

**TOWN OF AMHERST
INDUSTRIAL AND COMMERCIAL
INCENTIVE BOARD**

**REVISED FINAL REPORT &
RECOMMENDATIONS**

September, 2011

Town of Amherst Industrial and Commercial Incentive Board

Revised Final Report & Recommendations September, 2011

Introduction

On September 4, 2010, the Amherst Town Board adopted a resolution to reconvene and appoint members to the Industrial and Commercial Incentive Board (ICIB). The purpose of the ICIB is to review and make recommendations to the Town Board regarding the 485 (b) Tax Abatement Program. The following were appointed to serve on the ICIB: Rick Vilonen, Chair of the Amherst Industrial Development Agency (AIDA); Catharine Weiss, Chair of the Planning Board; Joe Speth, Chair of the Zoning Board of Appeals; Matt Plunkett, former Deputy Town Attorney; and Rudolph Bersani, business person. The Chair of the AIDA was designated as Chair of the ICIB.

The Town Attorney, Town Assessor, and Planning Director were appointed as resource persons, and the Town Board Liaison to the AIDA, Councilmember Steven Sanders, was appointed as Town Board Liaison to the ICIB.

This report revises a previous version released by the ICIB in April, 2011. It has been revised to address Town Board comments on the original proposal. The following summarizes the ICIB's analysis and recommendations to the Town Board for revisions to the 485 (b) program.

Background

"485 (b)" refers to a section of the New York State Real Property Tax Law. The State Legislature enacted this program in the mid 1970's to provide an incentive for investment in commercial, business, or industrial properties. It does this by offering the following:

- Abatement of 50% of the increase in assessment resulting from improvements made to a commercial property.
 - *Note that the abatement is on the increase in assessment, not the amount of investment.*
 - *Residential property is not eligible.*
- It is a 10-year program, with the abatement reduced by 5% per year until its expiration.
- During the abatement period, the assessment may increase or decrease as it typically would, based on applicable criteria.

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In 1995, the State Legislature amended the 485(b) law to give municipalities more local flexibility with its implementation. Part of this amendment allows municipalities to modify certain requirements to target the program both geographically and by specific land use. To do so requires the creation of an ICIB, which reviews local market conditions and planning objectives and makes recommendations to the Town Board for final approval.

To take advantage of these new provisions, the Town Board convened its first ICIB in 1995. The ICIB made some significant recommendations that were considered by the Town Board. These included:

- Dividing the Town into four classification categories for 485 (b) purposes: General Development, Industrial Development, Office Parks, and Geographically Targeted Enhancement Areas
- Targeting 485 (b) eligibility by land use within each of the four classification categories
- Raising the minimum project eligibility from \$10,000 to \$25,000.

The Town again convened an ICIB in 2001 to re-examine the 485 (b) program. Their recommendations, which form the basis of the current Town program, included:

- **Development Classifications:** The Town shall continue to be divided into the four classification categories as indicated above.
- **SIC Codes:** Eligible land uses within the Development Classifications will be based on US Department of Commerce Standard Industrial Classification (SIC) codes.
- **Enhancement Areas:** The boundaries of the enhancement areas were modified to include Main Street from the I-290 to Youngs Road and the Main Street/Eggert Road commercial area (see figure 1, existing 485 (b) enhancement area).
- **Investment Minimums:** The minimum project value required to apply for abatement was raised to \$25,000.
- **Exemption Amounts:** The abatement shall not exceed 50% of the increase in assessed value in any one year, nor shall it exceed an average of 27.5% of the increase in assessed value over the ten year abatement period.
- **Amherst Industrial Development Agency (AIDA):** A recommendation was made to the Town Board that the AIDA should be a conduit for various redevelopment incentives, focusing on the enhancement areas.

- Industrial and Commercial Incentive Board: Recommend reconvening the ICIB within 5 years.

Comprehensive Plan

Since the last ICIB completed its work in 2001, Amherst has continued to focus its efforts to encourage reinvestment in the older commercial districts, particularly in Snyder and Eggertsville. This policy direction was given greater emphasis with the adoption of the Bicentennial Comprehensive Plan in 2007, which included a Key Initiative and a series of policy recommendations that emphasized redevelopment and revitalization of older neighborhoods and commercial districts. By reference, the adopted Town of Amherst Bicentennial Comprehensive Plan is included as part of this report.

Other Planning Efforts

The Town has developed a new Traditional Neighborhood Business (TNB) overlay district to implement plan recommendations to provide pedestrian-oriented zoning with form and density more suited to older commercial districts. The zoning code adopted in the mid 1970's created regulatory barriers that discouraged investment. The TNB overlay was developed to provide new yard, area, bulk, and design requirements that meet these objectives and remove barriers to revitalization. It has been adopted for the Harlem/Kensington and Main/Eggert neighborhood shopping areas, and work is presently underway to consider adoption in two other locations in Eggertsville and Snyder.

In early 2010, the Town Board created the Eggertsville Task Force to identify issues impacting the Eggertsville community and find practical solutions. Residents and property owners that participated at Task Force meetings expressed concern about the long term viability of the neighborhood commercial districts in Eggertsville. This led to a recommendation that a review of current 485 (b) policies was needed to see if incentives could be improved and to make sure the location of TNB overlay districts was consistent with the 485 (b) enhancement areas. This led directly to the Town Board's resolution to reconvene the ICIB.

2010-2011 Industrial and Commercial Incentive Board

The first meeting of the reconvened ICIB was held on September 8, 2010, and the Board met approximately once per month until March, 2011. All meetings were advertised in the Amherst *Bee* and have been open to the public. The ICIB reviewed economic conditions and planning objectives to identify issues warranting further analysis and consideration. Based on this review, a preliminary report that included draft recommendations was prepared. The preliminary report was available for public review on the Town website and copies were placed in Town libraries.

A public information meeting was held at the Harlem Road Community Center on March 31, 2011 to gather information and comments on preliminary recommendations from stakeholders and the public. Approximately 800 invitations were distributed to affected property owners, neighborhood groups, and members of the development community. The meeting was also advertised in the *Amherst Bee*. It was attended by approximately 6 to 8 members of the public, with two persons asking questions about the program. No comments on the recommended changes to the 485 (b) program were received at either the public information meeting or in writing.

The following summarizes the ICIB's analysis and recommendations:

Identification of Issues

The initial meetings of the ICIB focused on reviewing the 485 (b) law, the history of the program in Amherst, its effectiveness as an incentive for desired development and redevelopment, and the recommendations of the Comprehensive Plan. Based on this review, the ICIB then identified the following issues for further analysis:

Geography The ICIB determined that revisions to the location of the existing enhancement areas as adopted in 2001 may be needed. The enhancement areas are those portions of Town where previous ICIB's identified a need to provide incentives for reinvestment and redevelopment. They generally include existing older commercial districts located in three general areas: Southwestern portion of Town south of and adjacent to Sheridan Drive; along Main Street from the I-290 to Youngs Road through the Village of Williamsville; and Transit Road south of Main Street. It is important to note that some uses, generally office and industrial uses, are eligible for 485 (b) abatement town wide. Retail and related services are currently eligible for abatement only within the designated enhancement areas. The existing enhancement areas are shown on Figures 1 - 12.

Changes to the boundaries and location of these areas were considered for the following reasons:

- **To make the enhancement areas consistent with recent zoning changes:** The ICIB wanted to insure that locations where the TNB Overlay has been applied or is likely to be applied in the near future should be included in the revised enhancement areas.

The current enhancement boundaries were limited to commercially zoned parcels at the time the 485 (b) maps were adopted in 2001. They did not include any adjacent non-commercial properties such as religious facilities or public and semi-public uses zoned Community Facilities. Due to changing economic and social conditions, some of these properties have been or are candidates to be redeveloped or adaptively reused. These parcels are not eligible for 485 (b) and cannot be included in an enhancement area unless the boundaries are recommended for revision through the ICIB process.

