. \$77,000) for a family of four which might be one of the limiting factors in why affordable housing hasn't been included as part of a density program.

One alternative that was raised in the Comprehensive Plan Update (refer to page 43) was the potential for higher density projects devoted exclusively to affordable/workforce housing, targeted to specific zoning districts. This concept might include the use of overlay or floating zones in such areas as the B, IB and or I Districts where there is available infrastructure (water, sewer, roads) and the development is proximate to retail and service providers which would reduce the potential traffic related impacts. With respect to this last point, it is noted that traffic is typically an impact issue associated with multi-family developments and there are certain roadways within Town (e.g., Route 9W) which operate at less than optimal conditions. The Town may want to consider more of a mixed-use development pattern as identified in the Comprehensive Plan Update see Item #11 page III-43 as part of a Hamlet zoning concept, Item #15 page III-45 as part of a major mixed-use development and as identified in the Intermediate Action Items III-63 related to integrating workforce housing with other uses.

⁴ The Town of Newburgh Comprehensive Plan Update, page 43 notes that affordable housing is also commonly referred to as workforce housing or community housing.

⁵ <https://hcr.ny.gov/system/files/documents/2019/06/2019%20AHC%20Income%20Limits.pdf>

The Orange County Planning Department participated in a 2009 study⁶ (the Housing Needs Assessment Report or (HNA)) which identified a housing needs assessment and housing affordability challenges. The HNA report examined existing and forecasted needs for affordable housing on the County-wide level and by municipality. The HNA report included a section on allocations to the different municipalities within each of the respective Counties by respective municipality. The HNA report concludes with a “To be Built” target for each community for both owner and renters by community. For the Town of Newburgh, the target figures for the year 2020 are 481 units for owner-occupied units and 195 rental units. As noted in Table 2 above, there is currently one development, Senior Horizons, with 70 units that has an affordable housing component. With respect to workforce housing, available records indicate that there is a six-unit workforce housing building at 16 Plank Road in the Town of Newburgh.

Quality affordable housing was identified as part of the prior planning process understanding that affording opportunities for Town residents and employees to remain in Town is an important societal goal and helps to stabilize the community. In summary, the Town should consider making affordable housing a requirement as part of future residential and mixed-use developments and consider a reasonable percentage AMI to target the market.

I will make myself available to meet with your Honorable Board in the future should you have any questions or comments on the above or attached.

Kind regards,

A handwritten signature in black ink, appearing to read 'D. B. Smith', written in a cursive style.

David B. Smith, Principal

Cc: Mark Taylor, Town Attorney

⁶ A Three-County Regional Housing Needs Assessment, Orange, Dutchess and Ulster Counties 2006 to 2020, April 2009

Planning & Development Advisors



Creating value by unlocking opportunities

February 4, 2020

Hon. Gil Piaquadio, Supervisor and
Town Board Members
Town Hall
1496 Route 300
Newburgh, NY 12550

Re: Senior and Affordable Housing - Update

Dear Supervisor Piaquadio and Town Board Members,

As you will recall this office submitted for your consideration a technical memo on senior and affordable housing dated November 13, 2019. There is a specific issue related to affordable housing that needs to be updated based on new information. On page 6 of 7 of the November 13th submission there is reference to the aggregate income limit for affordable housing being tied to the median annual Town-paid salaries of all full time employees. At that time of submission, the available information we had was the mean average. We have recently received updated information from the Town Accountant which now reflects the median 2019 salary for full time Town employees. Accordingly, we have updated page 6 of 7, see attached, as a replacement page for the original November 13th report. In addition we have also accounted for family size to make a more direct comparison to corresponding affordable housing criteria.

We look forward to meeting with the you and the Town Board to continue this discussion.

Kind regards,

A handwritten signature in black ink, appearing to read 'D. B. Smith'.

David B. Smith

Cc: Mark Taylor

independent living, assisted living) to include an affordable component given the more service intensive the use compared to a more traditional age restricted or active adult product.

Affordable/workforce Housing

With respect to affordable housing⁴, it does not appear that the Town has any current, or at least limited, developer interest in the use of the bonus provision to advance affordable housing construction. The Code does not require the mandatory inclusion of affordable housing but leaves it to the discretion of the developer to decide whether to opt in or not. Many communities that have identified the provision of affordable housing as part of an overall housing strategy (these are typically communities just outside of New York City (Westchester County, Nassau and Suffolk Counties although there are others see attached) have adopted inclusionary affordable housing ordinances that require a certain percentage (typically 6 to 10%) of the overall development program be affordable housing based on a percentage of area median income (AMI). The Comprehensive Plan Update (page III-44) does reference the potential for mandatory inclusion of affordable units into larger market rate single family and multi-family projects with priority for Town residents and employees.

