

Town of Lima Agricultural and Farmland Protection Plan

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ACKNOWLEDGMENTS

The Town of Lima Agricultural and Farmland Protection Plan was funded by a Municipal Planning Grant through the New York State Department of Agriculture and Markets. Thank you to the following individuals and groups for input and assistance in the planning process:

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Jeff Shanks
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John Bean	Ted Zornow
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Citizens of the Town of Lima

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EXECUTIVE SUMMARY

The Town of Lima comprises Livingston County's northeastern edge. A largely agricultural town, Lima is bordered to the north by two growing Monroe County towns. The high percentage of prime soils in Lima is one factor in the success of its farms. The foresight of the Lima Town Board, the Comprehensive Plan Committee, the Zoning Update Committee (whose members sought input from the Agricultural Advisory Committee for zoning updates relating to the Town's Agriculture Use Districts) and a dedicated group of farmers and interested citizens led to development of an Agricultural and Farmland Protection Plan. The Plan was funded with a grant from the New York State Department of Agriculture and Markets with the goals of proactively addressing the needs of agricultural businesses and protecting the abundant, high quality farmland in the Town.

Strong community support for preservation of Lima's agricultural sector identified in three town-wide citizen surveys led to the establishment of multiple recommendations to support agriculture in the Town's comprehensive plan adopted in March 2008. One recommendation called for the preparation of a local Farmland Protection Plan.

Once undertaken, this task identified an essential need to review and update zoning laws to support the Town's agricultural sector and to comply with protections set forth in New York State Agriculture and Markets Law. Agriculture



required Town support for both the business needs of farming and in stabilizing the land base. A detailed zoning analysis and recommendations accompany the Plan.

The year and a half planning process yielded both a plan and a discussion among Town farmers and residents. Public participation and dialogue were essential to the development of the written plan that will be implemented by the Town. The plan recommendations contain an action item to create a permanent agricultural advisory committee in Lima. This is one of the first tasks and once completed the Committee will be responsible for guiding the remainder of the implementation phase.

The Plan contains 4 main recommendations with action items and an implementation matrix.

The recommendations are:

- Plan for Town growth in order to maximize the protection of viable agricultural land. In the 2006 survey, 85% of residents ranked the amount of farming and agricultural uses of land as critically or very important.
- Adopt land use regulations that recognize the importance of agricultural working lands to the local economy and to the community.
- Support the business of farming recognizing that farms need to remain profitable and be sustainable in order to contribute to the quality of life and rural character that many Town residents appreciate. In the 2002 Comprehensive Plan Survey, “rural, small town character” received the highest rank of features that make Lima an attractive place to live.
- Educate the nonfarm public and local officials about the value of agriculture to the Town by promoting the benefits of agriculture to the community.

As Lima moves ahead to execute these actions it will be critical that the farm community remain active in the process. Farms provide numerous benefits to the community: economic, positive contributor to the local tax base (Cost of Community Services Studies), scenic, environmental, cultural, and provide healthy, local foods. Lima must remain dedicated to implementing the Agricultural and Farmland Protection Plan with the assistance, advice, and support of the farmers who operate the farms that benefit the larger Lima community.



A SHARED CALL TO ACTION

Following are excerpts from key State, County, and Town documents which support Lima's efforts to plan for agriculture and protect farmland.

➤ **New York State Agriculture and Markets Law – Declaration of Legislative Findings and Intent – Article 25AA Section 300**

(<http://www.agmkt.state.ny.us/AP/agsservices/2008C115.pdf>)

It is hereby found and declared that many of the agricultural lands in New York State are in jeopardy of being lost for agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

➤ **Livingston County Agricultural and Farmland Protection Plan, 2006**

(<http://depot.livingstoncounty.us/pdfs/planning/Farmland-Protection-Plan-2006.pdf>)

"The County should be proactively encouraging towns to support retention of the best soils and most productive farmland in a manner that supports local development objectives."

Recommendations:

- ✓ *Actively support town based agricultural planning.*
- ✓ *Encourage and promote more comprehensive inclusion of agriculture in town level comprehensive planning which may include supporting town requests for state funding support.*
- ✓ *Support agriculture friendly development policies through incentives, infrastructure investments, and other methods that encourage in-fill development in villages and other already developed areas.*

➤ **Town of Lima Comprehensive Plan, 2008**

(<http://www.townoflima.org/WEBVersionCompPlan.pdf>)

“As the Town’s largest industry, agriculture contributes significantly to the local economy. In addition, agriculture helps to retain the rural character and open space valued by Lima residents. Any significant, large-scale loss of land to non-agricultural use would be the loss of a valuable historic and future resource.”

Recommendations:

- ✓ *Form a farmland protection committee charged with maintaining agricultural land resources and promotion farm operations within the Town.*
- ✓ *Prepare a local Farmland Protection Plan consistent with the Livingston County Farmland Protection Plan.*



INTRODUCTION

The Town of Lima was awarded a municipal agricultural planning grant from the New York State Department of Agriculture and Markets in January 2008. Prior to that award, the Town had established an Agricultural Advisory Committee to guide the planning process. American Farmland Trust was hired as the plan consultant, and they worked with George R. Frantz & Associates, to conduct the zoning review and analysis.

Lima adopted its first Comprehensive Plan in March of 2008. Two surveys of town residents conducted as part of the comprehensive plan process, one in 2002 and one in 2006, identified protection of agricultural lands and businesses as a high priority for the community. Those surveys also documented support for open space and maintaining the rural nature of the town – while allowing managed growth. Agricultural recommendations in the Comprehensive Plan include two that are directly related to the process of developing a municipal agricultural plan:

4. Form a farmland protection committee charged with maintaining agricultural land resources and promoting farm operations within the Town. This committee would research and recommend the best lands to be preserved and develop strategies to accomplish this goal. These strategies may include:

- *Voluntary conservation easements – legal documents in which a landowner does not relinquish ownership but agrees to permanently give or sell certain uses of his or her property to preserve its natural condition,*
- *Purchase of development rights using grant funding – payment by a municipality to a landowner for restricting the future non-agricultural development of the land,*
- *Outright purchase of land. This is not intended to recommend purchase of land by eminent domain.*

5. Prepare a local Farmland Protection Plan consistent with the Livingston County Farmland Protection Plan that was developed by the Farmland Protection Board.

Lima is also in the process of updating its Zoning Code. This coincides well with the municipal agricultural planning process, as a review of the zoning code is a requirement of the State grant.



The zoning laws will be revised to be more agriculture-friendly, and to comply with New York State Agriculture and Markets Law.

More broadly, Lima’s Agricultural and Farmland Protection Plan will complement Livingston County’s Agricultural and Farmland Protection Plan which was adopted in 2006. The County Plan identified the need to support towns with agricultural land use planning, provide education and trainings for local officials, and promote agricultural economic development opportunities for farmers.

Livingston County’s “DAN” Plan – Development, Agriculture, Natural Resources – also identifies the overall land use goal to “minimize the adverse impact on the County’s natural resources and agriculturally productive lands”. A key recommendation in the DAN Plan pertinent to future land use planning in Lima (p.20) states:

A.2. Every effort should be made, through legal tax incentives, land use regulatory devices, public improvements, and other governmental subsidies or other means to encourage future urban development to occur first within the village corporate boundaries and , secondly, outside but adjacent to the village corporate boundaries.



ANALYSIS OF LOCAL CONDITIONS

Livingston County:

Livingston County is located on the western edge of the Finger Lakes region of New York State and lies just south of Monroe County which includes the city of Rochester, population 208,123 (U.S. Census, 2006 estimate). Neighboring towns in Monroe County have experienced the effect of a sprawling population as it leaves the city and moves to the suburbs. Although Livingston County is still a largely rural, agricultural county, that population spread has easy access into the County via Interstate 390 which runs through the county connecting the city of Rochester with the Southern Tier of New York, and also connects with the New York State Thruway only a few minutes outside of Livingston County. Letchworth State Park, a popular, public attraction, lies partially in the western part of the County and includes the northward flowing Genesee River.

Population growth in the county in the decade from 1990 to 2000 was moderate: the population increased by 3%, the number of housing units increased by 4%, and the population density per square mile increased by 3% (U.S. Census). The proximity to Rochester and Monroe County and ease of access create the potential for an influx of people and new homes at some time, particularly in the northern towns of Livingston County.

Agriculture, in the ten year period from 1997 to 2007 had its ups and downs. Land in farms increased in that period by 6%, from 209,782 acres in 1997 to 222,415 acres in 2007. At the same time the total number of farms fluctuated slightly from 750 in 1997, to a high of 801 in 2002, and settling at 792 in 2007. A similar fluctuation occurred in the average size of a farm: 280 acres in 1997; 262 acres in 2002; and 281 acres in 2007. The most significant change was in the market value of agricultural products sold: almost \$75,000,000 in 1997; \$84,000,000 in 2002; and a dramatic jump to almost \$154,000,000 in 2007. Since Livingston County agriculture has a significant dairy industry, the high milk prices of 2006-2007 would have factored into the large increase in market value of agricultural products sold and may also have had some effect on the increase in land in farms as well.

Lima:

The Town of Lima sits in the northeastern corner of Livingston County, bordered on the east by Ontario County and on the north by the rapidly developing Monroe County towns of Mendon and Rush. From 1990 to 2000 (U.S. Census), the Town of Rush had a 12% increase in population and a 16% increase in housing units. The Town of Mendon’s population and housing unit numbers increased by 22% in that same time period.

Lima is blessed with a wealth of highly productive soils. Only 8% of the world’s soils (see Map 1) are equivalent to prime farm soils as defined by the U.S. Department of Agriculture. As seen in Map 2, the vast majority of the soil in the Town of Lima is classified as prime. Preserving the quality and productive capacity of this limited natural resource is vital to the Town’s efforts to protect its valuable farmland. Map 3 depicts the agriculturally assessed value of the soils with the highest dollar values attributed to the very best soils.



Seventy percent of the town’s 20,779 acres (32 square miles) are in a state-certified agricultural district (Map 4). Approximately one half of the town land area, 10,250 acres, is in active agricultural production (NRCS, Common Land Units). The following excerpt from the Livingston County Agricultural and Farmland Protection Plan highlights the value of Lima’s soils.

*Livingston County has a wide range of soil qualities and conditions, anchored by the highly productive soils found in the towns of Mount Morris, Leicester, York, Caledonia, Geneseo, Avon, and **Lima**. USDA classified “Prime” and “Productive” soils are found in large contiguous blocks in these areas, and are otherwise found in dispersed pockets in other parts of the County. Because many of these soils are well drained, they are often considered prime candidates for development.*

Table 1 lists Town of Lima soil types, acreages of each, and notes soil classifications of prime, statewide important, and prime where drained. (See Soil Legend in Appendix for soil type listings.)

Soil Type	Acres	Classification	Soil Type	Acres	Classification	Soil Type	Acres	Classification
Ad	24.6	Prime	Hd	3688.6	Prime	Pc	248.7	Prime
Be	145.1	Prime	He	205.6		Pd	151.3	Prime
C8	47.5		Hh	1.2	Prime	Pe	6.9	
Cb	1.6	Important	Ka	322.8		Pf	114.4	
Cn	548.6		La	154.5	Important	Ra	49.1	
Co	474.2	Prime	Le	2.0	Prime	Sa	33.0	Important
Cq	102.7	Important	Lh	1357.3	Prime	Sb	70.7	Important
Cr	2109.2	Prime	Lo	341.1		Sc	249.0	Prime
Cs	129.7		Oc	26.8	Important	Sd	110.7	Important
Ct	204.1	Important	Oe	620.0		Se	519.1	
Cu	14.8	Prime	Of	54.8	Prime	Sf	88.3	Important
Cw	11.7	Prime	Og	0.1		Sg	279.6	Prime
Cx	16.5	Prime	Oh	73.5	Important	Sh	8.7	Important
Ea	15.6		Ok	241.1	Important	Sk	1003.5	Prime
Eb	325.7	Prime	Ol	2037.4	Prime	So	105.5	
Fa	94.4		Om	178.7	Prime	Sp	0.9	
Fb	124.1	Prime	On	167.0		Ss	16.2	
Fd	113.7	Important	Op	381.4	Important	Ta	68.6	Prime
Ga	23.1	Prime	Os	19.4	Prime	Tb	293.5	
Gb	144.5	Prime	Ot	101.8		W	67.8	
Gc	209.2		Ou	95.3	Prime-drained	Wb	2.6	
Ha	953.2	Prime	Pa	92.1	Prime	Wc	335.7	
Hc	27.9	Prime-drained	Pb	15.5	Prime	Wd	17	

Table 1

Lima’s approximately 30 active farms (see Appendix for current listing of active farms) are predominately cash crop farms with some dairy, livestock, and vegetable farming as well (Map 5). According to the 2002 Census of Agriculture, 80% of the farms in zip code 14485 had a value of agricultural products sold that year that were less than \$50,000 and the remaining 20% of farms had a value of agricultural products sold between \$50,000 and \$250,000. Figure 1 below shows these percentages from the 2007 Census of Agriculture. As noted previously, 2007 was an excellent year for the dairy industry, and although Lima does not have a large number of dairy farms they do have a few, as well as crop farms that provide feed for dairy farms. The increase in the two higher sales categories may be at least in part attributable to the success of the dairy industry that year.