The ICIB also identified a need to provide as much flexibility as possible to permit existing businesses to expand where appropriate to adjacent, non-commercially zoned property and have the entire development eligible for the incentive.

- **To expand to other areas of Town:** The ICIB asked the Planning Department to review other commercial districts in Town not currently located within an enhancement area to determine if the Town should provide the 485 (b) incentive at any new locations. The Planning Department recommended that the commercial strip along Niagara Falls Blvd. from the I-290 to Creekside Drive should be considered. This area exhibited many characteristics similar to existing enhancement areas, such as small, relatively shallow parcels, smaller buildings with constrained parking, and minimal recent development activity.

Improve the 485 (b) Incentive: The Town Assessor reported that use of the 485 (b) incentive has been very limited. He indicated fewer than 3 applications had been filed in the current year ending March 1, 2011 and less than 5 in each of the past 2 years. Further, there was minimal activity within the enhancement areas in southwestern Amherst. The ICIB concluded that Amherst's current 485 (b) abatement program is not an effective incentive for redevelopment of the Town's older retail commercial districts. **The ICIB examined possible remedies:**

- **School District Participation:** Currently, the four school districts in Amherst do not participate in the 485 (b) program. According to the State legislation, school districts may opt into the Town's program but cannot independently modify the program. If they choose to participate, they may opt out of the program at any time.

School taxes typically represent over half of the property taxes paid by a property owner. Participation by the school districts would significantly increase the attractiveness of the program.

The ICIB approached the Amherst Central, Sweet Home Central, and Williamsville Central Districts, the three largest districts in the Town, to discuss their participation. Representatives from all three districts have regularly attended ICIB meetings and shared their perspectives and insights on the needs of each of their districts. Their input helped guide the ICIB's recommendations.

- **Revised repayment schedule:** The ICIB explored whether the abatement schedule could be further revised to "frontload" the benefits in the first few years to make the incentive more attractive. The Board was advised by the Town Attorney's office that the Town does not have the authority to modify the repayment schedule beyond either the standard schedule or the accelerated option found Section 485 (b) (12) of the legislation. If the accelerated option were considered, certain findings would have to be made by the Town. After review of these options, no further action to modify the repayment schedule was considered.

Land use codes: The State legislation was modified to switch the basis for identifying land uses that are eligible for abatement from the Standard Industrial Classification Code (SIC) to the North American Industrial Classification System (NAICS). Planning Department and AIDA staff prepared a conversion from SIC to NAICS for the ICIB's use.

AIDA and the Planning Department also recommended that hotels and motor service and sales uses that were previously excluded from the enhancement area be included. Motor service and sales uses are typically located on properties that are difficult to redevelop and often have substantial barriers, such as small size and environmental clean up costs. Hotels, bed and breakfasts, and boutique hotels are often cornerstones of a commercial development or district and should be encouraged at appropriate locations. As with any land use, the permitted location is determined by zoning, not the eligibility for abatement within an enhancement area.

Change minimum dollar value: The ICIB evaluated whether the minimum investment required to be eligible to apply for the abatement should be modified from the current threshold of \$25,000. The State legislation permits the qualifying investment to be set within a range of \$10,000 to \$50,000. Alternatives were discussed, including raising it to the maximum of \$50,000 to save the administrative cost of processing small applications that would yield minimal benefits. The higher threshold may also act as an incentive for increased investment. The Town Board recommended to the ICIB that the minimum should be lowered to \$10,000 to encourage all levels of investment in the target areas.

New York State Real Property Tax Law, Section 485 (a): The Town Board adopted a resolution on September 20, 2010 requesting that the ICIB assist with providing a recommendation on making the 485 (a) incentive available in the Town. This program provides abatement of the increase in assessment resulting from the conversion of commercial property to mixed-use development. After reviewing this program, the ICIB determined that this law has no provision to be targeted either by land use or geography, and that they have no statutory responsibility with its implementation. Since it cannot be targeted, the ICIB recommended that the Town not opt into the 485 (a) program at this time.

Recommendations

Based on this analysis, the Industrial and Commercial Incentive Board offers the following recommendations for consideration by the Town Board:

Geography

The State legislation permits municipalities to geographically target 485 (b) incentives by defining enhancement areas. Currently, the Town's enhancement areas are generally located in older commercial districts and are the only locations in Town where retail uses are eligible for 485 (b) abatement.

Once established, enhancement areas are rigid geographic boundaries that may only be modified by the Town Board based on a recommendation from the ICIB. The limits of an enhancement area are therefore difficult to modify in a timely manner. Within these constraints, the ICIB sought to provide some flexibility to encourage desirable development that may need additional land adjacent to an enhancement area to be economically viable. The Town Board had expressed concern that proposed enhancement areas should not infer that the Town seeks to encourage commercial development in areas not planned for commercial use.

Per this guidance, the ICIB reviewed the Bicentennial Comprehensive Plan to identify the limits of planned commercial development in and around proposed enhancement areas. Based on this review, the ICIB, with some minor exceptions, has proposed enhancement areas that are consistent with planned retail-commercial and mixed use land uses as defined on the Plan's "Conceptual Land Use Plan" map. The recommended enhancement area boundaries are identified on Figures 1 - 12.

Highlights of these recommendations include:

- **Snyder/Eggertsville (South of Sheridan Drive):** The proposed enhancement areas for the southwestern portion of Town are shown on Figures 2 – 7. Their location is generally consistent with existing enhancement areas, with most expanded slightly to include areas planned for commercial or mixed-use development in the Comprehensive Plan. One exception is a new proposed enhancement area located at the intersection of Eggert and Sweet Home Roads. This small GB-zoned commercial node is not currently in an enhancement area and is not planned for commercial development. There is a vacant commercial building at the northwest corner of the intersection that was previously used as a dry cleaning operation. Reuse of this parcel will be difficult, particularly for residential use, due to typical environmental concerns associated with this former use. For this reason, the ICIB determined that the area would likely remain in commercial use and that incentives such as 485 (b) would be needed to attract interest in reinvestment in the property.
- **North Side of Sheridan Drive:** Based in part on input received from school district staff, parcels greater than 2 acres in size with frontage on the north side of Sheridan Drive from Niagara Falls Blvd. to the I-290 are proposed to be removed from the enhancement area. This refinement of the enhancement area emphasizes that the 485 (b) program is best suited for smaller parcels in neighborhood commercial districts. The specific parcels included in the enhancement are identified in Figures 2, 3, and 4.
- **Williamsville Area:** Based on input from the Village of Williamsville, the entire Village is recommended to be included. New proposed enhancement areas consistent with Comprehensive Plan land use recommendations include the intersection of Kensington Avenue and Main Street on the west side of the I-290; the commercial areas located generally at the intersections of Wehrle Drive with South Union and South Forest Roads; and the area located around the intersection of Wehrle Drive with Cayuga Road and Aero Drive. These areas may be found on Figures 8, 9, and 10.

- **Niagara Falls Boulevard:** A new proposed enhancement area includes the commercial frontage along Niagara Falls Blvd. from the I-290 to Creekside Drive at a depth of approximately 300 feet as depicted in Figure 12.
- **Transit Road:** As shown in Figure 11, the existing Enhancement Area located along the Transit Road frontage is proposed to be expanded with the addition of commercially zoned parcels fronting on Main Street adjacent to the existing district.

Land Use Codes

- Make all land uses as defined in the NAICS code that are located in an enhancement area eligible for 485 (b) abatement. Zoning will dictate permitted uses, not eligibility under 485 (b).
- Eliminate eligibility for 485 (b) abatement for all land uses as identified in the NAICS code in areas located outside of enhancement areas. This strengthens the targeting of this incentive to areas where the ICIB has determined that 485 (b) will provide the greatest potential benefit.

