

SPECIAL TOWN BOARD MEETING
March 3, 2021

Town of Lansing YouTube Channel
<https://www.youtube.com/channel/UCs2FqU2xFnDyGS8DwXgoJwA>

A Special Meeting of the Lansing Town Board was held at the Town Hall Board Room, 29 Auburn Road, Lansing, NY on the above date at 6:30 p.m. The meeting was called to order by Edward LaVigne, Supervisor, and opened with the Pledge of Allegiance to the flag. Roll call by Deborah K. Munson, Town Clerk, showed the following to be

PRESENT:

Andra Benson, Councilperson (remotely) Doug Dake, Councilperson (remotely)
Bronwyn Losey, Councilperson (remotely) Joseph Wetmore, Councilperson (remotely-6:32)
Edward LaVigne, Supervisor

ABSENT: No one absent

ALSO PRESENT: Patrick Tyrrell, Parks and Recreation Supervisor, Ruth Groff

ALSO PRESENT REMOTELY: Guy Krogh, Town Counsel, C.J. Randall, Director of Planning

MORATORIUM DISCUSSION

Director of Planning C.J. Randall reviewed the following:

Planning

Comprehensive Plan
+
other adopted plans
+
Awareness and analysis of current state, county, and local public policy and market conditions
+
Land Use Audit



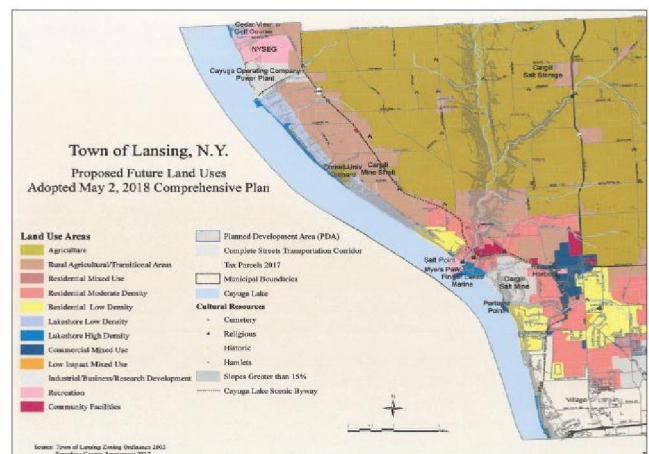
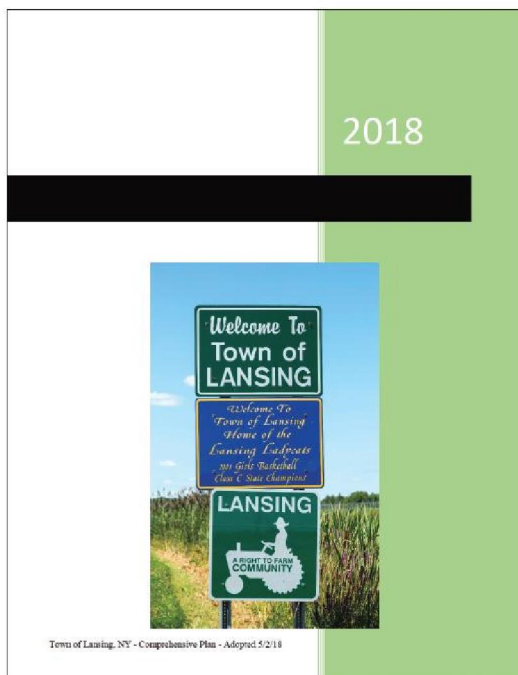
Zoning

Protects private property owners
+
Advances the public interest
+
Manages development expectations



Permitting

The built environment: the physical construction of businesses, residences, *appropriate** development
+
Building, Energy, Fire Codes



What else is Planning?

- ✔ **Monitoring broad swaths of federal, state, and local policy**
housing (including building permits and other land development), emergency management, natural resources, agriculture, economic development, tourism, parks and recreation, and infrastructure and utilities coordination including stormwater management, transportation, and energy*

- ✔ **Assessing Existing Conditions**
Documenting and analyzing the community's existing and desired form at different scales, providing a basis for the creation of the zoning and other land use regulations

- ✔ **Visioning and Creating Regulations**
Helping define the community's vision for its future and determining the specific regulations and procedures to further that vision. Understanding and clearly articulating desired degree of change

- ✔ **Updating Procedures and Administration**
Creating and implementing clear and streamlined processes that are consistently and fairly applied, following Federal and State Law

What is Zoning?

