

### III. TOWN OF BETHANY

#### Documents Reviewed

- **Comprehensive Plan, 1996 (reviewed draft update from 2004)**
- **Stormwater Management and Erosion Control Law, 1994**
- **Zoning Law, adopted 1985, amended through 2004**
- **Land Separation and Subdivision Regulations, amended through 2000**

#### Comprehensive Plan

##### *General*

A general recommendation would be to proceed with and complete the revisions to the Comprehensive Plan that are currently underway. The plan, the Town's first, was adopted in 1996, and the survey on which the plan is based on dates to 1993. It is a well organized, solid document, but a ten year planning window is fairly standard. Also, technological advances since then have allowed maps and graphics to be much more easily produced and inserted into narrative documents, adding significantly to the document's clarity and value. Finally, since 1996, Genesee County has adopted a Smart Growth Plan in conjunction with its expansion of the public water system in the county. Bethany should continue to review its Comprehensive Plan (and all land use regulations) for consistency with this county document.

##### *Other recommendations to consider for inclusion in a revised comprehensive plan:*

1. Page 1, Second Paragraph: Consider revising the phrase "still expanding metropolitan areas of Buffalo and Rochester." It may be helpful to clarify to the reader that these metro areas are expanding in development patterns, but not in population.
2. Existing Conditions, Natural Features Section: In general the discussions of the Town's soil types on pages 3 through 5 is excellent and a feature that far too few towns include in their comprehensive plans. Further recommendations for this section are:
  - a. Clearly show on a map where various types of soil are
  - b. Clearly show on a map the areas where the soils are potentially suited for development (East Bethany and Little Canada) and the areas where the soils are particularly unsuited for development (Bethany Center)
  - c. For areas that could "reasonably be targeted for future residential growth," such as East Bethany and Little Canada, detail how zoning regulates this concept
3. Existing Conditions, Flood Zones Section: Recommend renaming this section to something like "Water Resources" and include a paragraph or two discussing the streams and creeks in the town and the various watershed areas, in addition to the existing language on flood zones (you might even include a bit on Linden Falls and its role in the Town's history). It is good to remind people that streams are great assets and resources

that need protecting, not just “flood hazards.” However, the flood damage prevention law should be specifically referenced, not just merely mentioned. Having the Town’s flood plains mapped (on the zoning map) is a very helpful detail. Further recommendations include:

- a. Creating a new zoning district that just includes flood plain areas and using the permitted use regulations of this new district to limit the amount and type of development that can occur in the floodplains.
4. Existing Conditions, Wetlands Section: Having the Town’s wetlands mapped and included in the comprehensive plan would be a helpful detail. Further, the specific detail on the bottom of page 5 on how wetlands ST-25 and ST-31 can help buffer developed areas from agricultural areas is excellent. However, how are these statements in the plan getting put into action? Further recommendations include:

Creating an overlay district (as is recommended on Page 24 of the Comprehensive Plan) for floodplains and wetlands that allows all current zoning regulations of the underlying districts to remain in place but puts an extra level of scrutiny on development in these sensitive areas (for example, single family homes are not generally subject to site plan review, but perhaps in an floodplain and wetland overlay district, all construction would be subject to site plan review).

5. Community Vision Statement, Environmental Character Section: The language on the bottom on page 15 is outstanding. It helps people understand that a single home built or site developed is not going to greatly alter the character of the community, but collectively, over time, these changes to the landscape accumulate. Recommendations include:
- a. Expand on the topic of scattered incremental development as noted above, its impacts to the Town’s character, and widely publicize this concept to the Town.
  - b. Include a policy statement in this section that reads something to the effect of: “The Town of Bethany recognizes that water quality is best addressed at the watershed level; what occurs in the Town of Bethany has the potential to impact its downstream neighbors and similarly, what occurs in upstream municipalities has the potential to impact Bethany. It is the policy of the Town to actively participate in watershed-wide and regional organizations that address water quality. These can include, but are not limited to the Oatka Creek Watershed Committee and the Black Creek Watershed Committee.
  - c. Include a policy statement on wind energy that reads something to the effect of: “The Town of Bethany recognizes that Genesee County has the 11<sup>th</sup> highest potential for wind energy development of New York State’s 62 counties and that wind is a potential valuable resource in the Town. Consideration, study, and analysis of this resource is to be encouraged and any wind energy development should proceed with full public participation and a thorough review of the advantages and disadvantages of such development.