Minimum Assessment Increase

The ICIB recommended that the investment threshold to be eligible to apply for 485 (b) be set at \$50,000, the maximum amount permitted under the State legislation. This recommendation is based in part on guidance received from the Town Assessor that lower amounts of investment do not typically raise the assessed value of a property and the higher threshold acts as an incentive for increased investment.

The Town of Amherst Industrial and Commercial Incentive Board respectfully recommends that the Town Board consider implementation of all recommendations as stated in this report.

Acknowledgements

Town of Amherst Industrial and Commercial Incentive Board

Frederick A. Vilonen, Chair
Rudolph Bersani
J. Mathew Plunkett
Joseph Speth
Catharine Weiss

Amherst Town Board

Barry A. Weinstein, Supervisor
Guy R. Marlette, Deputy Supervisor
Richard "Jay" Anderson, Councilmember
Mark A. Manna, Councilmember
Barbara S. Nuchereno, Councilmember
Steven D. Sanders, Councilmember and Town Board Liaison to the ICIB

The ICIB wishes to thank the following for contributing their expertise and assistance to help make this a successful endeavor

Amherst Industrial Development Agency

James J. Allen, Executive Director
David S. Mingoia, Deputy Director

Town Attorney's Office

Patrick Kelly, Deputy Town Attorney

Amherst Assessor's Office

Harry Williams, Assessor

Amherst Planning Department

Eric W Gillert, Planning Director
Gary Black, Assistant Planning Director
Scott Marshall, Senior Planner
Jean Brzezinski, Senior Clerk-Typist

The ICIB also wishes to thank the representatives of the Amherst Central School District, Sweet Home Central School District, and Williamsville Central School District for providing critical input and guidance that helped shape the recommendations contained in this report

Legend

-  Existing 485-B Area
-  Proposed 485-B Area
-  OB Zoned Land
-  NB Zoned Land
-  GB Zoned Land
-  CS Zoned Land
-  MS Zoned Land
-  SC Zoned Land
-  CF Zoned Land
-  RD Zoned Land
-  Village of Williamsville

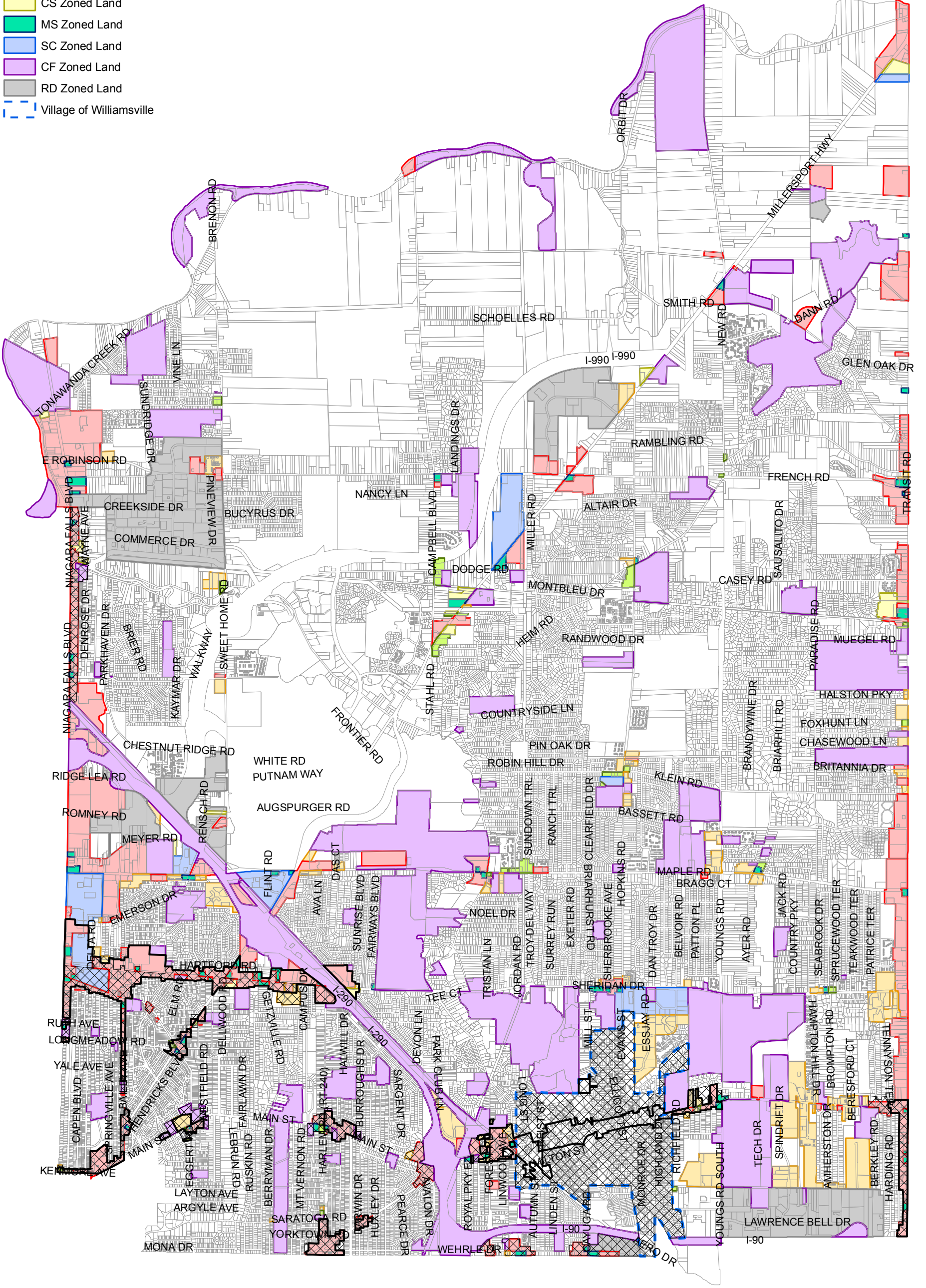


Figure 1

**Proposed 485-B Enhancement Area
Townwide**

Prepared by the Town of Amherst Planning Department, August 10, 2011



Legend

-  Existing 485-B Area
-  Proposed 485-B Area
-  OB Zoned Land
-  NB Zoned Land
-  GB Zoned Land
-  CS Zoned Land
-  MS Zoned Land
-  SC Zoned Land
-  CF Zoned Land
-  RD Zoned Land
-  Village of Williamsville