Development Regulations:

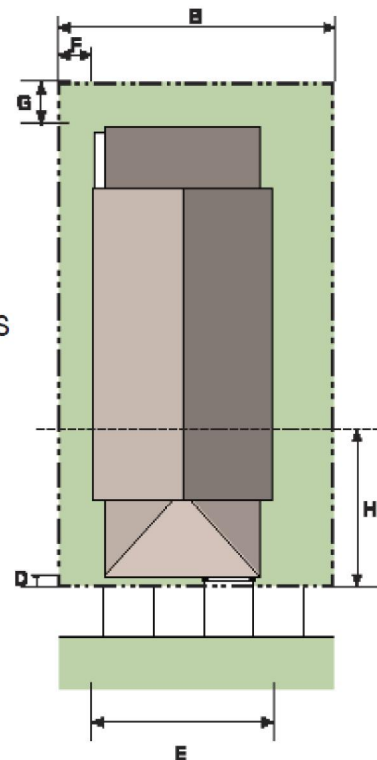
- Allowed Uses
- Required Lot Sizes
- Building Placement
- Building Size

May also include: Building features, styles, materials

Process:

- for approvals of new development/
redevelopment (Including Site Plan Review
and Special Permit criteria)
- for subdivision of land

Relief valve: Zoning Board of Appeals



What is form-based zoning?

Zoning Map

Shows where and what types of development are permitted.

Administration

Includes background and intent, establishes Home Rule authority for the code, and lists terminology and definitions.

Uses

Code	Intended Primary Use	Permitted Accessory Use
1	1. Use for residential, office, retail, manufacturing, and service uses.	1. Use for any other use.
2	2. Use for residential, office, retail, manufacturing, and service uses.	2. Use for any other use.
3	3. Use for residential, office, retail, manufacturing, and service uses.	3. Use for any other use.
4	4. Use for residential, office, retail, manufacturing, and service uses.	4. Use for any other use.
5	5. Use for residential, office, retail, manufacturing, and service uses.	5. Use for any other use.
6	6. Use for residential, office, retail, manufacturing, and service uses.	6. Use for any other use.
7	7. Use for residential, office, retail, manufacturing, and service uses.	7. Use for any other use.
8	8. Use for residential, office, retail, manufacturing, and service uses.	8. Use for any other use.
9	9. Use for residential, office, retail, manufacturing, and service uses.	9. Use for any other use.
10	10. Use for residential, office, retail, manufacturing, and service uses.	10. Use for any other use.
11	11. Use for residential, office, retail, manufacturing, and service uses.	11. Use for any other use.
12	12. Use for residential, office, retail, manufacturing, and service uses.	12. Use for any other use.
13	13. Use for residential, office, retail, manufacturing, and service uses.	13. Use for any other use.
14	14. Use for residential, office, retail, manufacturing, and service uses.	14. Use for any other use.
15	15. Use for residential, office, retail, manufacturing, and service uses.	15. Use for any other use.
16	16. Use for residential, office, retail, manufacturing, and service uses.	16. Use for any other use.
17	17. Use for residential, office, retail, manufacturing, and service uses.	17. Use for any other use.
18	18. Use for residential, office, retail, manufacturing, and service uses.	18. Use for any other use.
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28	28. Use for residential, office, retail, manufacturing, and service uses.	28. Use for any other use.
29	29. Use for residential, office, retail, manufacturing, and service uses.	29. Use for any other use.
30	30. Use for residential, office, retail, manufacturing, and service uses.	30. Use for any other use.
31	31. Use for residential, office, retail, manufacturing, and service uses.	31. Use for any other use.
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36	36. Use for residential, office, retail, manufacturing, and service uses.	36. Use for any other use.
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48	48. Use for residential, office, retail, manufacturing, and service uses.	48. Use for any other use.
49	49. Use for residential, office, retail, manufacturing, and service uses.	49. Use for any other use.
50	50. Use for residential, office, retail, manufacturing, and service uses.	50. Use for any other use.