With respect to the existing code, the current Affordable Housing section ties the aggregate income limit to the median annual Town-paid salaries of all full-time employees. Input from the Town Accountant indicates that the median annual salary mean average for all full-time employees in the Town is approximately \$55,93863,000. Based on the current Code requirements, maximum yearly rents, excluding utilities, for a middle-income dwelling unit shall not exceed 25% of the aggregate family income and the maximum gross sales price shall not exceed 2.5 times the aggregate family income. In this case, using current standards approximately \$13,98415,750 annually would be devoted to paying rent, equivalent to \$1,075312.50 per month. An affordable for sale product would not exceed \$139,84557,500 (\$55,93863,000 x 2.5).

Based on information from the New York State Affordable Housing Corporation⁵ (AHC), a sliding scale based on family size and income could also be used as a benchmark that might be more effective in addressing the creation of affordable housing opportunities. A typical standard used for creating affordable housing is a target income of 80% of AMI, with a sliding scale based on the size of the household. The current Orange County AMI is approximately \$96,600, based on the AHC threshold, a four-person household income limit would be \$77,280. The Town of Newburgh's eligibility threshold for a family of four is comparable to the AHC threshold much lower (\$78,313⁶63,000 v. \$77,000) for a family of four which might be one of the limiting factors in why affordable housing hasn't been included as part of a density program.

One alternative that was raised in the Comprehensive Plan Update (refer to page 43) was the potential for higher density projects devoted exclusively to affordable/workforce housing, targeted to specific zoning districts. This concept might include the use of overlay or floating zones in such areas as the B, IB and or I Districts where there is available infrastructure (water, sewer, roads) and the development is proximate to retail and service providers which would reduce the potential traffic related impacts. With respect to this last point, it is noted that traffic is typically an impact issue associated with multi-family developments and there are certain roadways within Town (e.g., Route 9W) which operate at less than optimal conditions. The Town may want to consider more of a mixed-use development pattern as identified in the Comprehensive Plan Update see Item #11 page III-43 as part of a Hamlet zoning concept, Item #15 page III-45 as part of a major mixed-use development and as identified in the Intermediate Action Items III-63 related to integrating workforce housing with other uses.

⁴ The Town of Newburgh Comprehensive Plan Update, page 43 notes that affordable housing is also commonly referred to as workforce housing or community housing.

⁵ <https://hcr.ny.gov/system/files/documents/2019/06/2019%20AHC%20Income%20Limits.pdf>

⁶ Per Section 185-47.C. (\$55,938 x 1.6 = \$78,313)

Examples of On-line Community Feedback

Your Feedback

What is your vision for the future of the Village? Have any comments, suggestions, or interesting ideas regarding the future of the Village? Please let us know.

NAME (Required)

EMAIL (Required)

CHECK ALL THAT APPLY (Required)

- I Live in The Village
- I Work in The Village
- I Own A Business in The Village
- I am Not a Resident but I Miss The Village Green
- None of the Above

COMMENT (required)

SUBMIT

Like this

English >

ABOUT

This is the website for the Village of Mamaroneck's Comprehensive Plan Update. [Click here](#) for the Frequently-Asked Questions (FAQ) page. [Click here](#) for the Project Schedules.

Site designed and maintained by Herdesky & Hanover. Header photos by June Marie via Flickr (Creative Commons: CC BY-SA 2.0, modified to fit header).

E-MAIL UPDATES

To receive periodic e-mail updates, type in your e-mail address and press the button below.

Email Address

KEEP ME UPDATED

YOUR FEEDBACK

[Click here](#) to go to the online feedback form.

MEETING VIDEOS

Questions & Answers

Frequently Asked Questions

Please click on any question that interests you below to view the answer.

+ What is a Comprehensive Plan?

– We already have other plans and strategies which address the Town of Lloyd – what will happen to those?

Existing plans and strategies are an important part of the Comprehensive Plan body of information. They can provide insight on unique features of community and local context. They can also be used guide planning. Local and region subject-specific plans will be consulted to assist with setting the vision and the attendant community and economic development strategies. In cases, they will be incorporated into the plan if the goals are still consistent with the community's aspirations and vision.

Questions Submitted by the Town of Lloyd Community

+ How can I impact this project?

+ How will this initiative improve job opportunities and support small businesses?

Updated July 11, 2022

Your Questions & Comments

Your input is important to us and to our community. Please use the form below to submit your questions, comments, or suggestions regarding the Town of Lloyd Comprehensive Plan.

If you ask a question, the reply will be posted on this page within 5 business days (without your name). Please check back.

SUBMIT QUESTION OR COMMENT