Town of Tonawanda

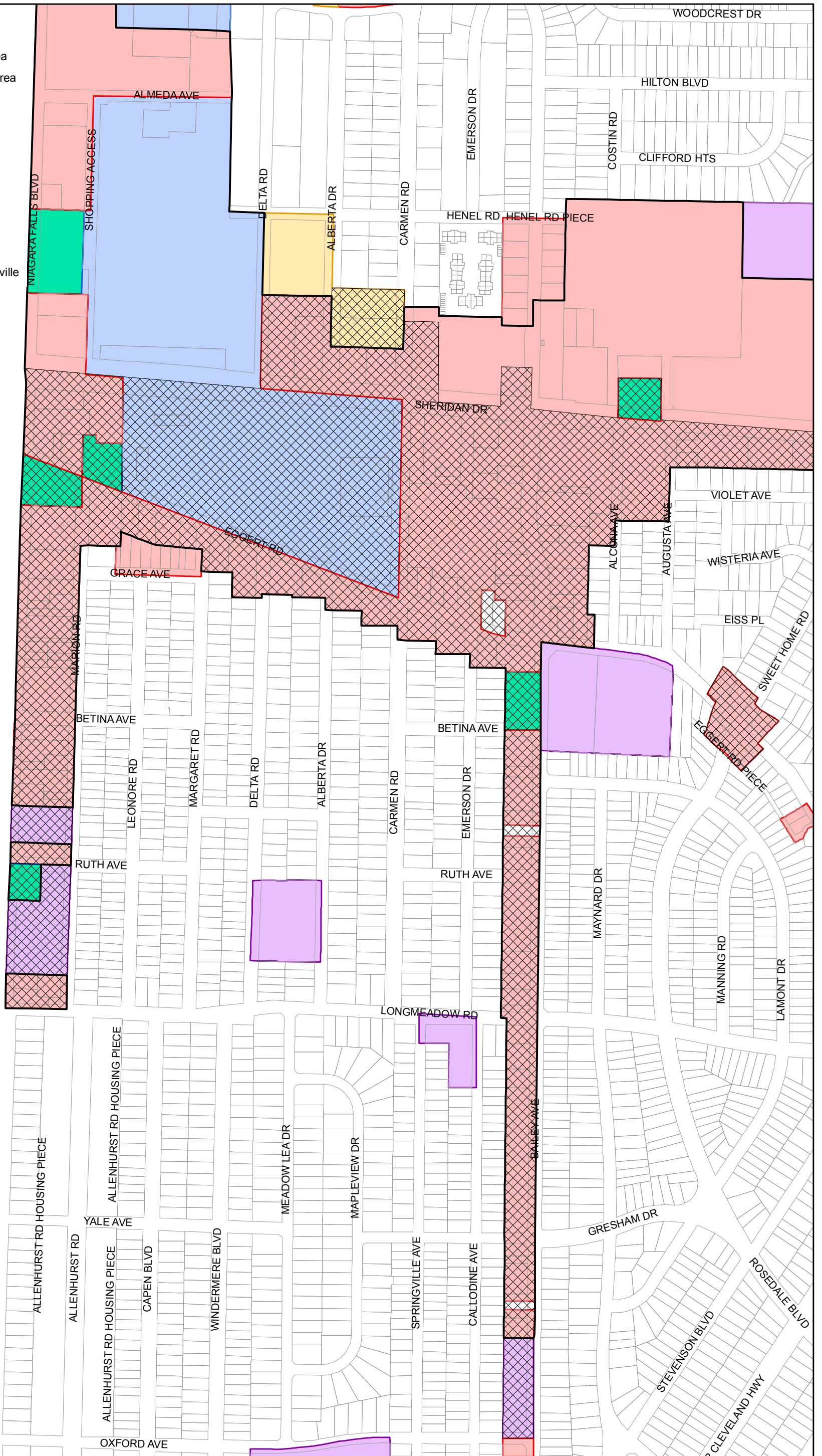
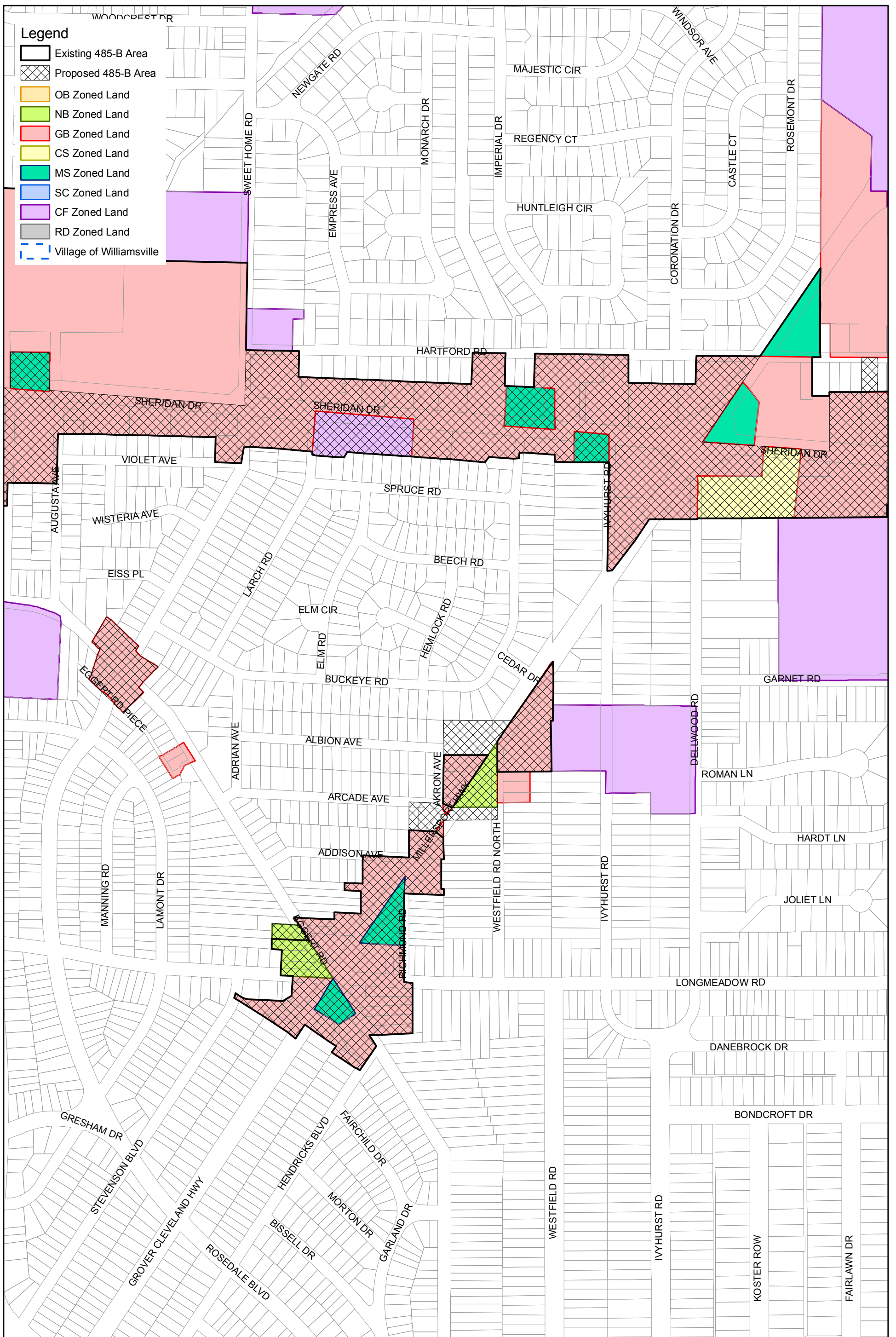


Figure 2

**Proposed 485-B Enhancement Area
Sheridan West / Bailey North**

Prepared by the Town of Amherst Planning Department, August 10, 2011





Legend

- Existing 485-B Area
- Proposed 485-B Area
- OB Zoned Land
- NB Zoned Land
- GB Zoned Land
- CS Zoned Land
- MS Zoned Land
- SC Zoned Land
- CF Zoned Land
- RD Zoned Land
- Village of Williamsville