6. Land Use Plan, Agricultural Section: This section includes the wording “residential development should be directed to other areas to preserve and protect some agricultural areas” (Page 18, Second Paragraph) If this is a policy statement in the Comprehensive Plan, there should be some sort of implementation technique specified. It has been noted that many communities call zoning districts “Agricultural Districts” but the regulations are actually, and inadvertently, encouraging single family home development. If the Town truly wishes to preserve its prime farmland, and thus limit single family home development in these areas, it needs to consider how to do this using zoning. Regional examples such as the Town of Seneca in Ontario County and the Town of LeRoy in Genesee County are utilizing “zoning allocation techniques” to discourage single family home and frontage development in prime farmland, while preserving the ability of the agricultural land-owner to develop portions of his or her property.
7. Land Use Plan, Hamlet Residential Section: From a development and physical planning standpoint, concentrating development in hamlets is an excellent policy. The Town may also wish to consider allowing/encouraging “small scale retail” in hamlet areas as has been historically the case. However, without public water and sewer, this needs to be carefully considered. Previously in the plan (Page 5), it was noted that Bethany Center may not be suited for further private wells and onsite wastewater disposal (septic systems).
8. Land Use Plan, Residential Section: The statement “No areas are designated for residential development on the Land Use Plan,” is misleading. There are areas designated; they are simply areas with existing development (hamlets) or adjacent to such areas. There is something of a disclaimer to this statement on the bottom of page 21, although further clarification may be helpful.

Also, it is noted that existing Town regulations allow lots as small as 30,000 square feet. To a large degree, lot size in areas not served by public water and sewer is dictated by New York State Health Law, Appendix 75A, which lists the standards for wells and onsite wastewater systems. Even on good soil, it is generally very difficult to achieve the necessary separation between the well and the septic system (using standard technology) on less than one acre (43,560 square feet). On less than ideal soils, much more than an acre may be necessary. It may be helpful here to reference the New York State Health Law governing this issue.

Lack of public water and sewer does not necessarily prohibit clustered site plans. There are techniques for clustered development that use private onsite wastewater systems and wells (see publications by Randall Arendt such as *Rural by Design* and by the Cattaraugus County Department of Planning). In addition, the Hamlet of Springwater, Livingston County, recently completed an innovative “public” septic system that addresses the sewage disposal concerns of an historic and relatively densely developed hamlet area without the expense of a full sewage treatment system. By allowing or encouraging clustered development and additions to established hamlets, the Town may

help preserve its rural landscape character by preventing development to spread out in a linear fashion along existing roads.

## **Stormwater Management and Erosion Control Law**

The fact that the Town of Bethany has such a law puts it at a great advantage in protecting the water resources of the town and the region. The most important issues for the Town to consider, however, is whether the current law meets the needs of the Town and can it, or is it, being effectively enforced. It has been written so broadly as to exclude most construction activities typically found from oversight. In other words, most of the limited development that Bethany has seen in recent years falls below the threshold for regulation under this law.

In addition, since it was developed well before Stormwater Phase II Regulations, the law does not conform with Federal and State stormwater criteria. For example, Bethany's Stormwater Management and Erosion Control law exempts all single family homes from stormwater regulation. Federal and State regulations state that single family homes that disturb more than an acre of land must file stormwater management documentation. A person building a single family home in Bethany might think that they are following the stormwater law, as far as the Town is concerned, but be unaware that they are not following the law as far as the State and Federal regulations are concerned. For this reason, it is recommended that Bethany either:

1. Bring the Town of Bethany Stormwater Management and Erosion Control Law into conformance with the State and Federal Stormwater Phase II Regulations (easily done by abolishing the existing law and adopting the model law developed for this purpose by the New York State Department of State and the New York State Department of Environmental Conservation)

OR

2. Abolish the Town of Bethany Stormwater Management and Erosion Control Law and simply inform landowners and building permit applicants that they must comply with State and Federal Stormwater Phase II Regulations

The Town needs to consider its twelve years of experience with the Stormwater Management Law and whether the law is doing the job it was intended to.

## **Zoning**

Overall the zoning is well ordered, clear, and easy to use. Simple aspects like page numbers and a table of contents seem like basic document details, but many town zoning laws lack these. The inclusion of graphics illustrating yard setbacks for irregularly shaped lots at the end of the law is a great technique. Additional graphical illustrations are encouraged.

As noted in the review of the Town's Comprehensive Plan (Flood Zones and Wetlands section), there are two recommendations coming out of that which have to do with zoning:

1. Creating a new zoning district that includes only flood plain areas. Then, using the permitted use regulations of this new district, the Town could limit the amount and type of development that can occur in the floodplains. This would be a new section, Section 310, in the Zoning Law.
2. An alternative to a completely new zoning district would be to create an overlay district (as is recommended on Page 19 of the Comprehensive Plan). This would also be inserted as “Section 310” in the Zoning Law. The overlay district could include floodplains and wetlands and would allow all current zoning regulations of the underlying districts (Agricultural-Residential, Commercial, etc.) to remain in place but puts an extra level of scrutiny on development in these sensitive areas (for example, single family homes and not generally subject to site plan review, but perhaps in an floodplain and wetland overlay district, *all* construction would be subject to site plan review).

