



Happy New Year!

The Department of Planning wishes you a healthy and happy 2012!

Census News: Genesee County Turns 40?

The median age of the County points to an aging population

The median age in Genesee County reached its highest point ever at 41.5 years, up from 37.4 years in 2000, according to recently released data from Census 2010. By "median age," the Census Bureau means that half of the residents of Genesee County are now older and half younger than 41.5 years. This increase in age continues a steady trend observed since the 1970 Census when the County's median age was 28.8.

In 2010, the County's two largest age groups were recorded in the population 45-to-49-years-old and 50-to-54-years-old. Together they make up nearly 17% of the total population. Although this is a national trend, as the baby boomers begin to hit retirement age, the aging trend is especially pronounced in Western NY where, as of Census 2010, all counties west of Monroe County have median ages over 40. The New York State median age was reported at 38 and the entire US at 37.2 yrs, both record highs.

Within Genesee County, the Town of Stafford ranks as the "oldest" municipality with a median age of 45.4 followed by the Town of Darien at 44 and the Town of Pembroke at 43.9. The youngest median age was reported by the Village of Oakfield at 34.1 followed by the Village of Alexander at 34.9. See table below.

Other changes/observations in the ten years between Census 2000 and 2010:

- The Hispanic population increased by nearly 80% from 904 to 1,616 people.
- The population under 18 yrs. of age dropped from 26.1% to 22% of the population.
- Contrary to popular perception, owner-occupied housing units increased from 66.7% to 73%. This percentage is much higher than the State at 53.3% and the US at 66.2% owner-occupied housing units.
- The County's housing vacancy rate increased from 5.8% to 7.3% in Genesee County. This compares to the statewide increase from 8.1% to 9.7% and the countrywide increase from 9.0% to 11.4%.

<u>Municipality</u>	<u>Census 2010 Median Age</u>
Stafford	45.4
Darien	44.0
Pembroke	43.9
Corfu	43.2
Bergen (town)	42.8
Alabama	42.0
Bethany	41.9
Pavilion	41.9
Elba (village)	41.8
Byron	41.5
Batavia (town)	41.3
LeRoy (town)	41.0
Alexander (town)	40.9
Elba (town)	40.7
Batavia (city)	40.4
LeRoy (village)	39.8
Bergen (village)	39.5
Oakfield (town)	38.4
Attica (village)	38.1
Tonawanda Reservation	36.3
Alexander (village)	34.9
Oakfield (village)	34.1

- Sprawl without population growth continues to be observed in Genesee County. Although the total County population decreased by 291 people, there were nearly 1,400 more housing units reported.

To view the full Census 2010 Demographic Profiles and Summary Profiles for all municipalities in Genesee County visit the Genesee County Department of Planning website at www.co.genesee.ny.us/departments/planning or the Census Bureau website at www.census.gov.

Agricultural Assessment Program

Extended to Land Used for Corn and Hay Bale Mazes

Signed into law in 2011 was a new measure that extends the state's agriculture assessment program to portions of farm land used for amusements, such as corn and hay bale mazes.

Sponsored by Senator Catherine Young, the new law combines agriculture and tourism, New York State's two top industries, with the purpose of bringing more business and opportunities to our communities.

With 38,000 farms in New York State, more farmers today are turning to agri-tourism and agricultural amusements to boost their operations, as well as the economy. The new law expands the program to include land used for agricultural amusements that are made from crops grown or produced on the farm and later harvested.

Established in the 1970s, the agricultural assessment program is designed to encourage the preservation of farmland in New York State. Eligible farmers are able to receive a reduced tax assessment rate on land based on its agricultural value, rather than its non-farm market value, through this program.

Planning Law

NY Trail Court Holds Upholds Constitutionality of Ordinance Prohibiting Formula Fast-Food Restaurants

Mead Square Commons, LLC v. Village of Victor, 2011 WL 4537068 (N.Y. Sup 2011)

The owner of real property in the Central Business District in the Village of Victor proposed a new mixed use building for its property with one potential tenant being a Subway restaurant. The Village of Victor code prohibits 'Formula Fast Food Restaurants' in the Village's Central Business District. 'Formula Fast Food Restaurants' are defined as any establishment that is required by contract, franchise or other arrangements to offer two or more of the following: standardized menus, food preparation and/or uniforms; prepared food in ready to consume states; food sold over the counter in disposable containers and wrappers; food selected from a limited menu; food sold for immediate consumption on or off premises; and customer payment before eating.