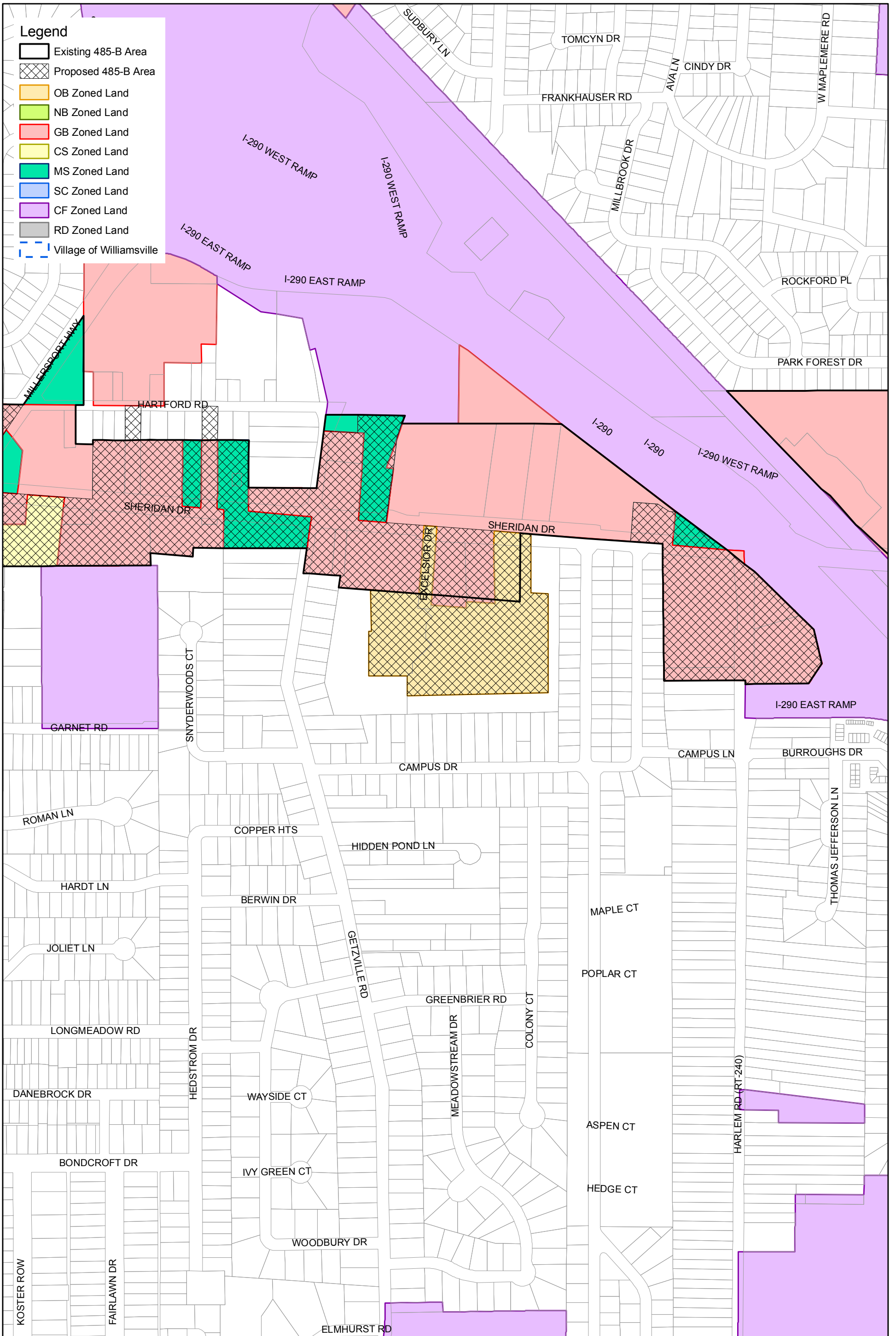
Proposed 485-B Enhancement Area
Sheridan Center / Six Corners



Figure 3

Prepared by the Town of Amherst Planning Department, August 10, 2011





Proposed 485-B Enhancement Area
Sheridan East














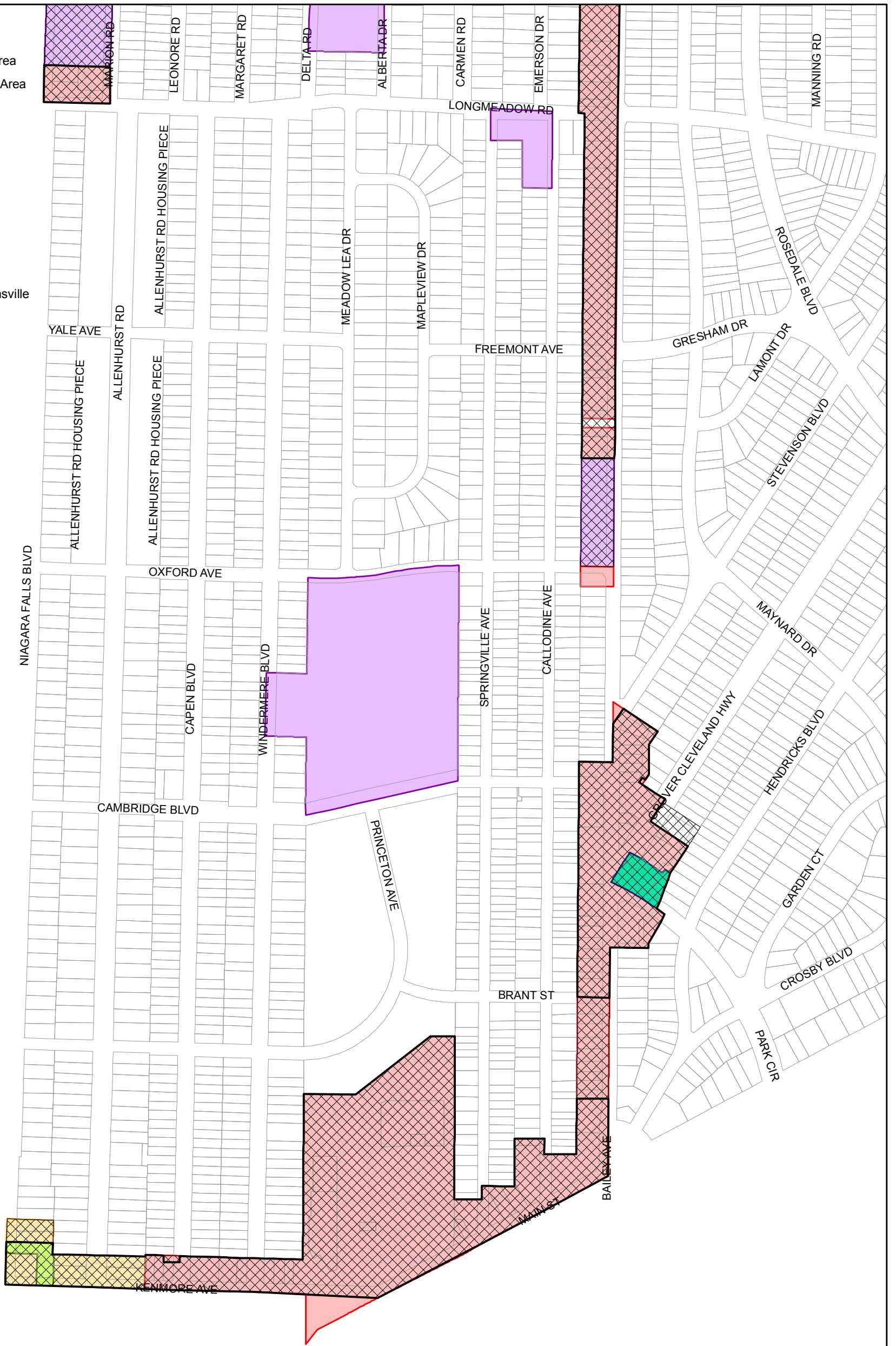
Figure 4

Prepared by the Town of Amherst Planning Department, August 10, 2011



Town of Tonawanda

- Legend**
-  Existing 485-B Area
 -  Proposed 485-B Area
 -  OB Zoned Land
 -  NB Zoned Land
 -  GB Zoned Land
 -  CS Zoned Land
 -  MS Zoned Land
 -  SC Zoned Land
 -  CF Zoned Land
 -  RD Zoned Land
 -  Village of Williamsville