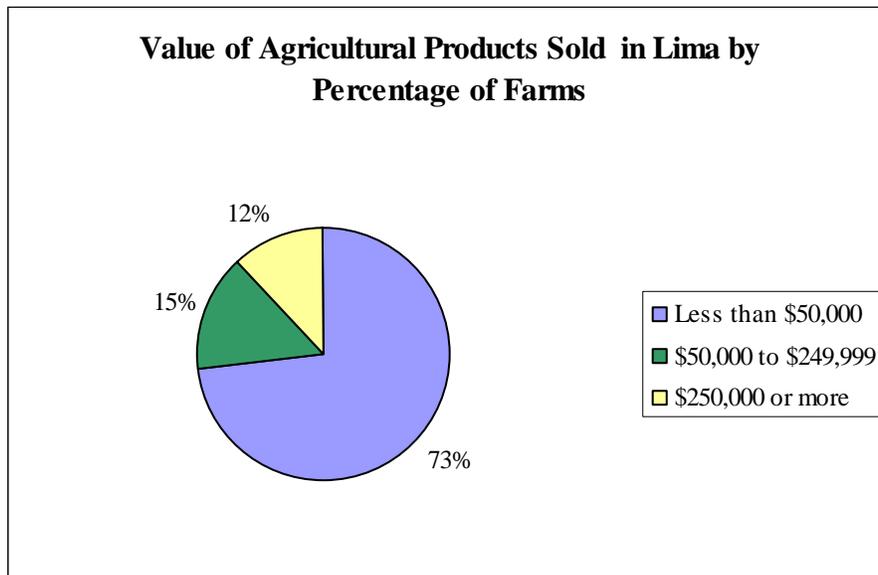


Figure 1

Also in zip code 14485, in the 2002 Census of Agriculture, 39% of the farms were in the size category of 1-49 acres and 61% of the farms were in the size category of 50-999 acres. Figure 2 shows the 2007 Census of Agriculture farm sizes.

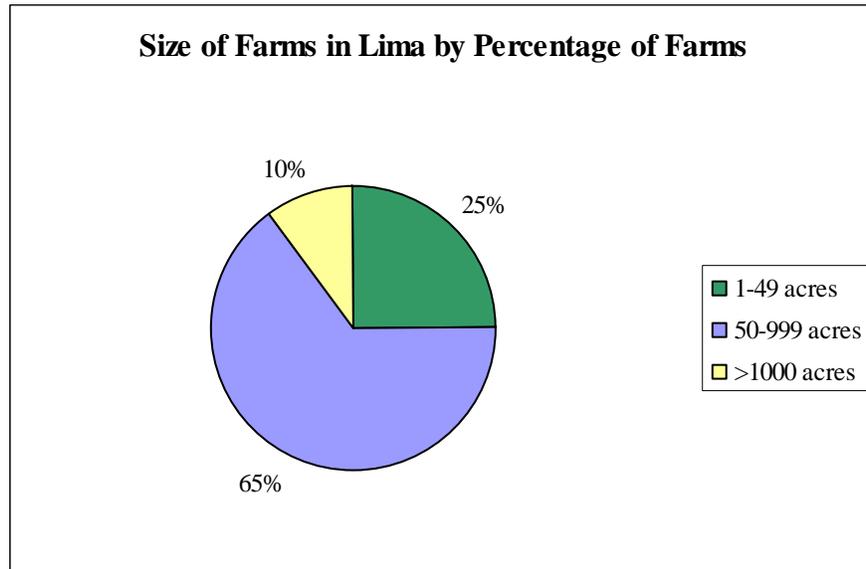


Figure 2

A shift occurred in the five years between the 2002 and 2007 Agriculture Censuses. Farms in Lima tended to become larger in land area. But, as evidenced by the 73% of farms that grossed \$50,000 or less in 2007, Lima has many small, part-time, and hobby farms that can play an important role in maintaining farmland, buffering larger farms, and providing a diversity of agricultural enterprises in the Town. Lima is just a 30 minute drive from Rochester and farmers have ready access to a large urban and suburban population via farmer's markets and other local markets and roadside stands. It is important to note though, that it is the bigger farms that are able to keep large, contiguous acreages in active production. To protect farmland, Lima will benefit from a mix of both small and large farms.

In 1990 Lima had a population of 4187 people (U.S. Census, 1990) and by 2000 the population had increased to 4593 (U.S. Census, 2000), an almost 10 % increase. The number of housing units in the Town increased by almost 6% and the population per square mile increased by almost 9%, while the average household size decreased by 37% in that same time period (figure 3). These are all noticeably higher growth rates than seen in Livingston County overall in those ten years. Growth has been somewhat slower recently with 20 housing permits issued in the Town and Village of Lima from 2006-2008. These are not alarming rates but are worth noting as the Town moves forward in planning for agriculture and managing growth.

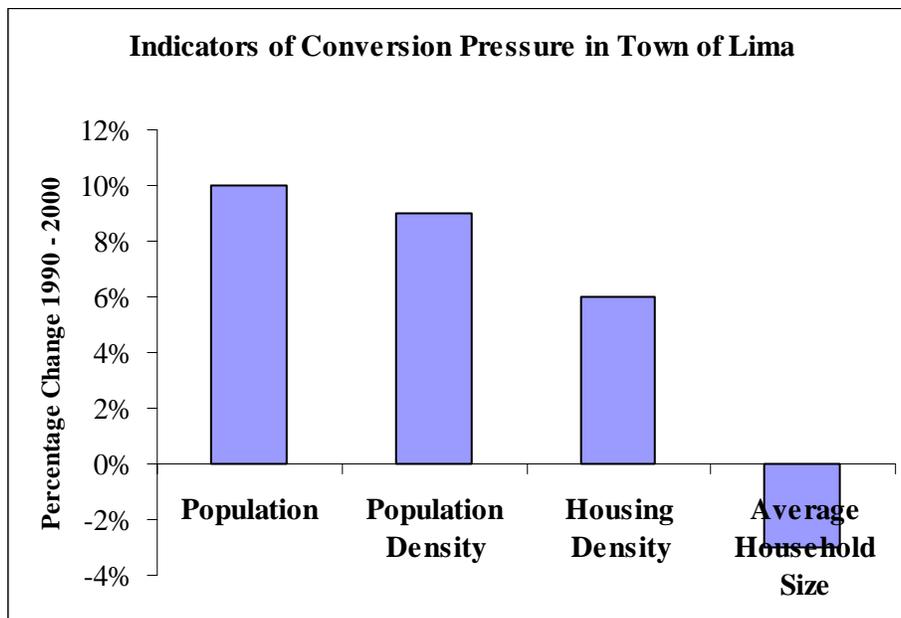


Figure 3

Over 15 *Cost of Community Studies* have been conducted in New York State (see Appendix for further information about the studies). These studies routinely show that farmland, open space, and forest land generate more in revenue than they receive in services, while residences generally require more in services than they pay in taxes. The average numbers are below:

Farm, Forest and Open Land:	\$0.29/\$1
Commercial:	\$0.26/\$1
Residential:	\$1.27/\$1

These numbers are not meant to discourage all residential growth in town but to emphasize the need to manage and balance growth with maintaining working farmland in Lima.

PUBLIC PARTICIPATION

Involvement of the farm and non-farm community in Lima was critical to this planning process. Four public meetings, and fourteen individual interviews were conducted over the year and a half plan development. Over 15 Agricultural Advisory Committee meetings were held to discuss each component of the plan.

Public Meetings

The Agricultural Advisory Committee sponsored three public meetings: a *Purchase of Development Rights* Roundtable on December 10, 2008; a public information meeting titled *Why and How to Plan for Agriculture* on January 14, 2009; and a Roundtable, *Zoning for Agriculture*, on February 11, 2009. A complete list of public meeting attendees can be found in the acknowledgements. A public hearing was also held on November 19, 2009.

Purchase of Development Rights Roundtable:

Presentations by:

- Diane Held, American Farmland Trust, regarding New York State's purchase of development rights (PDR) program – Farmland Protection Implementation Grants.
- Amber Hamman, Genesee Valley Conservancy, about Livingston County's participation in New York's program.
- Jeff Mulligan, Livingston County farmer and awardee of a state Farmland Protection Implementation Grant, about his family's decision to participate in New York's program.

Audience input and questions:

- Criteria for selection of local applicants to apply for the State grant.
- Soil types in Lima.
- Cost of Community Services Studies.

Why and How to Plan for Agriculture Public Information Meeting:

Presentations by:

- Cathy Gardner, Town of Lima Councilwoman, regarding Town’s purpose for undertaking local planning for agriculture.
- Diane Held, American Farmland Trust, about the “toolbox” of “tools” available for towns to use to plan for and support agriculture and protect farmland.

SWOT Analysis with audience input:

- Responses regarding strengths, weaknesses, opportunities, and threats to agriculture in the Town of Lima (chart follows).

Zoning for Agriculture Roundtable:

Presentations by:

- Diane Held, American Farmland Trust, briefly presented findings from individual interviews conducted with Lima farmers and landowners.
- George Frantz, George R. Frantz & Associates, regarding issues related to planning for agriculture, agricultural zoning, agricultural commerce.

Audience input and questions:

- Clarification of fixed ratio zoning provisions and flag lot considerations.



SWOT Analysis

Strengths	Weaknesses
High quality soils.	High percentage of rental farmland in town.
Precipitation/water resources.	Not much additional land available to purchase or rent in town.
Markets – both local and regional.	Advancing average age of farmers in the town.
Proximity of processors.	Lack of a younger generation to take over many of the farms in town.
Highways & transportation corridors.	Property taxes – particularly school taxes.
Suppliers and vendors.	No bank in town.
Growing season.	
Town support for ag planning process.	
Well maintained farms/attractive.	
Adaptable farm businesses; hard working, smart farm owners.	
Farmers who are active in the community.	
Town highway department – works well with farm community needs.	
Terrain ideal for farming.	
Rental landowners who are flexible and understanding.	
Opportunities	Threats
Local food niche.	Availability of a skilled workforce in the future.
Small, diverse farms that can capitalize on local food interest and food safety concerns.	
Ability to adapt farms to changing business conditions based on ideal soil resources, and owner/operator knowledge base.	

Agricultural Stakeholders: Interview Summary

Fourteen interviews of farmers and farm landowners were conducted in the fall of 2008 and winter of 2009. Interviews allowed for direct input from the farm community in a comfortable environment, at their home or farm. Following are the main themes gathered from these interviews.

Farmers and farm landowners are concerned about increasing property taxes. “Taxes will force me to split my land and sell it for development to survive.” Many of the comments regarding property taxes were focused on what has happened to date with rising taxes but some of the concern was also for the future. Because farmers often own substantial amounts of land, and even with agricultural assessments on the land, they pay significant property taxes.

Landowners who rent farmland to farmers are often the most sensitive to this issue because they may not have any income other than land rent with which to pay property taxes. This does make land ownership less stable and threatens agricultural land with “death by a thousand cuts”.