In addition, the following recommendations are related to the Zoning Law:

3. Clearer reference to Schedule A (dimensional requirements) in the text of the Zoning Districts (Section 305-309).
4. Include setbacks from water bodies. One innovative, yet simple, technique that has been used by some towns to protect their waterways is to require a setback (50 feet, for example) from the centerline of all streams appearing on USGS maps. This is very similar to setbacks required for front yards, side yards, etc. By requiring this setback, construction and development activity is kept out of areas adjacent to streams.
5. As noted previously, re-examine the 30,000 square foot minimum lot. If retained, make sure to reference New York State Public Health Law and the requirements for siting wells and onsite wastewater systems.

## Land Separation and Subdivision Regulations

Overall, the Land Separation and Subdivision Law is well ordered, clear, and easy to use. One over-arching concern is the phrase “Town of Bethany Local Law No. 1 of 1995 is hereby repealed.” This appears in Article VIII of the Land Separation Law (page 5). This phrase gives the impression that the entire Town of Bethany Land Subdivision Regulations (which are labeled “Local Law No. 1 of 1995” on Page 1) have been repealed. This discrepancy, which may lead to misunderstanding, should be corrected.

### *Other recommendations to consider for the Subdivision Ordinance:*

1. Article IV, Section 1, Subsection B (Page 20). This section refers to conformity to Official Map and Master Plan. Since “Master Plan” is a term that has largely been replaced by “Comprehensive Plan,” The Town should consider changing the language here to reflect that. Suggested wording might be: “Conformity to Official Map and

Comprehensive Plan or Master Plan.” Any other references throughout the document to ‘Master Plan’ should be similarly addressed.

2. Article IV, Section 2, Subsection A, Paragraph 4 (Page 21). This paragraph refers to standards for streets. The Town may wish to reword the description of minimum lane and minimum width requirements. Currently, the law states: “Roadways shall have a minimum of two lanes, each of which shall be ten feet or wider as specified by the Town Highway Superintendent.” Low speed, low volume residential roads can have lanes at 9 feet wide, and if there is an on-street parking lane, that can be 8 feet wide. The goal of the Town should be to require residential roadways to be as narrow as possible (while still allowing access for fire equipment, school buses, and snowplows) to encourage slow vehicular speeds and reduce the amount of pavement (impervious surface) area. A suggested rewording of this sentence might be: “Roadways shall have a minimum of two lanes. Each travel lane shall be a minimum of 9 feet wide and a maximum of 12 feet wide, or as specified by the Town Highway Superintendent.”
3. Article IV, Section 2, Subsection A, Paragraph 8 (Page 21). This paragraph refers to standards for cul-de-sac streets. The Town should consider adding two items after letter “d”
  - e. All cul-de-sac turn arounds shall have an open, unpaved, vegetated, and landscaped center island in order to improve the aesthetics of the streetscape and reduce the amount of impervious surface.
  - f. So as to promote efficient pedestrian circulation and walkability of residential neighborhoods, any two cul-de-sacs which back up to each other shall have at least a 20 foot wide right-of-way for a pedestrian path to connect the cul-de-sac ends.
4. Article IV, Section 2, Subsection D, (Page 23). This subsection refers to Stormwater Drainage, Erosion and Sediment Control Measures and Easements. The existing language refers all residential subdivision proposals to the Genesee County Soil and Water Conservation District and/or the Town Engineer for their review. This is very good. The Town should consider adding, mainly as a reminder for any subdivision applicant reading this law, some language such as:
  - a. All permitting and design documentation necessary to comply with the State Pollution Discharge Elimination System (SPDES) Phase II Stormwater Permit as administered by the New York State Department of Environmental Conservation, including but not limited to a Stormwater Pollution Prevention Plan (SWPPP) shall be provided with the Preliminary Plat. In addition, the applicant shall comply with the Town of Bethany Stormwater Management and Erosion Control Law of 1994 or its successors.
5. Article IV, Section 2, Subsection F, Paragraph 5 (Page 24). To clarify the language in this paragraph, the Town should consider the following:

- a. The Subdivider shall not be permitted to leave any surface depression which will collect pools of water unless such feature is part of the designed and approved stormwater management system.
6. Article VI, Section 2, Subsection A, Paragraphs 9 and 10 (Page 30). In order to update the language to reflect the current Stormwater Phase II requirements, I would suggest the following for paragraphs 9 and 10:
- 9. The approximate location and size of any proposed water lines, valves, hydrants and sewer lines, stormwater lines or conveyances (including ditches), and fire alarm boxes. Connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the Public Health Law or Environmental Conservation Law. Profiles of all proposed water, sanitary sewer, and storm sewer lines.
  - 10. All permitting and design documentation necessary to comply with the State Pollution Discharge Elimination System (SPDES) Phase II Stormwater Permit as administered by the New York State Department of Environmental Conservation (NYSDEC), including but not limited to a Stormwater Pollution Prevention Plan (SWPPP) that conforms to the requirements of the NYSDEC.

### **Other Laws to Consider**

The following are laws that the Town of Bethany may wish to consider adopting to help address water quality issues:

- Onsite Wastewater System Inspection Law
- Timber Harvesting Law