City of Buffalo

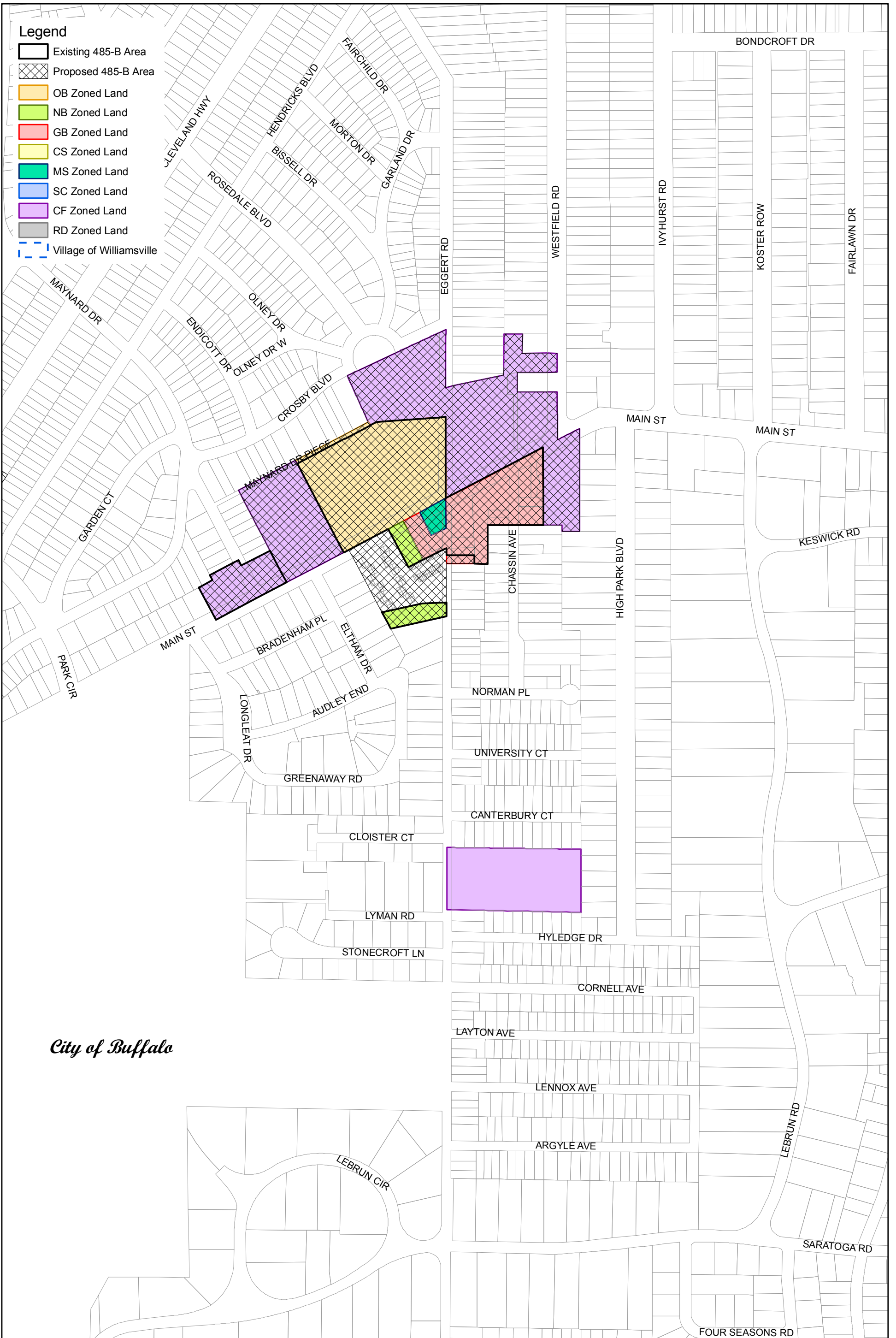


Figure 5

Proposed 485-B Enhancement Area Main-Kenmore / Bailey South

Prepared by the Town of Amherst Planning Department, August 10, 2011





City of Buffalo

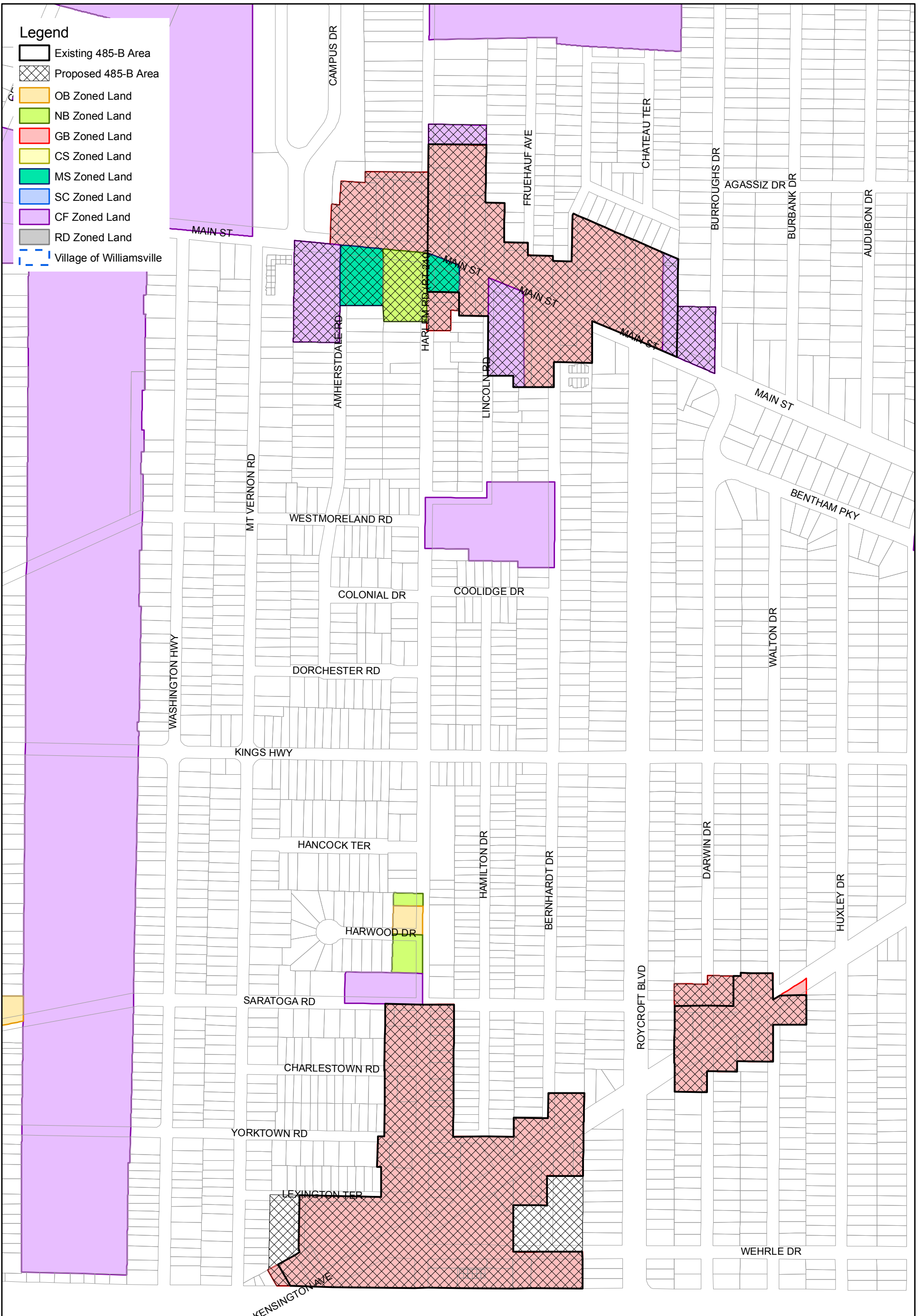
**Proposed 485-B Enhancement Area
Main / Eggert**