Farmers may sell a parcel of frontage here and there to make ends meet, and landowners with rental land may sell their land in its entirety for development to fund retirement or other needs.

“My land is my retirement,” was the sentiment expressed by one farm landowner.



Zoning to support agriculture’s business and land use needs in Lima needs to be addressed and updated. For a number of years, community discussion has focused on whether it is best for agriculture to maintain the current minimum lot size of 2.5 acres in the agriculture district, or whether to reduce this to 1 or 1.5 acres. Opinions were divided

among the interviewees but very strong property rights sentiments were expressed by many of the farmers and landowners. Also, some of the farmers expressed frustration with the difficulties of operating farm markets, agriculture related businesses, and providing signage for agricultural

businesses due to overly restrictive agricultural zoning. Addressing these issues will not only make it less difficult for current farmers but may make Lima a more attractive place to farm for new and next generation farmers. One farmer lamented that he “can’t sell as an existing business unless the zoning becomes more flexible for agriculture-related businesses.”

There is significant competition for farmland in the Town. When farmers want to expand their operations in Lima they do compete with other farmers for land. And it may be that they are competing with farmers from outside of the town and/or outside of the county. Frustrating as this is for the farmers, it does show that the industry is strong enough to support business growth. And many of the farmers were appreciative of the landowners who rent farmland to them citing their efforts to accommodate the changing needs of farming.

Lima needs to balance the needs of the agriculture community with the needs of the larger community when making decisions about infrastructure growth – especially the extension of water lines. Encroachment of water lines out of Monroe County from the north and from the Livingston County Water Authority from the south are of real concern. Lima currently has water lines largely in the village and areas adjacent to the village, as well as some extending into the northeast quadrant of the town. Water quantity issues in the southeast quadrant of town were mentioned in some of the interviews and that area was identified as having potential for public water service. “Lima has definite potential as a bedroom community,” was expressed by one farmer. And extending water lines into agricultural areas of the town will put just that kind of pressure on farms. With Lima’s close proximity to Monroe County towns that have experienced significant residential growth, having the added attraction of public water will significantly increase housing development pressure.



More farmers in Lima need to become actively engaged in Town government and need to participate on local committees and boards. “There are not a lot of (Lima) farmers in local government positions.” A few of the interviewees seconded this thought. Farming is often a 365 day a year business with little time to spare for other pursuits. Because the farm population has become such a small percentage of the entire population (less than 2%), and because the effects of non-agricultural activity and development can be so devastating to the long term viability of farms, farmers must take the time to serve in various capacities in local government.



The farm labor force in the Town of Lima primarily consists of farm-family members and is supplemented with local employees. One farmer particularly enjoys giving local teens a tie to their home community, “it’s the best feeling when the teenagers come back and say ‘I worked for him’”. All of the interviewees used a local labor force if they needed to

hire any labor other than family. This may change over time if the main agricultural businesses in Town have a need for a larger labor force than they can fill locally, or if farms located outside of the Town (and already utilizing migrant labor) begin to work more of the land.

CONVERSION PRESSURE, FARMLAND PROTECTION AND PRIORITIZATION

As mentioned in the Analysis of Local Conditions section, the Town of Lima's proximity to a few of Monroe County's residential towns, as well as proximity to a Route 390 interchange (within a few miles of the Town limits), creates potential for Lima to become a bedroom community for the larger Rochester area. Already on a drive through town, scattered lot residential development is evident in some agricultural areas. Currently, water lines extend throughout the village and on the major roadways of Route 15A and Routes 5 & 20 (Map 6). One line does extend from Ontario County to the east into the northeast quadrant of the Town and concern about water quality and quantity has spurred early discussion about water lines extending into the southeast quadrant of the Town. Pressure to convert agricultural land to non-agricultural uses increases once water lines are extended into farming areas. And, keeping Lima's significant prime soil resources intact for farming use becomes more difficult because these high quality soils are also preferred for development.

Lima's wealth of prime soils and large blocks of contiguous farmland found on active farms in all quadrants of the Town, have led planning efforts to focus on future residential growth occurring within the village limits or along the village edges. This is in direct accordance with the County DAN Plan goal as cited in the Introduction of this Plan. The Town's Comprehensive Plan also calls for new business development within the existing village limits and along the Route 15A corridor, extending north of the village. Lima is working to sustain agriculture and protect farmland throughout the Town, on viable farmland acreages.

Lima's excellent soil resources were cited as both a strength and an opportunity for farm adaptability in the SWOT analysis. As of this writing, approximately 1000 acres of farmland in the Town are either permanently protected with agricultural conservation easements or are under contract to be permanently protected. The focus of farmland protection efforts in the Town will be on the highest quality soils under the most threat of development. Following is a Land

Ranking Tool which accounts for numerous factors that can help to evaluate a parcel's value and importance for agricultural purposes. The Town can use the Land Ranking Tool for two purposes:

1. If the town chooses to submit a purchase of development rights application to the state or federal program at any time, this tool can be used to rank Town farms who would like to apply. Thus giving the Town the ability to prioritize farms for application purposes.
2. The Town (Town Board, Agricultural Advisory Committee, and Planning Board) should utilize the land ranking tool for land use planning, reviews of potential nonfarm development in agricultural areas, and site planning considerations.



**Town of Lima
Land Ranking Tool**

Farm Name: _____

Landowner Name(s): _____

Eligibility Criteria met? Yes ___ No ___

Part II Score: ___/130 Part III Score: ___/15 Part IV Score: ___/15

Total Combined Score: ___/160

Total Project Acres: _____

-----**Part I – Eligibility Criteria**-----

***This section to be completed only when used for purchase of development rights project ranking.**

Y / N

- Are the properties currently enrolled in an Agricultural District?
- Does the zoning of the properties allow residential, commercial, or industrial development?
- Do the physical characteristics of the properties permit residential, commercial or industrial development?
- Do the properties have a Soil Conservation and Water Quality Plan, Forest Management Plan, Nutrient Management Plan, CAFO Plan, or similar plan?
- Are the properties in good standing with local tax authorities?

-----**Part II - Property Information**-----

Farm Characteristics

1. Soil Quality

- 20 points (50% - 74% USDA Prime soils)
- 25 points (75% - 89% USDA Prime soils)
- 30 Points (greater than 90% USDA Prime soils)

2. Size of Application

- 5 points (less than 100 acres but contiguous to permanently preserved parcels of more than 100 acres)
- 10 points (100-199 acres)
- 20 points (more than 200 acres)

3. Land Usage

- 5 points (50% - 74% tillable land)
- 10 points (75% - 89% tillable land)
- 15 points (more than 90% tillable land)

4. Commitment

- 5 points (all farm operator-owned land is included in the application)

Location Factors

5. Adjacency to Agricultural Land *check all that apply, maximum 20 points*

- 10 points (properties are adjacent to actively farmed land)
- 10 points (properties are within ½ mile of permanently protected farmland)
- 20 points (properties are adjacent to permanently protected farmland)

6. Adjacency to Public Water or Rt. 5 & 20 *check all that apply, maximum 20 points*

- 5 points (within ½ mile of Rt. 5 & 20)
- 5 points (within ½ mile of public water lines)
- 10 points (adjacent to Rt. 5 & 20)
- 10 points (adjacent to public water lines)

7. Development Pressure *check all that apply, maximum 5 point*

- 1 point (construction of non-agricultural buildings)
 - 1 point (changes in zoning)
 - 1 point (subdivision of building lots)
 - 2 points (purchase offer for non-agricultural use of the farm itself)
 - other. Explanation: _____
-

8. Road Frontage

- 5 points (1' - 1499')
- 10 points (1500' - 2999')
- 15 points (3000' or greater)

Part II Score: _____ / 130

----- **Part III – Farm Viability Narrative** -----

10. Type of Farm (no points awarded)

11. Farm Planning *check all that apply, maximum 5 points*

- 2 points (has a written partnership/succession plan)
- 2 points (phasing in of partner/next generation)
- 3 points (has a written business plan)

12. Farm Management Tools *maximum 5 points*

- 3 points (utilization of outside resources/expertise)
- 4 points (investment in more efficient equipment/technology)
- 5 points (utilization of conservation practices)

13. Capital Improvements *maximum of 5 points*

- 2 points (general maintenance of farm operation)
- 3 points (improvements to cropland - tiles, ditches, etc.)
- 4 points (improvements made to existing facilities)
- 5 Points (construction of new facilities)

Part III score: / 15

----- **Part IV – Ancillary Section** -----

17. Discretionary Points *check all that apply, maximum of 15 points*

- 5 points (cost of easement relative to appraised value)
- 2 points (consistency of application with County and/or Town Plans)
- 10 points (imminent sale or intergenerational transfer)
- 5 points (cultural or historic significance)
- 5 points (scenic vista)
- 5 points (gatekeeper parcel)

Part IV score: / 15

**Town of Lima
Land Ranking
Review Committee**

1 member of the Soil and Water Conservation District or Natural Resources Conservation Service

1 member of the Town Planning Board

1 member of the Town Agricultural Advisory Committee

1 member of the Genesee Valley Conservancy

1 member of the Town Board

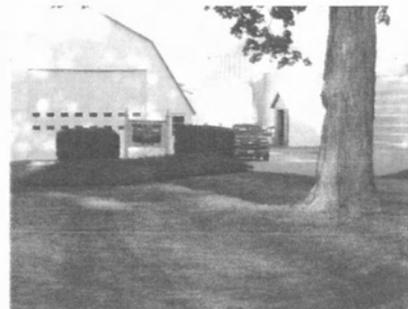
VISION, GOALS, RECOMMENDATIONS, AND ACTIONS

Vision: The Town of Lima is committed to supporting the viability of agriculture as an industry and to protecting the land base needed to support farms. Lima is fortunate to have an abundance of prime, productive soils that provide jobs and income for our residents. Good stewardship of the land is essential to the productivity and longevity of Lima's farms. Agriculture enhances the quality of life for all Lima residents by contributing to a vibrant economy, maintaining open space, providing environmental benefits, and supplying the food and fiber essential to our lives.

GOAL AND RECOMMENDATION 1

Plan for town growth in order to maximize the protection of viable agricultural land. In the 2006 survey, 85% of residents ranked the amount of farming and agricultural uses of land as critically or very important.

Towns are comprised of an array of businesses, land uses, and residents. Addressing and balancing the needs of these varying groups is key to town level planning. Agricultural enterprises are businesses which utilize a significant portion of town land, and are generally operated by local residents who live and raise their families in the community. Protecting the land base upon which agricultural businesses depend is essential to their long term success.



ACTIONS

- Any land use planning decisions made in the Town will take into consideration the value of the soil quality.
- Research the potential cost and impact of a term easement program (lease of development rights) whereby farmers receive a reduction in property taxes in exchange for a deed restriction to keep their land in active agriculture for a specified period of time.
- Endorse the policy of the Livingston County Agricultural and Farmland Protection Plan (Recommendation 12) to give preference to purchase of development rights farm applicants from a town with an adopted Agricultural and Farmland Protection Plan. Reserve the possibility for the Town to submit an application on behalf of a local farm.
- Draft and adopt a Town Right to Farm Law that establishes a dispute resolution committee.
- Lima will communicate directly with Town farmers when Livingston County announces that it is accepting PDR applications.
- Research alternatives for a town land protection fund: Community Preservation Act authorization; developer fee; private funding; others.
- Draft and adopt a Town law that establishes a permanent Agricultural Advisory Committee with specified duties. Model this law after the Town of Eden's law (see Appendix) with the following modifications:
 - Committee membership (5) to consist of (4) residents of the Town of Lima agricultural community and (1) resident not associated with agriculture. Additionally, (2) liaisons, one each from the Town Board and the Town Planning Board. It was noted that at any time when a Lima farmer is appointed to the County Ag and Farmland Protection Board, it would be desirable to include this individual as a member of the Town Committee.
 - As part of review of proposed zoning change, land subdivision policy change or development in the agricultural use district, the Committee will receive copies of all Agricultural Data Statements and related notices.