As a result of the proposed mixed use building's potential tenant, Subway, a noted 'Formula Fast Food Restaurant,' the applicant challenged the validity of the ordinance, alleging that the ordinance was unconstitutional and

illegal under both State and Federal constitutions. The applicant argued that the ordinance was illegal because its prohibition on 'Formula Fast Food Restaurants' was 'based, not upon the characteristics of the restaurant, but upon whether or not the owner or operator is under some contractual or franchise agreement to utilize Formula Fast Food Restaurant Criteria.' Zoning regulations can only deal with land use, not with the people who own or occupy the land, argued the applicant.

The Village of Victor asserted that the ordinance had a legitimate purpose 'to maintain the unique village character and vitality of the commercial district.' The Village maintained the ordinance was not based on who owned or operated the restaurant; rather it applied to all types of owners equally and it merely prohibited everyone from operating a 'Formula Fast Food Restaurant' within that district.

The Supreme Court, Ontario County, held that the ordinance was not an improper regulation of a specific entity and that the ordinance was not unconstitutional. The Court found that the 'Formula Fast Food Restaurant' ordinance was not based simply upon who owned or operated the restaurant. All land use laws related to the owner to some extent, noted the Court. The Court determined that this ordinance was not unconstitutional in that it was not 'plainly personal' and did not seek to regulate a specific entity. It was found by the Court that the ordinance treated all similarly situated owners identically and was based on 'neutral planning and zoning principles.' The Court said that the ordinance 'applied to the entire business district and addressed conduct that affected the character of the community.'

NY Appellate Court Holds 30-Day Time Period to Challenge Granting of Variance Began to Run When Minutes of Meeting Containing Determination and Vote of Board Members was Filed with Clerk

99 MM Motel, Inc. v. Zoning Board of Appeals of Town of Newburgh, 2011 WL 6091459 (N.Y.A.D. 2 Dept. 12/6/2011)

The owner of a hotel situated on 12 acres in the Town of Newburgh, applied for and received area variances for the construction of a second hotel on a lot it planned to subdivide from the 12 acre site. The minutes of the Board meeting were filed with the Town Clerk on June 10, 2010 and a written decision was filed with the Clerk on June 29, 2010. The Petitioners, homeowners and business owners in proximity to the hotel property, commenced this action on July 26, 2010 to challenge the Zoning Board's decision which the Zoning Board and the hotel owner challenged as untimely under Town Law which requires an appeal be instituted within 30 days of the filing of the decision of the Board in the office of the Town Clerk.

The Appellate Court held that the 30 day limitation period began to run on June 10, 2010 when the minutes of the meeting, in which the determination was made and each member's vote was set forth, was filed with the Clerk. Therefore, the Court dismissed the challenge as untimely.

NY Appellate Court Finds No Default Approval of Special Use Permit and No Underlying Similar Purposes Between the Federal Telecommunications Act and the State Mined Land Reclamation Law

Troy Sand and Gravel Company, Inc. v. Town of Nassau, 2011 WL 5221262 (N.Y.A.D. 3Dept. 11/3/2011)

Although the State Town Law and the applicable local law governing special use permits sets forth specific time frames for the holding of a public hearing and to decide an application for a special use permit, neither law provides for the default approval in the event the Town does not comply with the time periods. The Court noted that Town Law 274-b(6), governing the times frames for special use permit review/decisions does not contain the same language as Town Law 276 which specifically provides for default approvals for subdivision applications. Therefore, the Court said that when a Town fails to follow the appropriate time frames for review and decision of a special use permit, the appropriate remedy is a special proceeding to compel the Board to issue a decision.

The Court also found meritless the second claim, that the Town relinquished their rights to review the special use permit application by unreasonably delaying its decision. The petitioners relied on the Telecommunications Act of 1996 for authority, but the New York Appellate Court was quick to point out it was a Federal Law and it did not agree with the petitioner's claim that New York's policy underlying the Mined Land Reclamation Law was analogous to the Federal government's policy underlying the Telecommunications Act. The Court noted that while the Telecommunications Act was designed to regulate the manner in which state and local governments make decision on wireless communication applications to prevent those governments from blocking the towers that would have the effect of causing gaps in service, the Mine Land Reclamation Law 'does not prevent local governments from enacting local laws having the effect of banning mining, nor does it govern the manner in which decisions on special use permits must be made or the time within which those decisions must be made.'