Figure 6

Prepared by the Town of Amherst Planning Department, August 10, 2011





Town of Cheektowaga



Figure 7

**Proposed 485-B Enhancement Area
Harlem-Kensington / Main-Harlem**

Prepared by the Town of Amherst Planning Department, August 10, 2011



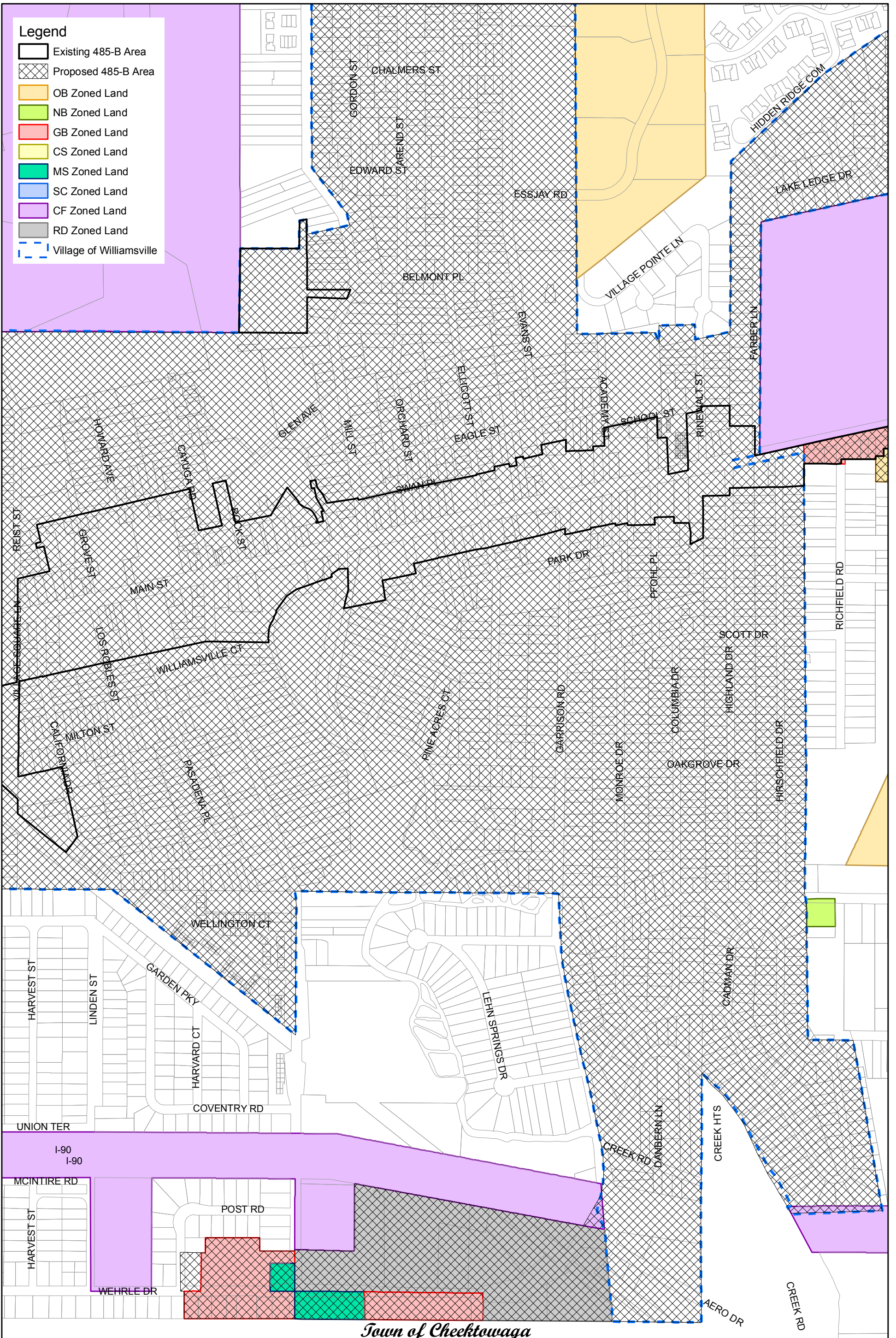


Figure 9



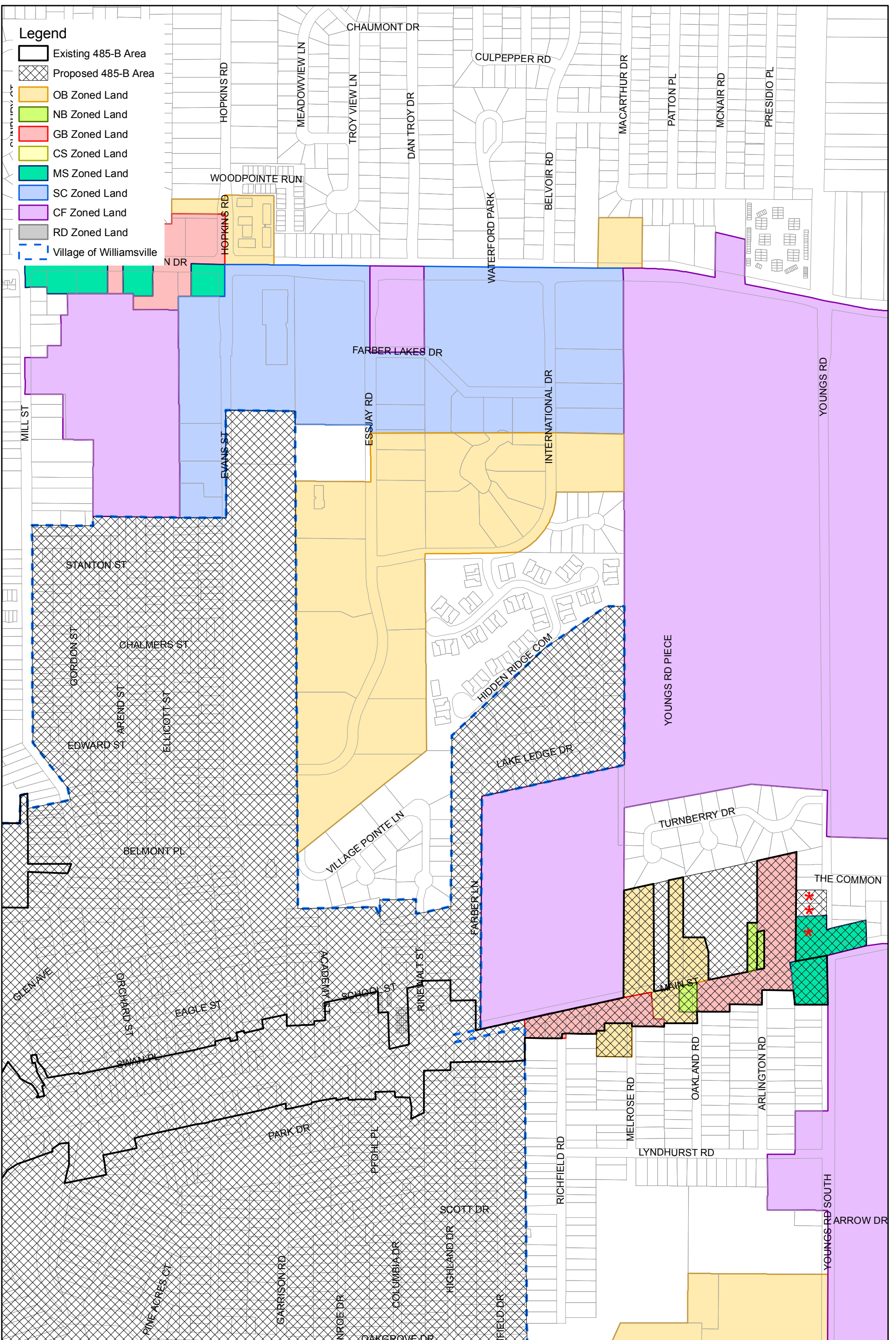


Figure 10

Proposed 485-B Enhancement Area Williamsville - East

Prepared by the Town of Amherst Planning Department, August 10, 2011

* Zoned GB pending finalization of rezoning



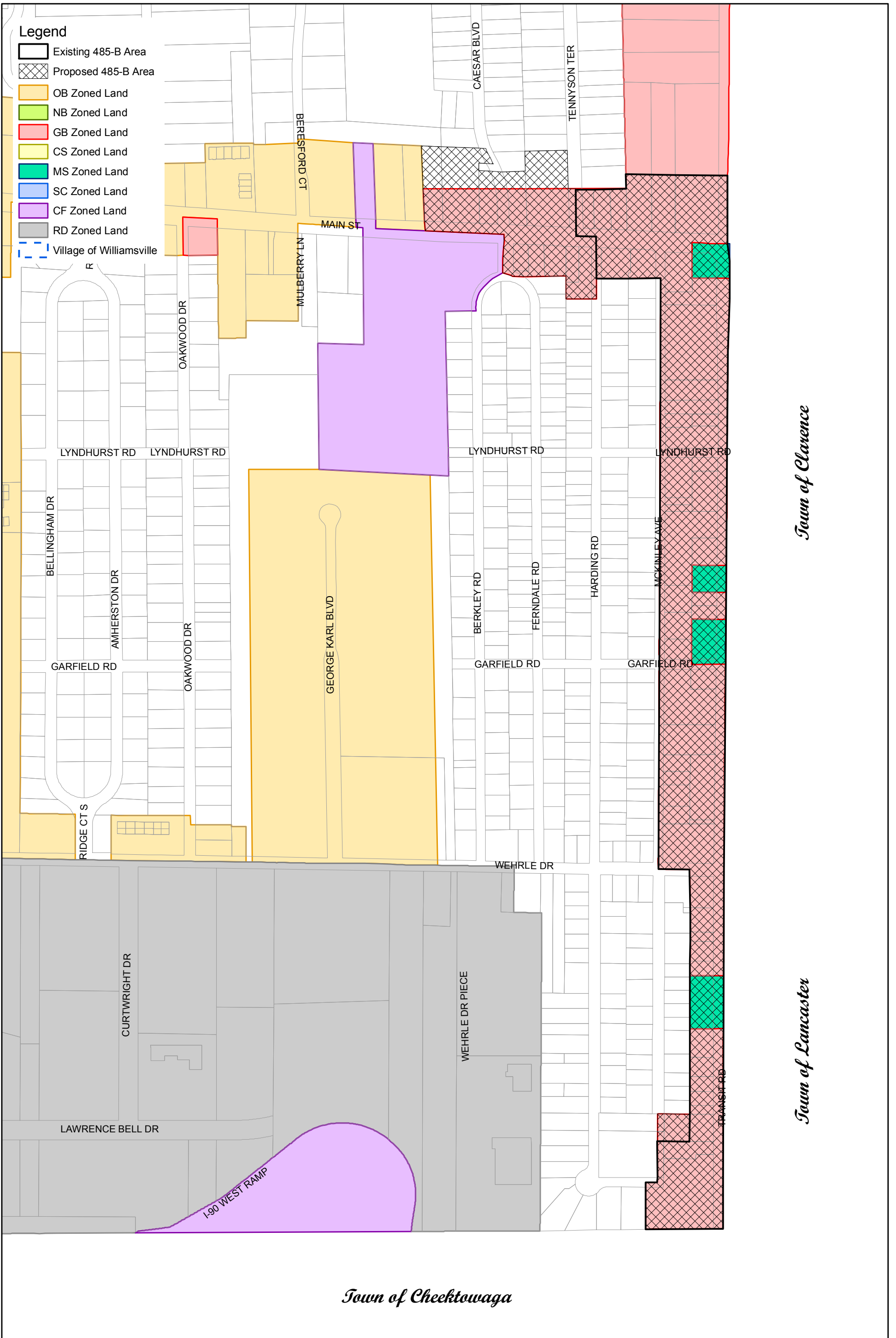