- The Committee shall review Agricultural Data Statements and shall, at its discretion, provide comments regarding potential development impacts, including but not limited to drainage considerations to surrounding farm operations to allow for identified impacts to be considered as part of review deliberations, and to provide for mitigation of said impacts when appropriate.
- The Committee shall participate in the review and consideration of any infrastructure improvements proposed for any area within the Town's Agricultural Use Districts and shall evaluate and provide recommendations which account for the potential impacts on agricultural operations in the area under review. Any Committee recommendations shall be forwarded to the County Agricultural and Farmland Protection Board for consideration in their review of the same proposals.
- At least annually, the Committee will discuss the condition of drainage ditches situated along roadways and will provide an assessment of such conditions to the Town.
- Annually, the Committee will review any changes or updates made to Agricultural Markets Law 25AA and will recommend corresponding updates to local regulations as it deems appropriate.
- Meetings called by the Chairperson as needed, no less than once a year.

IMPLEMENTATION RESPONSIBILITY: Agricultural Advisory Committee; Lima Town Board; Lima Planning Board; Town Attorney; Town Supervisor

BUDGET CONSIDERATIONS: Town staff time; Volunteer Committee time



FUNDING RESOURCES: Allocation of funding for Town staff time

GOAL AND RECOMMENDATION 2

Adopt land use regulations that recognize the importance of agricultural working lands to the local economy and to the community.

Creating a supportive operating environment for agriculture with appropriate zoning code is an action that the town can take to help maintain flexibility for local farms as they adapt to an ever-changing business environment. Establishing land use regulations that address the needs of agriculture and protect the land base are critical to the long-term future of farming in Lima.

ACTIONS

- Adopt the New York State Department of Agriculture and Markets policy on water hookups in Agricultural Districts insuring that active agricultural operations may access waterlines at any point if such infrastructure is extended into an agricultural district. This policy is also in effect county-wide.

In 1999, the Livingston County Water and Sewer Authority adopted construction guidelines and a lateral restriction policy for water transmission mains located in an

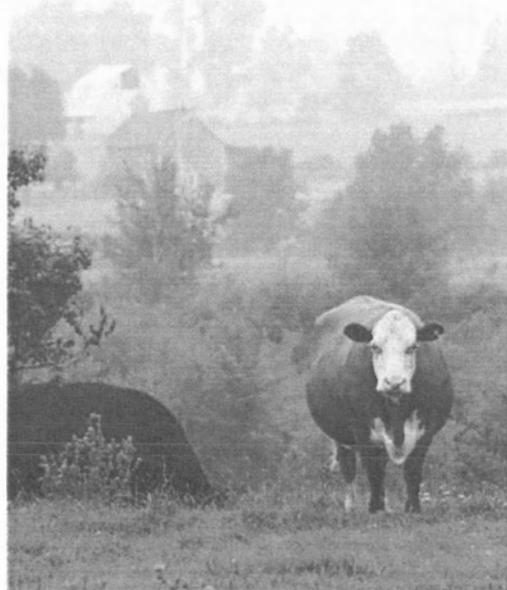


Agricultural District: "The only land and/or structures which will be allowed to connect to the proposed waterline within the agricultural district will be existing structures at the time of construction, future agricultural structures, and

land and structures that have already been approved for development by the local governing body prior to the filing of the Final Notice of Intent by the municipality," (Livingston County Agricultural and Farmland Protection Plan, p.49). This policy is the same as the New York State Department of Agriculture and Markets policy. The

Agricultural Advisory Committee should review all potential infrastructure extensions into the Town's Agricultural District.

- Assessments on obsolete agricultural buildings should reflect their limited value for present day agricultural purposes.
- Consider establishing an agricultural overlay zone. Consider allowing property tax reductions in exchange for a term easement on active agricultural land in the overlay zone.
- Work with the Livingston County Planning Department to draft a model Transfer of Development Rights policy for possible future use in Lima and other Livingston County towns.
- Act in accordance with the Livingston County DAN Plan, Land Use Policies Plan when planning infrastructure improvements:
 - *A.2. Every effort should be made, through legal tax incentives, land use regulatory devices, public improvements, and other governmental subsidies or other means to encourage future urban development to occur first within the village corporate boundaries and secondly, outside but adjacent to the village corporate boundaries.*
 - *A.5. Municipal water and sewer services should be used as a planning tool to achieve desired land use development patterns adjacent to the villages.*
- Use the land ranking tool to assist with land use planning review in the Town's Agricultural Use Districts.
- Address inconsistencies in zoning as identified in the Town of Lima Zoning Analysis included in this plan. Adopt recommendations as identified in the Town of Lima Zoning Recommendations included in this plan.



- Use Agricultural Data Statements (example in Appendix) for review as required by Agriculture and Markets Law. Forward all Agricultural Data Statements received by the Town to the Agricultural Committee in addition to neighboring farm operators. Provide for a publicized time and location for discussion of potential impacts on the neighboring farms.
- Provide copies of current Agriculture and Markets Law to all Planning and Zoning Board members. Require that zoning and development reviews consider potential impacts to nearby agricultural lands and businesses.

IMPLEMENTATION RESPONSIBILITY: Agricultural Advisory Committee; Lima Town Board; Lima Planning Board; Livingston County Department of Planning; Town of Lima Assessor; Town Attorney; Town Supervisor, Town Zoning Board of Appeals

BUDGET CONSIDERATIONS: Volunteer Committee time; Dept. of Planning staff time; Town staff time

FUNDING RESOURCES: Allocation of funding for town staff time.



GOAL AND RECOMMENDATION 3

Support the business of farming recognizing that farms need to remain profitable and be sustainable in order to contribute to the quality of life and rural character that many Town residents appreciate. In the 2002 Comprehensive Plan Survey, “rural, small town character” received the highest rank of features that make Lima an attractive place to live.

Sustaining the beautiful working landscapes that cover much of the Town of Lima requires recognition of the need to support the viability of farms. Farms are businesses and they must be profitable to remain in business. Although the Town may be limited in its ability to take direct action to affect farm profitability, it can establish regular communication with town farmers to gauge current needs and respond where appropriate and able.



ACTIONS:

- Strive to have a farmer on each local board and/or committee as well as on the County Agricultural and Farmland Protection Board.
- Adopt the Agricultural and Farmland Protection Plan as part of Lima’s Comprehensive Plan.
- Provide Town support for implementing recommendations in the County’s Agricultural and Farmland Plan.
- Encourage Town Board advocacy in support of state and federal initiatives and legislation that promotes agricultural viability and protects farmland.
- Collaborate with other Livingston County towns and the County IDA to spur agricultural economic development efforts countywide.

IMPLEMENTATION RESPONSIBILITY: Agricultural Advisory Committee, Town Board, Town Supervisor, Town Attorney

BUDGET CONSIDERATIONS: Town staff time.

FUNDING RESOURCES: Allocation of funding for town staff time.

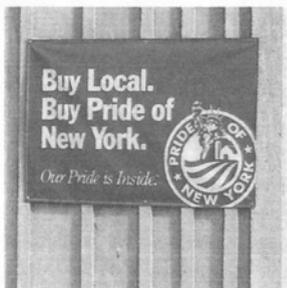
GOAL AND RECOMMENDATION 4

Educate the nonfarm public and local officials about the value of agriculture to the Town by promoting the benefits of agriculture to the community.

Once, most people in a rural community like Lima had a direct tie to farming through a relative or close friend or neighbor. Now, most people are a few generations removed from that association. And with this distance between production agriculture and town residents comes a disconnect that can create issues for both farmers and nonfarm residents. Informing and educating local officials and town residents of the contributions that agriculture makes to the community is a critical component to bridge that gap.

ACTIONS:

- Provide periodic trainings for Town Board, Planning Board, Zoning Board of Appeals members, the Town Attorney, and Code Enforcement Officer about the tools available to plan for agriculture in the Town of Lima.



- Create an identity for Lima as an agricultural Town. Post “Right to Farm” or other ag-friendly signage on major routes through the Town. Create an agricultural logo and website for the Town. Possibly work with a professor and students at SUNY Geneseo to create a “branding of place” for Lima agriculture.

- Connect the larger community with the agricultural community at least annually through the use of agriculture related press communications, Town website features, and/or promotional exhibits.
- Expand promotion of Lima's Farmer's Market and also expand the educational component of the Market.
- Encourage all local officials and board/committee members to attend a meeting/training presenting Lima's Agricultural and Farmland Protection Plan. Highlight the tools that have been identified to support Lima's agricultural businesses and protect farmland.
- Design and print a high-quality brochure/publication that highlights agriculture in the Town. Distribute this brochure at public agricultural events, Town Hall, library, and other public venues.

IMPLEMENTATION RESPONSIBILITY: Agricultural Advisory Committee; Town Supervisor; Town Board,

BUDGET CONSIDERATIONS: Volunteer Committee time; Town staff time; cost of signs for Town

FUNDING RESOURCES: Allocation of funds for staff time.



Analysis of Existing Town of Lima Zoning Regulations As They Pertain to Agriculture

Introduction

(Refer to Map 7)

For the purpose of this analysis agriculture is defined as the use of land, buildings, structures, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise or a hobby, and including commercial horse boarding operations as defined in the Agriculture and Markets Law Article 25-AA, Section 301. Historically agriculture has included a variety of disciplines aside from fruit, vegetable and crop production and livestock raised for food. Although they may not at first thought be considered "agriculture," pursuits such as animal husbandry, or the breeding of specific animals for use or sale (e.g. race horses), beekeeping, aquaculture (fish production), horticulture, floriculture and silviculture are all considered agricultural pursuits as well.

Agriculture and farming, and agricultural operations and farms are considered to be interchangeable terms in this report.

One of the issues that communities such as the Town of Lima face today is that, in the arena of land use policies and zoning regulations in America, agriculture has traditionally been relegated to secondary status as a land use. It has rarely given the attention and protections afforded other land uses in the community. For many decades agriculture has been treated as and transitory land use, one which at some point in the future would disappear as land was developed for its "highest and best use." Planning and zoning as a result has been biased toward residential, commercial and industrial use of the land, and a certain level of ambivalence with regard to agriculture.

Zoning regulations in many cases also tilt toward protecting residential development and non-farm residents of the district from some of the less attractive aspects of agricultural operations,

such as the noise, dust, insects and odors generated in the day to day operation of the modern farm.

Today communities are recognizing the importance of agriculture to the local economy, and as an investment worthy of protection, across the country. Agriculture and the character of place it creates are increasingly seen as valued community assets. Communities that desire to enhance the long term viability of their agricultural sectors are now taking a closer look at local regulations to ensure that they reflect the character of modern agriculture, create a farm friendly environment, and yet also protect the general health, safety and welfare of the overall community.

There are a number of points where the existing Town of Lima zoning regulations may pose potential problems for agricultural operations in the community or place unnecessary and even unanticipated burdens on agricultural operations. In a few cases provisions of the regulations may be in conflict with the NYS Agriculture and Markets Law and the protections it affords farmers and farm operations within NYS Agricultural Districts. In some cases the issue is one of inconsistency between various sections of the zoning regulations.

This report focuses on four areas of the Town of Lima zoning regulations as they relate to agriculture in the Town:

- zoning definitions;
- permitted (and not permitted) land uses;
- zoning dimensional requirements;
- level of review required for certain agricultural infrastructure;
- conformance with Agriculture and Markets Law



Zoning Definitions:

The glossary section is one of the most important components in any set of zoning regulations. It contains definitions of various terms used in the zoning regulations. Clarity is critical to ensuring fair and consistent interpretation of zoning regulations, promoting efficient

administration and positive public perceptions with regard to their local zoning. Clear, concise and comprehensive definitions can also inoculate the community against controversy and in some case expensive litigation.

As a rule of thumb a word used in zoning regulations should be defined within a definitions section of a zoning ordinance if:

1. It is a term specific to the zoning regulations and not found in the dictionary or in commonly used language; (e.g. "home occupation," "industrial agriculture," "hard weather surface")
2. It is a term that must be interpreted in a specific manner for the purpose of the zoning regulations.(e.g. "animal shelter," "artificial lake," "parking space," "yard")

In the Town of Lima regulations there are a number of terms used in reference to agriculture that for which specific definitions are provided. They include:

- | | |
|-------------------------------------|--|
| 1. Agriculture; | 6. Industrial agricultural enterprise; |
| 2. Agricultural accessory products; | 7. Poultry house, cage-type; |
| 3. Animal husbandry; | 8. Riding academy; |
| 4. Farm market; | 9. Stable, private; |
| 5. Farm stand; | 10. Stable, public; |



The Town of Lima zoning regulations define "Farm" as:

"Any tract of land comprising three or more acres on which agricultural products, animal products or animal increase with a value of \$150 or more are produced annually. It excludes fur farms, cage-type poultry houses, public stables and dog kennels."