Genesee County Comprehensive Planning Process

Have you been to a County Comprehensive Plan Steering Committee Meeting? At each meeting, two of the ten focus groups will review their monitoring reports for the Committee, seeking comments and suggestions on items to concentrate on for the future. All are invited to attend. Meetings are held at 9:30 a.m. (please call to verify the location). If you are unable to attend the meetings, but would like to review the focus group monitoring reports, please visit the County website at <http://www.co.genesee.ny.us/dpt/planning/compplan.html>. If you are interested in serving on one of the focus groups, please contact the Planning Department at 344-2580 ext. 5467.

FOCUS GROUPS REPORT TO THE GENESEE COUNTY COMPREHENSIVE PLAN STEERING COMMITTEE

In January, the Genesee County Comprehensive Plan Steering Committee heard reports from the Chairpersons of the Health and Human Services and Government Administration Focus Groups at a meeting held at the Jerome Center in Batavia.

Deb Kerr-Rosenbeck, Director of the Youth Bureau, is Chair of the Comprehensive Plan's Health and Human Services Focus Group. This year, the Focus Group made some changes to the format of the monitoring report. A few actions were deleted, some were labeled as inactive and others received an assessment of either unstable or stable with regard to the actions status. By doing this, the monitoring report was made more accessible and easier to manage for the Focus Group members. The Health and Human Services Focus Group continues to strive for solutions to several topics of concern, including obesity, financial independence for seniors, as well as increasing community engagement and volunteerism in light of the challenges that many agencies/departments/organization that are members of the Focus Group are currently facing.

Jay Gsell, County Manager, also serves as Chair of the Comprehensive Plan's Government Administration Focus Group. The Focus Group's presentation gave a summary of the actions being undertaken and monitored by the group's members. It was noted that County, local municipal and school officials are beginning to look at working together to increase the impacts that they collectively may have on changing State policies, rules and regulations. Mr. Gsell mentioned that GAM (Genesee Association of Municipalities) continues to renegotiate the existing contracts with the current single provider, in hopes of expanding the existing infrastructure to provide broadband services to

cover more rural areas. It was also noted that the WRA (Water Resources Agency) is waiting on a proposal from MCWA (Monroe County Water Authority) as to the projected costs for having them provide all of the County's water needs should the City of Batavia Water Plant eventually be taken out of service. GIS, according to the Focus Group, continues to expand.

Complete copies all of the Focus Groups Monitoring Reports are available online at: www.co.genesee.ny.us/dpt/planning/compplan.html. The Genesee County Comprehensive Plan Focus Groups (Economic Development, Government Administration, Land Use, Health and Human Services, Housing, Parks, Recreation and Culture, Transportation, Law Enforcement and Emergency Management, Utilities, and Technology) are composed of public officials, agency representatives, and interested citizens. If you are interested in joining a particular focus group please contact the Genesee County Department of Planning at (585) 344-2580 ext. 5467 or at planning@co.genesee.ny.us

Available Training

As we prepare our schedule for training opportunities, we want to hear what you are interested in. Do you want to attend a Planned Unit Development training session or would you rather learn what your role and duty is as a planning or zoning board member? These are just some examples of training that can be conducted. Please contact Jill Babinski at either (585) 344-2580 ext. 5471 or jbabinski@co.genesee.ny.us to let her know what training you think is necessary.

Watershed Public Meetings

In the month of February, two meetings will take place to discuss Intermunicipal Planning for the Black & Oatka Creek Watersheds project. This project is being prepared for the New York State Department of State Division of Coastal Resources with funds provided under Title 11 of the Environmental Protection Fund. The public meeting will provide an overview of the draft *Black Creek Watershed Characterization* and *Oatka Creek Watershed Characterization*, which were developed with input provided by the Black Creek Watershed Project Advisory Committee and the Oatka Creek Watershed Project Advisory Committee, respectively. Additionally, the public will have an opportunity to discuss the project, provide feedback on the draft documents, and provide input on watershed issues and recommendations.

On Tuesday, February 7, 2012 there will be a public meeting for the Intermunicipal Planning for the Black & Oatka Creek Watersheds project from 6:30-8:00 pm at the Byron Fire Department Recreation Hall located at 6357 East Main Street, Byron, New York. A copy of the draft *Black Creek Watershed Characterization* has been posted online at <http://www.gflrpc.org/Publications/BlackOatka/Characterization/BlackCreekWatershed/index.htm> in advance of the meeting. The draft *Black Creek Watershed Characterization* is also available at the Richmond Memorial Library, 19 Ross Street, Batavia, NY and the Chili Public Library, 3333 Chili Avenue, Chili, New York.