Figure 11

**Proposed 485-B Enhancement Area
Transit Road**

Prepared by the Town of Amherst Planning Department, August 10, 2011



Legend

-  Existing 485-B Area
-  Proposed 485-B Area
-  OB Zoned Land
-  NB Zoned Land
-  GB Zoned Land
-  CS Zoned Land
-  MS Zoned Land
-  SC Zoned Land
-  CF Zoned Land
-  RD Zoned Land
-  Village of Williamsville

Town of Tonawanda

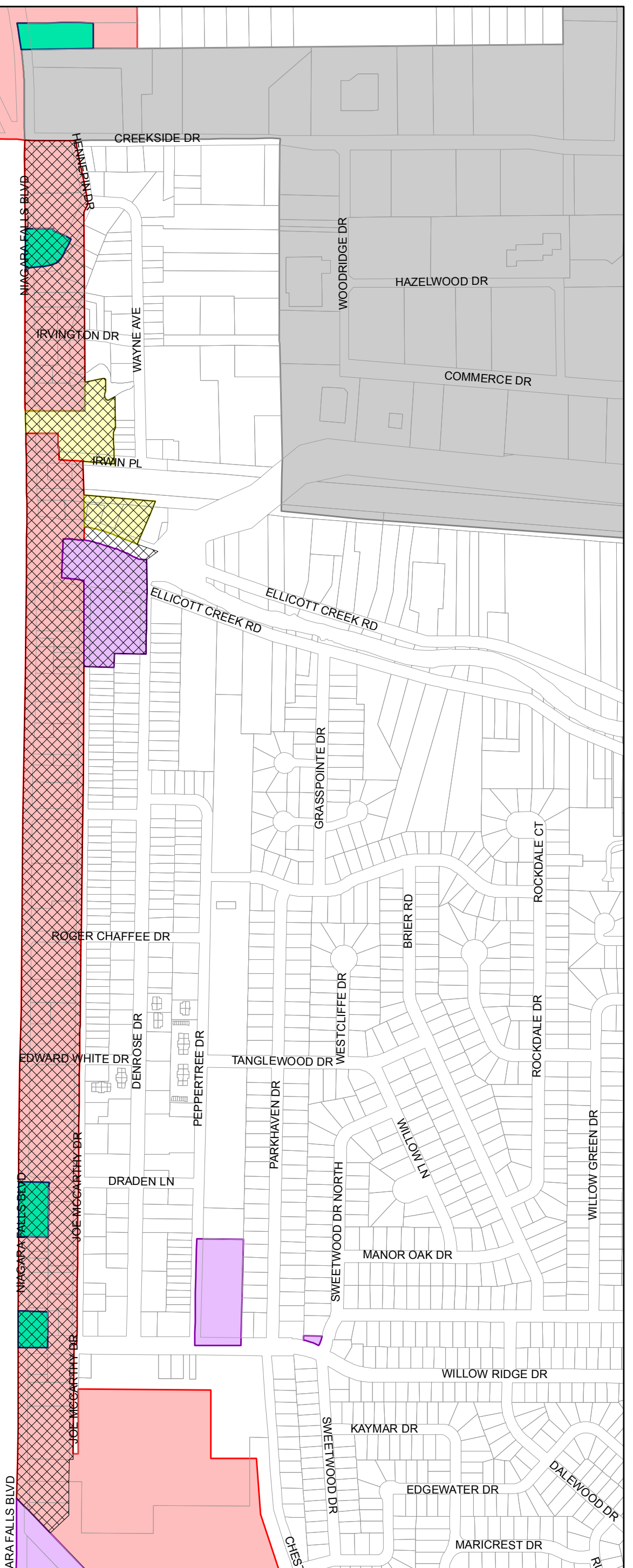


Figure 12

**Proposed 485-B Enhancement Area
Niagara Falls Boulevard - North**

Prepared by the Town of Amherst Planning Department, August 10, 2011