Agriculture is defined as:

"The production of crops, or plants or vines and trees."

Both of the above definitions should be reviewed to ensure conformance with the NYS Agriculture and Markets Law, but also to ensure that they adequately represent agriculture today. Of particular concern is that, strictly interpreted, the Town's definition of agriculture technically excludes dairy, beef, swine, poultry, sheep, and a host of other traditional agricultural pursuits.

The distinguishing of "caged-type" poultry facilities from other types of agricultural operations in the definition of a farm should be reviewed. No rationale is given for treating such operations as anything other than conventional agricultural operations. Moreover no rationale is offered for distinguishing such facilities from structures housing cattle, swine, sheep, horses or other livestock, or why such a distinction furthers the general public health, safety and welfare.

In addition the minimum acreage and minimum income requirements within the definition of farm may inadvertently may preclude a number of small-scale specialized agricultural operations recognized by the New York State Agriculture and Markets Law, such as specialty gardens and greenhouse operations. Such operations can be important elements in an overall agricultural economy.

By carefully defining "agriculture" as an umbrella term the Town of Lima can eliminate a number of other terms now used in its zoning regulations. It would be possible to use a single word (agriculture) to: 1) define the physical entity (farm); 2) the activities that take place on the farm (farming, farm-related activities); and 3) the associated structures (farm dwelling, customary farm buildings, agricultural buildings and structures, manure storage, farm buildings for storage of products or equipment, farm buildings for housing animals, farm water supply ponds). This could simplify interpretation of the regulations and reduce potential for inconsistent interpretations.

Another definition which may warrant reconsideration is the one for Industrial Agricultural Enterprise:

"The intensive housing or feeding of animals carried on as an industry, on an area less than three acres where less than 8 percent by weight of the feedstuffs consumed by and of the litter used for the animals is grown on the premises."

As with the case of cage-type poultry facilities, no rationale is given for distinguishing such operations from any other sort of conventional agricultural operations and no public health, safety or welfare interest is identified.

Moreover the majority of agricultural operations today could conceivably be described, by reasonable persons, as being "industrial." A large number of municipalities in regions where agriculture is a major economic sector in fact now treat agriculture in much the same manner as industry. They have crafted agricultural zoning district regulations with the explicit objective of protecting agricultural land resources and promoting agricultural economic development. Rather than subordinating the interests of the agricultural community to those of non-agricultural residents, these zoning regulations clearly delegate non-agricultural residential development to a subordinate status as a land use.

Permitted Uses and Setback Requirements

There are a variety of agricultural and non-agricultural uses permitted in the existing Agricultural Use District A (Sect. 250-11). The purpose of the district is as follows:

"The Agricultural Use Districts A are established primarily for farm and rural residential uses in areas where it appears that the intermingling of farm and residential uses is desirable."

As stated above the Town of Lima purpose statement, as is the case in many municipal zoning regulations, assumes the intermingling of agriculture and residential development. Although the mingling of residential and agricultural land uses is an American tradition and is by no means inappropriate, the potential for conflict between both land uses must also be recognized. Given the potential for such conflicts, communities must decide which land use will be subordinate to the other.

In the case of the Town of Lima the zoning regulations as they are currently written appear to favor rural residential development over agriculture. Some examples of the potential bias include:

- 1) The definitions discussed above and additional approval requirements and restrictions imposed on large-scale poultry operations and industrial agricultural enterprises.
- 2) The restrictions placed on "private stables" (Sect 250-14(D)) such as minimum lot size, maximum number of animals and minimum setback requirement of 250 feet between any stable and any residence. Horse raising and breeding is a universally recognized branch of animal husbandry and thus a legitimate agricultural pursuit. Because the regulations apply in the Agricultural Use District the minimum lot size and setback requirements also seem arbitrary as they apply to horses but no other types of livestock.
- 3) The special regulations that apply when an agricultural building is located on a parcel of land that lacks a dwelling (Sect. 250-14(E)) such as a ten-acre minimum lot size, minimum road frontage of 500 feet, and minimum setback of 400 feet from the centerline of a road and 200 feet from any other lot lines appear to be both excessively burdensome and arbitrary. Moreover the stated rationale: *"These setbacks are prescribed so as to minimize the impact or effect of such barn or agricultural building may have in connection with adjacent residential uses authorized as of right in an Agricultural Use District A."* display a definite bias against agriculture and in favor of non-agricultural residential uses.



- 4) The provisions for farm stands (Sect. 250-18 (A) (4) (5)) limit sales to honey, maple syrup and "vegetative produce." The term "vegetative produce" is not defined anywhere, leading to a question as to what is permitted to be sold. For instance are fruit, flowers, or horticultural products included? Are eggs, meats, baked goods and jams, jellies or juices included? Also the seasonal use only plus limits on hours, and the requirement that structure be dismantled or removed from site during off season may be unreasonably restrictive and discouraging to prospect farm stand entrepreneurs.

- 5) The provisions for farm markets (Sect 250-18(B)) such as the required 175-foot setback from road edge of pavement and 200 feet from side lot lines appear to be unnecessarily burdensome and

restrictive. They are also inconsistent with the treatment of requirements for barns (75 ft. from road centerline) or similar commercial enterprises (80 ft front yard, 30 ft side yard). Limitations on hours of operation and restrictions on outdoor display may be both unnecessarily restrictive and discourage such operations.

In both cases of farmstands and farm markets the limitation of products permitted to be sold to those grown on land owned or leased by the stand or market operator may be unnecessarily restrictive. Such limitations may also negatively impact the agricultural community in general by precluding the opportunity for the sale of produce and other agricultural products that could be grown on neighboring farms and sold to the farm stand or farm market owner for resale to the general public.

Finally, consideration should be given to eliminating a number of incompatible land uses such as motels, hospitals, mobile home parks, multifamily developments and drive-in theatres that are currently permitted as special exceptions within the Agricultural Use District A. (Section 250-53). Such facilities may compete with farmers for valuable land, as well as raise the potential for conflicts between agricultural and non-agricultural uses.

Level of Review

Section 250-11 leaves unclear what, if any agricultural or agriculture-related structures are subject to site plan approval by the Planning Board. In general any agricultural facility where access by the general public is not granted should not be subject to site plan approval. The intent of the site plan approval process has traditionally been to protect the health and safety of the general public through safe planning and design of commercial and other types of development where the public has general access. It can also be a very burdensome requirement on farmers, as well as planning boards.

Conversely, given the nature of farm markets (but not farm stands) and their potential impacts, the Town of Lima may wish to consider a requirement for site plan review for such facilities.

The Town of Lima requirement (Section 250-53) that a special exception be granted for cage-type poultry houses, as well as the setback requirements and operation restrictions imposed by Section 250-76 may be

problematic. This is also true for the special exception approval and setbacks required for industrial agricultural enterprises.

In both cases there is no rationale given as to why such agricultural operations require special treatment. They are similar in scale to many other types of modern agricultural operations. In general they are not open to the general public nor do they attract large volumes of traffic. The primary consideration in the imposition of additional review appears to be potential impact on non-agricultural residential land use. If so then the additional level of review is another indication that agriculture is subordinate to residential development within the Agricultural Use District A.

The process of obtaining a special exception can be extremely burdensome, politicized and risky for an applicant. In general it is reserved for land uses that warrant a higher level of review because of potential large impacts on other land uses within the same zoning district. Because cage-type poultry operations and the types of agricultural operations defined as industrial agricultural enterprises by the Town of Lima are considered to be legitimate agricultural pursuits under the Agriculture and Markets Law, the requirement that such operations be subject to the special exception approval process is likely to be interpreted as a contravention of that law.

Agriculture and Markets Law

The Agriculture and Markets Law (AML) Section 305-a provides farmers and agricultural operations located within State agricultural districts specific protections against local zoning regulation that may be unreasonably restrictive and cause undue interference with legitimate agricultural practices as defined by State law. Because many of the farms in the Town of Lima are located within a state agricultural district, they are afforded the protections available through Section 305-a.

In addition the Legislature in 2002 amended Town Law Section 283-a. Local governments must now ensure that their laws, ordinances or other regulations that might apply to agricultural operations located in State certified agricultural districts do not "*...unreasonably restrict or regulate farm operations in contravention of Article 25-AAA of the Agriculture and Markets Law, unless it can be shown that the public health or safety is threatened.*"

The Commissioner of Agriculture and Markets is empowered to initiate a review of local land use regulations as they may affect farm operations within a State agricultural district, either independently or upon the request of a farmer or municipal official within an agricultural district. The Department of Agriculture and Markets will review the regulations to assess whether the local law or ordinance is unreasonably restrictive on its face and whether it is unreasonably restrictive when applied to a particular situation. The Department must also assess whether the regulated activity also poses a threat to public health or safety.

If the Department of Agriculture and Markets determines that a local law or ordinance does impose an unreasonable burden on farm operations within a State agricultural district, it will notify the municipality of its findings. The Department will then work with municipal officials to bring the local regulations in line with the AML. If the issue cannot be resolved through negotiation the Commissioner is authorized under the law to bring an action against the municipality to enforce the provisions of Section 305-a.



Recommended Revisions to Town of Lima Zoning Regulations As They Pertain to Agriculture

Introduction

There are a number of points where the existing Town of Lima zoning regulations may pose potential problems for agricultural operations in the community or place unnecessary and even unanticipated burdens on agricultural operations. In a few cases provisions of the regulations may be in conflict with the NYS Agriculture and Markets Law and the protections it affords farmers and farm operations within NYS Agricultural Districts. In some cases the issue is one of inconsistency between various sections of the zoning regulations.

The following recommendations are put forward with the objective of ensuring that the Town of Lima zoning regulations are:

1. Supportive of agricultural operations and work to enhance the long-term viability of agricultural operations in the Town of Lima;
2. Protective of the right of farmers to engage in legitimate agricultural pursuits and limit the potential for conflict between agricultural operations and non-farm residents within the Agricultural Use District;
3. In conformance with Town Law Section 283-a that requires local governments to ensure that their laws, ordinances or other regulations that might apply to agricultural operations located in State certified agricultural districts do not unreasonably restrict or regulate farm operations in contravention of Article 25-AAA of the Agriculture and Markets Law, unless it can be shown that the public health or safety is threatened.

The table shown on the next two pages provides a summary of the recommended changes. In the pages following the table the various recommendations with regard to zoning definitions, permitted uses and lot dimensional requirements and the appropriate level of review for specific land uses are addressed in further detail.