On Thursday, February 9, 2012 there will be a public meeting for the Intermunicipal Planning for the Black & Oatka Creek Watersheds project from 6:30-8:00 pm at the Pavillion Fire Department Recreation Hall located at 11302 Lake Road, Pavillion, New York. A copy of the draft *Oatka Creek Watershed Characterization* has been posted online at

<http://www.gflrpc.org/Publications/BlackOatka/Characterization/OatkaCreekWatershed/index.htm> in advance of the meeting. The draft *Oatka Creek Watershed Characterization* is also available at the Woodward Memorial Library, 7 Wolcott Street, LeRoy, New York, the Scottsville Free Library, 28 Main Street, Scottsville, New York, and the Warsaw Public Library, 130 North Main Street, Warsaw, New York.

The project includes preparation of watershed management plans for the Black Creek and Oatka Creek watersheds, two key tributaries of the Genesee River. Black Creek and Oatka Creek, which are 46 miles and 58 miles long, respectively, together drain an area of approximately 420 square miles across 28 municipalities and in parts of five counties. The Black Creek and Oatka Creek watershed management plans will identify and analyze the issues related to land and water use, including development, recreational uses, tourism, drinking water supplies, irrigation, aesthetics, agricultural uses, industrial uses, and economic development. The process of developing the watershed plans can serve to build consensus among watershed municipalities, State agencies, non-governmental organizations and the public on short and long term actions needed to protect and restore

Both Drafts provide a description of each creek's watershed area and the condition of natural resources and the built environment within that area. This characterization is the first component of a comprehensive watershed management plan for the Black Creek watershed. The characterization includes:

- Description of the watershed and its constituent sub-watersheds, land use and land cover, demographics, natural resources, and infrastructure;
- Evaluation of existing water quality data, run-off characteristics and pollutant loadings, including the identification of critical knowledge gaps pertaining to these subject areas; and
- Identification of pollution sources, sources of water quality impairment, and potential threats to water quality and watershed hydrology and ecology.

For more information about the Intermunicipal Planning for the Black & Oatka Creek Watersheds project please visit: <http://www.gflrpc.org/blackoatka.htm>, or contact David Zorn at dave.zorn@gflrpc.org or 585-454-0190 Ext. 14.

The text "You're Invited!" is rendered in a large, bold, blue font with a 3D effect, appearing to float above the page.

The Genesee County Planning Board cordially invites members of local municipal planning boards and zoning boards of appeals to attend one of their monthly meetings. Attendance at a meeting will allow board members to see how the County Planning Board functions and possibly earn training credit (if municipal approval is granted). A set amount of time will be available for a question and answer session. If your municipality is interested in attending a County Planning Board meeting, please contact Jill Babinski at 344-2580 extension 5471 or jbabinski@co.genesee.ny.us

County Planning Board Meeting Dates and Submittal Deadlines for 2011

Regular meetings begin promptly at 7:30 p.m. (doors open at 7:00 p.m.)
in the large Meeting Room at Genesee County Building II

Final Date for Zoning Referral Submittal to County Planning Department	Planning Board Meeting Date
Thursday, February 2, 2012 – 5:00 PM	Thursday, February 9, 2012
Thursday, March 1, 2012 – 5:00 PM	Thursday, March 8, 2012
Thursday, April 5, 2012 – 5:00 PM	Thursday, April 12, 2012
Thursday, May 3, 2012 – 5:00 PM	Thursday, May 10, 2012
Thursday, June 7, 2012 – 5:00 PM	Thursday, June 14, 2012
**Thursday, July 5, 2012 – 5:00 PM	Thursday, July 12, 2012
Thursday, August 2, 2012 – 5:00 PM	Thursday, August 9, 2012
Thursday, September 6, 2012 – 5:00 PM	Thursday, September 13, 2012
Thursday, October 4, 2012 – 5:00 PM	Thursday, October 11, 2012
Thursday, November 1, 2012 – 5:00 PM	Thursday, November 8, 2012
Thursday, December 6, 2012 – 5:00 PM	Thursday, December 13, 2012

* For individuals with disabilities, requests for reasonable accommodations should be made with at least five days notice. Call the Genesee County Planning Department at 585-344-2580 ext. 5467 or email at hmcallister@co.genesee.ny.us.

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