Lists the permitted primary and permitted accessory uses.



Site Development

Landscape, fences and walls, lighting, parking, etc.

Frontage Rules

Defines the space between the pedestrian travel way and the building facades.

Blocks & Streetscapes

Thoroughfare requirements for the public right of way that can include parking lanes and travel lanes for vehicles, transit, goods movement, and bicycles.

Building Types

Large House

1. Description: A detached one- or two-family dwelling with a footprint of 1,500 square feet or more.

2. Frontage: One or more storage areas indicate in area required: **Storage** **Porch** **Lightwell** **Screening**

3. Lot Dimensions:

3a. Lot Area (sq ft)	1,500
3b. Lot Width (ft)	30
3c. Lot Depth (ft)	50

4. Building Setbacks:

4a. Front Setback (ft)	5
4b. Side Setback (ft)	5
4c. Rear Setback (ft)	5
4d. Height (ft)	12

Provides building requirements, such as build-to standards, floor heights, massing, height, and articulation.

How do we update the Zoning Code and Land Use Regulations?

- ✔ Step 1: Conduct audit, assessment of conditions
 - ✘ Step 2: Public information meetings
 - ✘ Step 3: Revise zoning in cooperation with Planning Board
 - ✘ Step 4: Review by Town Board
 - ✘ Step 5: Public meetings and hearings
 - ✘ Step 6: SEQRA (State Environmental Quality Review Act)
 - ✘ Step 7: County Planning review
 - ✘ Step 8: Final zoning!
-

What is a moratorium on land development?

- A land use moratorium temporarily suspends the rights of property owners to obtain development approvals while new rules and strategies are considered by the Town
- Also called ‘interim’ or ‘stop-gap’ zoning
 - Rationally related to a stated and valid public purpose
 - Scope of activities and geography affected
 - Must not amount to a taking without compensation
 - Must comply with procedure (generally, as an adopted Local Law)
 - Limited to a finite and reasonable length of time
 - Process where landowners can apply for relief or exemption

Town Counsel Guy Krogh discussed the following:

Moratoria Generally

- Legal criteria
- Scope and impact
- Duration
 - Plan for it to be no more than one year (rule of thumb)
 - One small area or one store front will not get more than one year
 - Large area probably gets more than one year
 - Also depends on complexity of subject matter
 - Need to have relief valve – akin to a variance
- If challenged, no way to predict the outcome as analysis is based in constitutional balancing, and “correctness” of purposes for temporary taking and any extensions of the restrictions
 - When in doubt – property rights often win
- Town will need to document
 - What it is doing
 - Why it is doing this
 - How it has made consistent and steady progress

- First step
 - What property rights are being sought to be restricted or suspended?
 - Where, a geographical area or zone, or something else?
 - For how long?
 - When does it end, and why?
- Major question – is moratorium necessary – this is a policy determination
- Criteria to survive challenge
 - Arise from unanticipated situation, non-foreseeable risk or problem, or exigent need to preserve current status to consider or make changes
 - Have relief valves – relief for property owner if impact on them is invidious or very harmful
 - Sunset within appropriate time period
 - Do not take away people’s property rights needlessly – a Fifth Amendment issue always arises and moratoria can be a “taking” or an “administrative taking”
 - This often requires a vested right, and most proposed future plans are not often “vested rights”
 - Public Purpose must be served – zoning regulations and conditions must stay within police power of zoning
 - Power to control nuisances
 - Protect public health, safety, and welfare
 - Protection of citizen property rights and values (public weal)

Moratorium Risks and Challenges

- Generally upheld if use pursued is a proper subject matter of zoning
- Needs to be public and general, not targeted at one property, zone, area, project, or use
- Timing can matter greatly
- The record created leading up to the moratoria can matter as well
- Spot Zoning – pop up regulation to allow or disallow a use
 - Turns on relationship to Comprehensive Plan
 - If done for particular person or for a very localized benefit, often is spot zoning
- Lawsuits & Waivers – these take time and produce costs incurred to protect municipality – state-based claims under Article 78 usually resolved in about six months; federal cases easily triple that amount
- Litigation is risky and expensive, fair minimums to get to a hearing tend to be high
 - Estimate \$20,000 to \$50,000 for NYS lawsuit
 - Estimate \$60,000 to \$150,000 for Federal lawsuit
- Sometimes changing the zoning is faster, cheaper, and less risky than first investing in a moratorium – again, this is a policy decision