Table 1. Summary of Recommended Changes

Issue	Recommendation
Definition of "agriculture" incomplete; may contravene Ag & Markets Law	Revise definition in Section 250-9
Definition of "farm" outdated; may contravene Ag & Markets Law	Revise definition in Section 250-9
No provisions permitting and regulating "agricultural borrow pits;" may contravene Ag & Markets Law	Add a new definition for "agricultural borrow pits" to Sect. 250-9; add to Sect. 250-11 as an accessory use to an agricultural operation
Definition for "agricultural accessory products" may place unnecessary limits on farm product sales	Revise definition in Section 250-9
No provisions for permitting and regulating agriculture-related enterprises; may contravene Ag & Markets Law	Add a new definition for "agribusiness enterprises" to Sect. 250-9; add to Sect. 250-11 as a use permitted with Site Plan Approval
No provisions permitting and regulating "agricultural recreational events;" may contravene Ag & Markets Law	Add a new definition for "agricultural recreational events" to Sect. 250-9; add to Sect. 250-11(A) as a use permitted with Site Plan Approval
Definition of, restrictions placed on farm stands, ambiguous language in Sect. 250-18 (A)(4)(5) should be revised; may contravene Ag & Markets Law	Modify Sect. 250-9, Sect. 250-18
Definition of, restrictions placed farm market sales, excessive setback requirements in Sect 250-18(B) should be revised; may contravene Ag & Markets Law	Modify Sect. 250-9, Sect. 250-18
Special exception requirement for large-scale poultry operations and industrial agricultural enterprises in Sect. 250-53 contravenes Ag & Markets Law	Revise Section 250-9 to remove these terms; remove from Sect. 250-53
Definition of "public stable" may be too restrictive; may contravene Ag & Markets Law	Revise the definition of "public stable" in Sect. 250-9 to conform to Agriculture and Markets Law
Agricultural Use District A purpose statement does not adequately support agriculture as a land use and promotes residential development. (Sect 250-10)	Revise statement to make it clearer that agriculture is the primary land use within the Agricultural Use District

Issue	Recommendation
No "right to farm" language in Sect. 250-10	Add "right to farm" paragraph to Section 250-10
In Sect. 250-11 the requirements that certain agricultural buildings be subject to site plan review by Planning Board contravenes Ag & Markets Law	Revise Sect. 250-11 to remove requirement, simplify language
Restrictions placed on "private stables" in Sect 250-14(D) may contravene Ag & Markets Law	Delete Section 250-14(D); revise Sect. 250-20 to add as accessory use "private stable" with proposed restrictions
Language related to "farm" in Sect. 250-11(D) is redundant	Revise Sect 250-11 (D) to delete the language related to "farm" and replace with "public stables."
Section 250-53 includes incompatible land uses permitted by special exception in Agricultural Use District	Remove such land uses from list of uses permitted by special exception; where appropriate move to Residence Use or General and Highway Business Use districts
Sect. 250-11(N) and Sect 250-14(E) place substantial restrictions on selected agricultural buildings; may contravene Ag & Markets Law	Revise Sect. 250-11(N) to replace provisions governing agricultural buildings with provisions permitting "agriculture-related enterprises" subject to site plan approval; eliminate Sect. 250-14(E)
No provisions permitting and regulating wineries and associated activities; may contravene Ag & Markets Law	Add a new definition for "wineries" to Sect. 250-9; add to Sect. 250-11 as a use permitted with Site Plan Approval
Provisions of Sect. 250-14 (A) may be both too lax, and too restrictive when applied to barns, stables and other agric. buildings; may contravene Ag & Markets Law	Revise Sect. 250-14 (A) to exclude barns, stables and other agricultural buildings from the list of buildings.
Sect. 250-18 regulations governing farm stands and farm markets pose significant restriction on such enterprise; may contravene Ag & Markets Law	Sect. 250-18 should be substantially revised to both remove barriers to establishing and operating such enterprises
Private stables not permitted in Residence Use districts	Add to Sect. 250-20 as an accessory use "private stable" with proposed restrictions
Special exception requirement for animal hospitals; excessive setback requirements (Sect 250-53)	Add to Sect 250-11 as use permitted with site plan approval

In addition to the recommended changes listed above the Town of Lima should consider eliminating from its draft revisions to the current zoning ordinance (August 2009 version) Section 250-66(U), which governs the installation of non-commercial wind energy systems on agricultural lands. The extensive guidelines and requirements of this section appear to be out of scale with the potential impacts of the small wind energy systems (up to 50 kW) to be permitted with the proposed revisions.

Of particular concern is the fact that Section 250-66 (U) unnecessarily treats small wind energy systems on farms differently from such systems elsewhere in the Town, requires inspections not required elsewhere and, at the discretion of the Town, an “Environmental Monitor” at the owner’s cost. Given the extremely small footprint of the typical small scale wind energy systems, the small number of wind turbines (2 or 3) permitted within the 50 kW limitations set forth in the draft regulations, and the fact that cost considerations would most likely dictate locations in or adjacent to existing farmsteads, the multiple requirements covering location of the systems, access roads, culverts, etc. appear to be unnecessary. For the same reason provisions for stockpiling topsoil, removal of soil from the site and site restoration, minimum requirements for cable trench depths, etc. appear to be unnecessary and costly additional burdens on a farm operator.

Zoning Definitions

The following revisions to the definitions used in the Town of Lima zoning regulations should be made as the Town of Lima moves forward with updates to its zoning:

1. Revise the definition of "agriculture" to better reflect the diversity of agricultural pursuits and to ensure conformance with the NYS Agriculture and Markets Law. Language might include:
The use of land for the production, preparation, marketing and transportation of grain, vegetable, fruit, and other crops, horticultural and floricultural products, animal husbandry, livestock and livestock products, as well as the buildings, structures, equipment, manure processing and handling facilities and associated operations necessary to support such production activities and practices, including a commercial horse boarding operation as defined in the Agriculture and Markets Law Article 25-AA, Section 301.

2. Revise the definition of "farm" to remove any references to size, income or the exclusion of certain activities recognized by the Agriculture and Markets Law as legitimate agricultural pursuits and to conform to the recommended definition for agriculture. Language might include:
Any tract of land used for the production, preparation and marketing of grain, vegetable, fruit, and other crops, silviculture, horticultural and floricultural products, animal husbandry, livestock and livestock products, as well as the buildings and structures necessary to support such production activities and practices.

3. Add a definition for "agricultural borrow pit" that would permit farm operators to excavate limited amounts of soil and gravel - up to 2,000 cubic yards per year (or a hole roughly 80 ft. by 100 ft. by 7 ft. deep) - for use in their operations, as provided for under the Agriculture and Markets Law. This would bring the Town zoning into conformance with the Agriculture and Markets Law but also protect it and its residents from commercial mining operations outside the existing Quarry zoning district. Language might read:
"The removal of up to 2,000 cubic yards of earth, gravel, rock or other mineral resources for use as fill material in support of an agricultural operation in another location on the premises or off the premises, but not for sale to the general public."

4. Revise the definition for "agricultural accessory products" to expand it to include items not grown on the premises and clarify what products might be sold to include the sale of grain, trees, shrubs and flowers, syrups and honeys, in addition to fruit and produce. Also products principally utilized in agricultural production such as seed, fertilizers, mulch soil amendments and like products should be included to support the sale of trees, shrubs, flowers and potted vegetable plants.

Possible new definition language could be:

"Items, whether natural, processed, or manufactured, which are directly linked to and promote the use and sale of agricultural products such as but not limited to grain, fruit, produce, trees, shrubs, flowers, syrups and honeys, as well as seed, fertilizers, mulch soil amendments, hand implements and like products principally utilized in gardening, animal husbandry, horticulture, floriculture, apiculture and other agricultural pursuits."

5. Add a new definition for “agribusiness enterprise.” This class of use would permit farm operators to tap sources of supplemental income by providing goods and other services that support theirs and other agricultural operations in the town and the region. Such businesses would be owned and operated by the owner/operator of an active farm and be subordinate to the farm operation. Examples of such businesses would be farm equipment dealerships, seed, grain, hay, straw and fertilizer sales, repair services, building, excavating and other contracting services and trucking services.

Definition language might include:

"A retail or wholesale enterprise providing services or products principally utilized in agricultural production, operated by the owner of the agricultural operation existing on the property, including sale and erection of structures used in support of agricultural operations, agricultural equipment and agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer and equipment repairs, storage and shipping of crops, or providing for wholesale or retail sale of grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations, including the packaging and storage of raw and processed materials utilized in the operation of said enterprise."



Key to controlling the size and scope of agriculture-related enterprises is that they be limited to the owner/operator of an active agricultural enterprise, be subordinate to the larger farm operation and have limits on the number of permitted employees. Limiting the number of employees of such non-farm enterprises, for instance to 3 or less, can prevent the agribusiness enterprise from growing into a large-scale independent business on the premises. Limiting the amount of land allocated to an agribusiness enterprise to one acre (43,560 square feet) and building floor area dedicated to such an enterprise to 10,000 square feet could also limit them to an appropriate size and scale.

6. Add a new definition for "agricultural recreational events." These activities would include on-farm recreational activities such as petting zoos, corn mazes, hayrides, farm tours, demonstrations

of historic and contemporary handcrafts, cooking and other activities that can tap the interests of the non-farm community in agriculture, provide opportunities for both education and recreation and generate supplemental income for the farm operation.

Such activities and enterprises would be open to the general public and likely require support facilities such as temporary or permanent parking areas, walkways, restrooms, and temporary or permanent structures such as booths and pavilions. They may also generate traffic and other impacts that should be investigated. As a result such activities should be subject to Site Plan Review. Definition language might include:

"Recreational, educational and entertainment activities operated in conjunction with and as part of an overall direct marketing strategy for an active agricultural operation or farm market that contribute to the production, preparation and marketing of crops, livestock and livestock products, and including activities such as petting zoos, hayrides, corn mazes and other such recreational activities, educational demonstrations, the onsite processing of foodstuffs and sale of prepared foods comprised primarily of ingredients produced on the premises for consumption on site and off site."

Specific standards should also be formulated for such activities that would address issues such as traffic, noise control, lighting, hours of operation and dates of operation. Such standards should be incorporated into the zoning regulations and be met prior to the granting of site plan approval.

7. Revise the definitions of "farm stand," and "farm market" to modify the requirement that limits sales to "agricultural produce grown upon the ... premises" and the "sold in season" requirement. The rationale for modifying this restriction is that the locations where produce or other agricultural products may originate is of less importance, in terms of the potential impact of such enterprises on adjacent properties and the community as a whole, than the size of the enterprise. Permitting farmers to sell the product of others on the other hand can both enhance the profitability of the farm stand or farm market, and provide an outlet for the goods produced on surrounding farms, many of which may not have frontage or exposure on a main thoroughfare.

Farmstands could be permitted to dedicate up to 30 percent of their sales display areas to products not produced on the premises. For farm markets the recommendation is that they be permitted to dedicate up to 50 percent of their sales display areas to products not produced on the premises.

In addition to removing restrictions on product sources, the definition of farm market should be revised to permit “onsite preparation of processed foods comprised primarily of ingredients produced on the farm, such as a kitchen or bakery, as well as facilities for onsite consumption of such foods...”

Farm stands are relatively small operations generating limited traffic. Farm markets on the other hand are larger scale operations with the potential to generate traffic and other impacts that should be investigated prior to receiving municipal approvals. As a result farm markets should be subject to Site Plan Review.

8. Revise Section 250-9 to delete the " Industrial agricultural enterprise" and "Poultry house, cage-type" definitions.
9. Revise the definition of "public stable" to include "riding academy providing lessons in horseback riding and equestrian sports." A revised definition might read:

"A building and ancillary facilities such as paddocks, indoor and outdoor riding rinks and pastures that provide care, housing, training and health- related services to horses kept on the premises or on other properties owned or leased by the stable operator, including horses boarded on the premises by others, and which may include activities such as the sale of horses to the general public, the hiring of horses and horse drawn vehicles to the general public, and riding academy providing lessons in horseback riding and other equestrian skills or sports."

The objectives of the above definition are to conform to the provisions of the Agriculture and Markets Law regarding commercial horse boarding operations within County agricultural districts, streamline somewhat the zoning regulations, and to distinguish such operations from private stables. Private stables would still be permissible, with appropriate conditions, as accessory uses

in the Residence Use Districts, but the larger and more intense public stables would be limited to the Agricultural use Districts.

10. Add a definition for “comfort care house” also known as a hospice. Possible language for a definition could be:

A building other than a hospital or nursing home where up to two terminally ill persons are regularly lodged and furnished with meals and nursing care.



Permitted Uses and Setback Requirements

The purpose of the Agricultural Use District in Lima should be restated in a manner that communicates more clearly that agriculture and associated activities is the primary land use within the district.

Examples of zoning district purpose statements that emphasize the agricultural character of the zoning district from other Towns include:

"The purpose of the A1–Agricultural District is to protect the agricultural production resources of the Town of Ulysses as seen today in viable agricultural operations, and the agricultural heritage of the Town as seen today in the variety of land uses and the openness of agricultural fields."

Town of Ulysses Zoning Law Art. V, Sect. 5.1

"The purpose of the Agricultural Zone is to assure a proper economic and physical environment for continued agricultural use of land and other nonextractive natural resource land uses; to maintain an open rural character to viable agricultural areas; to assure compatible types and densities of development on lands that are usable for agricultural pursuits; and to minimize other land uses incompatible with farming. Persons and entities not engaged in agricultural pursuits in the Agricultural Zone should be aware that the primary intention of the zone is to permit usual acceptable farming and farming practices which may generate dust, odor, smoke, noise, and vibration; during growing seasons machinery may be operated at other than daylight hours; certain generally acceptable farming operations may involve the use and spraying of herbicides or pesticides; and acceptable practices in keeping animals may involve odors or noises. Accordingly, any person or entity residing or working in an Agricultural Zone should anticipate these types of concerns and recognize that such are the by-product of zoning an area in the Town where agricultural endeavors are encouraged to thrive. To the extent buffer areas may be required, the intention of such buffers is to reduce the potential for conflicts between farming and nonfarming uses. Agricultural Zones are also areas of the Town where it is unlikely public water or sewer will be made available, so as to reduce the economic pressures for development that often flow from the introduction of such facilities. Accordingly, persons acquiring property in Agricultural Zones should not expect such public facilities to be provided."

Town of Ithaca Code, Chapter 270, Zoning/ Art. VI, Agricultural Zones

In their respective statements both Ithaca and Ulysses make it clear that the primary land use in their agricultural zoning districts will be agriculture, and that the intent of the zoning regulations is to enhance the long-term viability of the agricultural sector agricultural. Neither Town precludes non-agricultural residential use of the land, but neither do they explicitly endorse it. The Town of Ithaca goes a further step in explicitly noting that persons who purchase homes within its Agricultural Zone must be prepared to accept the impacts of agricultural operations and forego the prospect of future extensions of public utilities to their home.

The Town of Ithaca statement above appears to be an appropriate template for the Town of Lima. The Town of Lima however could make the statement stronger by changing the first sentence to read (added language in bold text):

*“ The purpose of the Agricultural Use District is to **ensure that agriculture shall be the primary land use**; assure a proper economic and physical environment for continued agricultural use of land and other nonextractive natural resource land uses; to maintain an open rural character to viable agricultural areas; to assure compatible types and densities of development on lands that are usable for agricultural pursuits; and to minimize other land uses incompatible with farming”*

A second step that the Town of Lima can take would be to add a new section within Article IV immediately following the purpose statement. This section would contain a "right to farm" statement that would parallel the typical language found in many local right-to-farm laws. The rationale for including such language in the zoning regulations for the Town of Lima is that it would reinforce the purpose statement. Moreover including such language would increase the public awareness of the right-to-farm concept, as in most communities many more residents and officials consult local zoning regulations than adopted local laws.

Language used by the Town of Ulysses in its Zoning Law reads as follows:

"In the AI–Agricultural District, agriculture shall be the primary land use. Within the District any agricultural practice determined to be a sound agricultural practice by the New York State Commissioner of Agriculture and Markets pursuant to Article 25-AA, Section 308, including but not limited to practices necessary for on-farm production, preparation and marketing of agricultural commodities, such as the operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; and construction and use of farm structures, shall not constitute a private nuisance."

Town of Ulysses Zoning Law, Art. V, Sect. 5.2

The above language or slight variation on it would be appropriate for the Town of Lima Zoning ordinance. To make the language stronger however the above statement should be expanded to include the following language from the Town of Ithaca zoning regulations, or similar language:

“Accordingly, any person or entity residing or working in an Agricultural Zone should anticipate these types of concerns and recognize that such are the by-product of zoning an area in the Town where agricultural endeavors are encouraged to thrive. To the extent buffer areas may be required, the intention of such buffers is to reduce the potential for conflicts between farming and nonfarming uses. Agricultural Zones are also areas of the Town where it is unlikely public water or sewer will be made available, so as to reduce the economic pressures for development that often flow from the introduction of such facilities. Accordingly, persons acquiring property in Agricultural Zones should not expect such public facilities to be provided.”

Town of Ithaca Code, Chapter 270, Zoning/ Art. VI, Agricultural Zones

With regard to permitted uses and setback requirements, in a number of cases specific sections of the Town of Lima zoning regulations outlining should be revised or removed. Table 2 and table 3 on the following pages summarize the recommended revisions to permitted uses. They include:

1. Sect. 250-11. Revise to read:

"In the A Agricultural Use Districts no building or other structure or land shall be used and no structure or other building shall be built, altered or erected for any other purpose other than the following:"

The objectives of this proposed revision is to bring the Town of Lima zoning regulations into conformance with the Agriculture and Markets Law and to also bring the language in Sect. 250-11 in line with the language utilized for other zoning districts.

2. Sect 250-11(A) (7). Revise to read simply: "Private stable. Animal husbandry includes the raising, breeding, use and boarding of horses. Hence the restrictions on "private stables" constrain what is generally considered to be a legitimate agricultural activity and in addition appear to contravene the provisions of Agriculture and Markets Law. The recommended action is to delete the section and the potentially burdensome restrictions on private stables within the agricultural district contained therein.

This action is proposed to occur in conjunction with revising Section 250-11(D) below to permit "public stables."



**Table 2. Recommended Zoning Revisions to Section 250-11:
Permitted Uses**

Permitted Use by Right	Keep	Remove	Add	Notes:
Agriculture Agricultural Operation	X			Should be redefined as ag operation to distinguish from use that is allowed in residential use district and moved up to top of list to reflect its position as <i>primary</i> use in the agriculture use district
One-family dwelling Farm ...Public utilities ... CampsH&F Cabins Other ...(Signs/Temp)	X			
Animal husbandry		X		This term may be redundant in light of use of agriculture and agricultural operation
Open Storage		X		Would still be permitted as a recognized customary accessory use to a farm operation but not a principal use.
Barn or Ag Building		X		Not necessary to list as they are integral to agriculture and agricultural operations.
Riding Academy &.... Stable public or private	X			These operations should be allowed as part of AG,
Agribusiness enterprise			X	Replace "Sales and service of ag machinery" with new, broader "agribusiness enterprise," with broad definition such as proposed in text. Permit subject to Art. XIII site plan review
Agricultural recreational events			X	Permit as accessory use to agricultural operation; Art. XIII site plan review
Comfort Care House			X	Permit subject to Art. XIII site plan review
Farm markets			X	Permit subject to Art. XIII site plan review
Non-Commercial Wind Energy			X	Permit subject to output limits and setback standards

**Table 3. Recommended Zoning Revisions to Section 250-53:
Uses Permitted with a Special Use Permit**

Permitted Use by Special Permit	Keep	Remove	Notes:
Carnival, Circus	X		Revise definition of carnival to include circuses, emphasize temporary nature and lack of permanent structures.
Airfield, private		X	
Animal hospital		X	More suited to business district
Cage...poultry Industrial Ag		X	Redundant – covered under definition of agriculture and agricultural operation
Churches or... Educational ...	X		Churches and educational institutions have special status under zoning and generally can't be prohibited. Churches historically part of rural/agricultural landscape; public schools exempt from local zoning, but not private ones
Rod & Gun Clubs, Clubhouses	X		Move rod and gun clubs from 250-11 (Permitted) to 250-53
Elec. Substation	X		
Radio or television transmission facilities...	X		Revise to explicitly exclude broadcasting studios, offices, etc.
Nursing Home Hospice Senior Housing Mobile home park Two family ...		X	
Gov't use/bldg		X	Government facilities traditionally exempt from local zoning regulation
Golf Courses Public Parks Playgrounds Private...non-profit	X		Park facilities and golf courses can have significant impacts to surrounding land uses and community infrastructure and should be subject to special permit review. Should be moved from 250-11 to 250-53
Private auto lot		X	Existing would be grandfathered as legal non-conforming use
Sand & Gravel		X	Commercial sand and gravel operations should be limited to the Industrial Use District. Town can always entertain proposal to rezone land, and use process to ensure that impacts of mining operation are adequately mitigated. Agricultural borrow pits could still be permitted as accessory uses on a farm
Tourist Home/Bed & Breakfast	X		Replace "Tourist Home" with "Bed and Breakfast"
Wineries	X		New use

3. Sect. 250-11(D) Delete the language related to "farm" as it would be covered under 251-11(B) in a revise ordinance and replace with "Public stables."

4. Sect. 250-14(D). This section should be deleted.
Although the language in Sect. 250-14(D) may not be suitable for the Agricultural Use District, permitting private stables within the Residence Use District, subject to these or similar restrictions, may be appropriate. This would permit non-farm residents to own horses while at the same time protect their neighbors from potential adverse impacts. Public stables and riding academies should be limited to the Agricultural Use District and permitted by right. See 10 below.

5. Sect. 250-11(M) Revise Sect. 250-53 to delete the following uses permitted by Special Exception:
 - Boardinghouse or rooming house;
 - Cage-type poultry house;
 - Crematorium;
 - Dental clinic;
 - Drive-in outdoor theatre;
 - Hospital;
 - Industrial agricultural enterprise;
 - Medical clinic;
 - Motel or motor court;
 - Multi-family dwellings;
 - Private commercial automobile parking lot;
 - Sand and Gravel: non-commercial;
 - Sanitarium;

Courts in New York have consistently taken the position that whenever a municipality lists a land use as being permitted by special approval or as a special exception or conditional use, the municipality has made the legislative determination that said land use is appropriate for that particular zoning district. Although a community may have substantial leeway in setting conditions designed to mitigate the potential adverse impacts of such land uses, it can be

extremely difficult to marshal the arguments necessary to support the denial of approval for such uses. The best approach is to simply not permit such uses in any zoning district if there is any question of whether or not they are appropriate.

6. Sect. 250-11(N). Delete this section. Replace it with:
“Agribusiness enterprises, subject to Site Plan Review as provided for in Article XIII.”

7. Add a new Sect. 250-11(O) that would permit wineries and activities typically associated with such operations. Wineries and their ancillary facilities and activities would be subject to Site Plan Approval. Language might include:
“Wineries, including wine production facilities, sales and display areas, recreational, educational and entertainment activities operated in conjunction with and as part of an overall direct marketing strategy for the winery including facility tours, wine tasting, the onsite processing and sale of prepared foods in support of marketing wine, as well as public and private parties and special events such as festivals and receptions hosted for the purpose of promoting the sale of wines produced on premise, subject to Site Plan Review.”

8. Sect. 250-14 (A). Revise this section to exclude barns, stables and other agricultural buildings from the list of buildings. While it has been traditionally considered appropriate to have garages and small scale accessory structures such as storage sheds within typical front, side and rear yard areas, and with 0 to 10 feet of a property boundary, barns and other agricultural buildings generally should not be permitted that close to a property line.

Suggested revised language for Sect. 250-14(A) is:

“No private garage or other accessory building shall be placed closer to a side or rear property line than 10 feet, closer to the street line than 10 feet to the rear of the rear main wall of the principal building and, on a corner lot, closer to the street line of the side street than 90 feet. No barn shall be placed on a property closer than 100 feet from any street line, and no closer than 50 feet to any side or rear lot line that is not also a street line.”

9. Sect. 250-14(E). These special regulations that apply when an agricultural building is located on a parcel of land that lacks a dwelling should be deleted. In addition to being biased against agriculture they appear to contravene the provisions of Agriculture and Markets Law.

10. Sect. 250-18. The regulations governing farm stands and farm markets should be substantially revised to both remove substantial barriers to establishing and operating such enterprises and to bring the Town of Lima zoning regulations into conformance with the Agriculture and Markets Law. Examples of provisions that should be reconsidered include excessive setback requirements, annual permitting process and fees, limitations on hours and season of operation.

In the case of both farmstands and farm markets the limitation of products permitted to be sold to those grown on land owned or leased by the stand or market operator should be removed. The public policy rationale for such restrictions is not clearly stated in the zoning regulations. More importantly such limitations may negatively impact the agricultural community in general by precluding the opportunity for the sale of produce and other agricultural products that could be grown on neighboring farms and sold to the farm stand or farm market owner for resale to the general public.