Relief Valves

- These are generally required as zoning and moratoria impacts are not uniform – all persons, situations, and lands are unique; one size does not fit all
- Area and use variances are used for exceptions to zoning rules, and waivers in moratoria tend to follow use variance rules – however, standards are set on a per moratorium basis
- Balancing the harm with the goals of the moratoria should be part of the calculus in building waiver rules
- Purpose is to address situations where landowners or land have a unique situation or hardship; to let applicant seek a waiver to reduce or avoid hardship or the strict application of the moratorium
- Improper emplacement of rules, conditions, or delays upon an applicant or landowner can cause moratoria to fail, but even if it survives there are ‘special exception’ rules that can require the old zoning to apply, even if moratoria survived (and there are also special rules on appeals on this matter)
- Also provides an interim review step prior to court to ‘get it right’

In summary, fairness matters

- So, Town should build a record supporting a moratorium
- Explain why Town doing what it is doing, and how it relates to public weal
- Clearly state purposes and goals
- Show no gaps in time – no unreasonable delays
- Create history – show steady and continuous course towards particular goal that could now be materially disrupted by not preserving *status quo* pending adoption of new regulations

Director of Planning C.J. Randall reported the following:

Town Center Incentive Zone

- Direct development to areas where it is most financially advantageous to the Town
 - Existing or planned infrastructure
- Incentives for economic development
- Town Center and part of East Shore Drive
- Map expires end of 2021

Economic Analysis

- Smart Growth America published Fiscal Implications of Development Patterns – model for municipal analysis

TOWN BOARD CONCERN

Supervisor Ed LaVigne expressed concern of Town Board members stating their opinion to Town residents. Ed stated Town Board members should advise people to come to the Town Board with their concerns.

Councilperson Joseph Wetmore stated he believes the Town Board Members should listen to the residents and explain the Town’s processes.

Town Counsel Guy Krogh stated:

Some municipalities have standard rules that board / committee members do not discuss (for or against) a topic; they tell the person to bring their concern to the attention of the appropriate board / committee.

1. Avoids bias or appearance of bias
2. Regulate land and property rights of applicant
 - Applicant should be present to hear objections, etc. and then respond

Town Board members should listen to people, but not engage an individual response. Listen and then advise them to submit in writing or go to appropriate board (planning board, town board, etc.)

MOTION TO ENTER EXECUTIVE SESSION

Supervisor Edward LaVigne moved to **ENTER EXECUTIVE SESSION TO DISCUSS THE PROPOSED ACQUISITION/SALE/LEASE OF REAL PROPERTY WHEN PUBLICITY MIGHT AFFECT VALUE AT 7:52 PM.**

Councilperson Doug Dake seconded the motion.

All in Favor - 5 Opposed - 0

MOTION TO EXIT EXECUTIVE SESSION

Supervisor Edward LaVigne moved to **EXIT EXECUTIVE SESSION AT 8:45 PM.**

Councilperson Joseph Wetmore seconded the motion.

All in Favor - 5 Opposed - 0

MOTION TO ENTER CLOSED SESSION

Supervisor Edward LaVigne moved to **ENTER CLOSED SESSION FOR CONFIDENTIAL LEGAL ADVICE ON SPECIFIC TOWN MATTER(S) AT 8:45 PM.**

Councilperson Joseph Wetmore seconded the motion.

All in Favor - 5 Opposed - 0

MOTION TO EXIT CLOSED SESSION

Councilperson Doug Dake moved to **EXIT CLOSED SESSION AT 10:09 PM.**

Councilperson Andra Benson seconded the motion.

All in Favor - 5 Opposed - 0

ADJOURN MEETING

Meeting adjourned at the call of the Supervisor at 10:10 p.m.

Minutes taken and executed by the Town Clerk and Guy Krogh, Town Counsel.

Respectfully submitted,

Deborah K. Munson, RMC
Town Clerk