Suggested revisions to Section 250-18(A) include:

a. Sect. 250-18(1). Revise the maximum permitted size down from 200 square feet to 150 square feet. The rationale for this is that the majority of farm stand are generally less than 100 square feet in size and generally no larger than a typical hay wagon. Moreover the portability of a structure decreases substantially above 150 square feet.

b. Sect. 250-18(A) (3). Revise to read:

"Any structure or ground display shall be located outside the public highway right-of-way but in all cases shall be located no closer than 25 feet from the edge of the pavement of the adjacent public road."

This added language is to ensure that in cases where the public highway right-of-way is wider than normal farm stands are still located off the right-of-way.

c. Sect. 250-18(A) (4). Revise to read:

"Sales shall be limited to vegetables, fruits, syrups, jams and jellies, juices, honey, baked goods and other foodstuffs grown or produced as part of a home occupation, however in no case shall the sale of goods requiring refrigeration or freezing be permitted."

The above description expands the potential selections as well as the sources of the products that could be offered at a farm stand. Although the selection of goods may be expanded, the size and thus traffic generation and other potential impacts of such enterprises are still controlled by Sect. 250-18(A) (1) and (2). The Town may also consider adding handcrafts produced as part of a home occupation to the list of items that would be permitted.

d. Sect. 250-18(A) (5). Deleted this locational requirement, but replace it with basic design standards for parking or safe pull-off for prospective farm stand customers. Language might include:

"No roadside stand shall be placed in a manner that limits the sight distance available to the motoring public or that in any other way obstructs their vision while driving, and furthermore, adequate space for customers to be able to park outside the outer edge of the road or highway shoulder shall be provided. Said space shall consist of an all weather surface."

- e. Sect. 250-18(A) (6). Revise this section to eliminate season requirement and modify requirements to remove farm stands. Language might include:

"Farm stand sales shall be permitted between 8:00 AM and one-half hour after sunset. During those times or seasons of the year when such farm stand is not operational it shall be either dismantled or removed from the location to an area or a building upon the lands of the proprietor where such structure would be permitted. At all times of the year however farmstands visible from the public rights-of-way shall be maintained in a safe and attractive manner."

The rationale for giving owners the possibility of year-round operations is that with advances in technology it is possible to sell locally grown fruits, produce and other foodstuffs year-round. Also in areas where there are larger populations of Plain Sect (Amish, Mennonite) farms many baked goods stands already operate year round, with no apparent adverse impacts.

Suggested revisions to Section 250-18(B) include:

- a. Sect. 250-18(B) (1) (a) (b) (c). Revise to simplify. Suggested language might include:

(1) Buildings and Structure.

(a) *"No farm market, whether in a shared structure or freestanding structure, shall have more than 1,500 square feet of retail sales and display area, including any areas under porch roofs or other structures with roofs. Greenhouses and other structures utilized for production of plants but which may still be open to the public, or areas under cultivation open to the public such as "U-Pick" operations, are excluded from the limitation on size of retail sales and display area."*

(b) *"No farm market structure or associated parking areas shall be located within any front, side or rear yard setback areas of the property."*

The above language simplifies the Section by essentially eliminating language referencing various building code requirements. It also takes into consideration the practice in many greenhouse-based agricultural enterprises of opening up the production greenhouses to customers in lieu of moving plant stock to a central display area. Although such an interpretation would be considered

extreme, the fields of a typical "U-Pick" operation could be interpreted as "retail sales and display areas."

Finally, the above revisions propose to eliminate what appear to be unnecessarily restrictive setback requirements for farm markets. Farm markets generally have fewer impacts on the community than many typical retail commercial enterprises, including gas station convenience stores that have far smaller setback requirements.

More appropriate setbacks for a farm market structure would be the existing front yard setback requirement for the Agricultural Use District outlined in Section 250-13(B) of 50 feet from the street line or 75 feet from the centerline of a street, whichever is greater. Parking could be permitted within the front yard area, however no parking should be permitted within 20 feet of a street line, and that any area between parking spaces and the street line shall be landscaped. Given that such markets are permitted in the agricultural use districts and may be situated adjacent to parcels which include pre-existing residences, the existing side yard setback requirements of 20 feet outlined in Section 250-13(C) should be extended to 40 feet, with no parking permitted within 20 feet of any side yard property line.

b. Sect. 250-18(B) (2) (a) (b) (c). Revise to simplify. Suggested language might include:

"(2) Except for products on display under porches or other structures with roofs, or in greenhouses and open fields or gardens, no more than 1,500 square feet of outdoor or ground display of products shall be permitted. Furthermore no more than 200 square feet of the above 1500 square feet of outdoor or ground display shall be permitted within any front, side or rear yard areas of the property. No outdoor or ground display of products shall be permitted within any public right-of-way."

c. Sect. 250-18(B)(3). Revise to simplify and eliminate unnecessary parking requirements. Suggested language might include:

"(3) Paved, gravel or other all-weather surface offstreet parking facilities shall be provided. A minimum of one parking space for each 300 square feet of indoor and outdoor retail display area

shall be provided. No parking shall be permitted within any front, side or rear yard areas of the property. No single dimension of the parking area shall exceed 150 linear feet."

d. Sect. 250-18(B)(5). Revise to simplify and eliminate unnecessary restrictions. Suggested language might include:

"(5) Display of Products.

No more than 20 percent of the bulk or volume of the products or wares displayed for sale at any farm market shall be agricultural accessory products as defined in this chapter. For the purpose of this section greenhouses and other structures utilized for production of plants but which may still be open to the public, or areas under cultivation open to the public such as "U-Pick" operations, are excluded from the calculation of the size of retail sales and display area."

e. Sect. 250-18(B)(6). The 8AM to dusk restrictions imposed on hours of operation for farm markets should be reconsidered. They are likely unnecessary given the character of such retail establishments and may also contravene the Agriculture and Markets Law. At the same time the type of 24 hour/7 days per week businesses now common in commercial zoning districts are not appropriate for residential or rural areas. Some restriction on hours of operation is warranted, and limiting hours of operation to between 6 AM and 10PM is recommended. This proposed approach can balance the need for protection from 24/7 retail operations without imposing undue burdens on farm enterprises.

f. Sect. 250-18(B)(7). The requirement for an annual permit for a farm market should be reconsidered. No rationale as to how any public policy is further by the requirement, nor does it appear that any other businesses in the Town of Lima are subject to the level of scrutiny given farm markets. As is the case with other provisions of the zoning regulations the requirement for an annual permit may also contravene the Agriculture and Markets Law.

g. Sect. 250-18(B)(8). This section should be deleted, primarily because the code enforcement officer generally has the power to enter any retail commercial establishment open to the general public, nor does it appear that any other businesses in the Town of Lima are subject to the level of scrutiny given farm markets.

h. Sect. 250-18(C). This section should be deleted. The definition of a farm market coupled with the other provisions of the zoning regulations should effectively protect the Town of Lima from "isolated, general commercial enterprises" being created within the Agricultural Use District. Whether a farm market operates in conjunction with an active farm operation or independently of an active farm, is of less importance than the size of such enterprises and the character and scope of items offered.

12. Sect. 250-20. Add as an accessory use "private stable" with the following restrictions:
- a. The private stable shall be an accessory use incidental to a private dwelling;
 - b. No more than two (2) horses kept exclusively for the use of residents of the dwelling and their non-business guests may be kept, and no boarding of horses for fee shall be permitted;
 - c. Minimum lot size shall be five (5) acres and all pastures and paddocks shall be securely fenced;
 - d. No structure housing horses shall be placed within any required front, side or rear yard areas.

Level of Review

Zoning regulations in practice generally classify permitted land uses into three categories: uses permitted as of right; uses subject to site plan review; and uses permitted by special approval, conditional use permit, or in the case of the Town of Lima, special exception. These categories incorporate three possible levels of review for development within a community.

In the case of uses permitted as of right, the level of review is an administrative exercise limited in most cases to a review for conformance with zoning regulations, building code and other relevant codes. If the proposed development complies with zoning and other regulations approval is automatic.

Land uses such as commercial and industrial development are many times subject to site plan approval, usually by the planning board. The primary objectives of site plan approval are to: 1) ensure compliance with zoning and other growth management regulations; 2) ensure that the proposed layout of buildings, streets, roads, parking lots and other facilities ensures the safety of site tenants, workers and the general public that will be accessing the site; and 3) ensure the mitigation of potential impacts on the

environment and surrounding community. Site plan review is for the most part a technical review of the proposed development to ensure that the proposed development complies with generally accepted design and safety standards. As a result while a planning board may set conditions of approval to ensure compliance with such standards, planning board can deny site plan approval only in cases where a development proposal is in violation of zoning or other codes.

Although the Agriculture and Markets Law substantially limits the power of local municipalities to apply site plan review to agricultural operations, it is an appropriate tool for a small number of land uses associated with agricultural operations. In cases where the general public is invited onto the premises there is a legitimate tie to the protection of the public safety and health. For that reason such activities as farm markets, wineries, public stables and agriculture-related enterprises should be subject to site plan review. Farm operations and proposed improvements not open to the general public and taking place outside areas open to the general public should be exempt from such review.

The Department of Agriculture and Markets recognizes that the limited application of site plan review is appropriate. The Department however also urges municipalities to make the process as streamlined as possible for the farm community.

Certain land uses, due primarily to their more intense nature and hence greater potential for significant adverse impact on the environment and surrounding community, warrant a higher level of review than site plan review because of potential large impacts on other land uses within the same zoning district. In some cases such uses may not be appropriate for all locations within a zoning district due to potential impacts. The Town of Lima utilizes the special exception approach for a number of such land uses in various zoning districts.

The process of obtaining a special exception can be extremely burdensome, politicized and risky for an applicant. The Department of Agriculture and Markets views the application of special exception and similar review procedures to agricultural operations as being unnecessarily burdensome to farmers.

At the same time there are a number of land uses that are listed as permitted by special exception in the Agricultural Use District that are not compatible with agriculture or may work against the Town's desire to protect its agricultural land resources. These uses include among others boarding homes, drive-in

theatres, hospitals, motels, apartment complexes and private commercial automobile parking lots. Given the relatively limited capacity for the Town to deny approval under the special exception review process, these and other uses should be removed as recommended above.

Land Subdivision

Although outside the purview of zoning the subdivision review process can have a positive effect in furthering the goal of protecting agricultural lands. Subdivision regulations generally do not set development densities. Creative subdivision plat design however can have a positive impact.

Over the past several decades as farm sizes have increased through acquisition and consolidation of other farm properties many traditional farmsteads – the residence and barn complexes that dot the rural landscape have become obsolete. In many instances the barn complexes have been removed and the residences and surround lot subdivided off and sold. There are however a number of farmstead residences that are still part of an overall farm operation.

In some cases it may be desirable to have these residences subdivided off from the main farm operations. The Town of Lima minimum lot size requirement of 2.5 acres and associated setbacks in the Agricultural Use District, while appropriate for newer residential lots, may be unnecessarily excessive in the case of existing farmstead homes. In some cases the requirements may result in the unintended loss of valuable agricultural lands.

To permit a reduction in lot size for existing farmstead residences while protecting the overall integrity of the zoning lot size and setback regulations the Town of Lima should consider revising Section 250-100 (C) to provide the Zoning Board of Appeals authority to grant variances for smaller lot sizes and setbacks, provided that 1) the proposed lot shall be at least 1 acre in area and that 2) such variance would:

- a. Permit subdivision off of a pre-existing residence (i.e. built before October 1, 2009) on the premises that is part of an active agricultural operation;
- b. Serve to protect the integrity of an existing agricultural operation, including providing for adequate lands surrounding and existing barn complex needed to maintain its capacity to function safely and efficiently;

- c. Serve to protect other farm infrastructure such as ponds, drainage ways, tile systems, access points and other existing feature critical to safe and efficient operation of the farm;
- d. Serve to protect agricultural land resources.

These variance requests should be referred to the Agricultural Advisory Committee for review and comment prior to submission to the Zoning Board of Appeals.

The above provisions if enacted would permit the adaptive re-use of farm residences while preserving existing agricultural lands and operations. Given the above criteria necessary to grant such a variance it will have limited application throughout the Town of Lima. Nonetheless it could promote the adaptive reuse of existing farm residences while providing housing for the non-farm population of the town without loss of valuable agricultural lands.

