

# SmartCode

## As Applied to Newton County, GA

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*“Cities have to move to a new system.  
They should look at the streets they like  
and the public spaces they like and  
then write the rules to get more of what they like  
and less of what they don’t.  
Conventional zoning doesn’t do that.  
It just gives a use and a density  
and then you hope for the best.”  
-Peter Katz*

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## **I. Summary of the Problem**

This report seeks to address the viability of implementing the SmartCode across Newton County, Georgia. Newton County was chosen as the jurisdiction because of the existence of two communities, East Haven and Clark's Grove, which reflect the goals that the SmartCode seeks to encourage. As described in the Introduction (Section I) and the Planning for the SmartCode section (Section III), Newton County is encouraging growth by attempting to bring in business through tax incentives and at least one of the cities is investigating smart growth alternatives.

Thus, the balance of this report will discuss the history and demographics of Newton County, current Georgia and local law affecting planning and zoning in Newton County, the benefits of SmartCode development, the steps needed to legally implement the SmartCode, the applicability of the SmartCode to Newton County, and our recommendation for a public participation and communication plan for the adoption of the SmartCode in Newton County.

## **II. Introduction – Newton County**

Carved from portions of Henry, Jasper and Walton counties, Newton County became Georgia's 53<sup>rd</sup> county by act of the Georgia legislature in 1821.<sup>1</sup> The county was named after revolutionary war hero, Sgt. John Newton, who served under Gen. Francis Marion, the "Swamp Fox".<sup>2</sup> The county has a total area of 279 square miles with 276 square miles of land and 3 miles of water.<sup>3</sup> Covington, known initially as Newtonsborough, became the county seat in 1822, at a time when the state constitution required county seats to be near the center of the county.<sup>4</sup> In addition to the town of Covington, Newton County is home to Oxford, Porterdale, Mansfield,

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<sup>1</sup> New Georgia Encyclopedia: Newton County, [www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372](http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372)

<sup>2</sup> *Id.*

<sup>3</sup> Newton County, Georgia-Wikipedia, the free encyclopedia, [http://en.wikipedia.org/wiki/Newton\\_County,\\_Georgia](http://en.wikipedia.org/wiki/Newton_County,_Georgia)

<sup>4</sup> New Georgia Encyclopedia: Newton County, [www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372](http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372)

and Newborn as well as a number of unincorporated areas.<sup>5</sup>

The coming of the railroad in 1836 was the beginning of the growth and stability of Covington and Newton County.<sup>6</sup> As early as the 1840s, the area's extensive agricultural base produced related industries, like textile mills.<sup>7</sup> After 1900, textiles became a major industry of the area serving farmers of surrounding counties.<sup>8</sup> Today, modern, diversified industry has largely supplanted agriculture as the principal source of income for residents.<sup>9</sup>

Covington is noted for its many ante-bellum structures. Home to the Newton County Courthouse, Covington is well known as the site for *In the Heat of the Night* as well as the early episodes of *Dukes of Hazzard* and various scenes from *My Cousin Vinny*.<sup>10</sup> In 1988, Covington was awarded the designation of a Georgia "Main Street" city due to the city's dedication to the preservation of 19<sup>th</sup> century structures.<sup>11</sup>

Though historically a rural county with a "small town atmosphere", the County's proximity to metro Atlanta has made it one of the fastest growing counties in the United States.<sup>12</sup> Newton County is connected to Atlanta by way of Interstate 20. In addition to making the commute to Atlanta convenient for work, shipping, or travel, I-20 also provides the residents accessibility to Interstates 75, and 85.<sup>13</sup> Due to the location, transportation connections and ready labor force in Newton County, another primary growth factor is the expansion of the existing industrial base which includes such Fortune 500 companies as General Mills and Bridgestone.<sup>14</sup>

As a result of people moving to work in the county's industry or commute to jobs in

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> New Georgia Encyclopedia: Newton County, [www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372](http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372)

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Newton County Chamber of Commerce, <http://www.newtonchamber.com/default.aspx?scid=/xM5t3I2kj4=>

<sup>13</sup> New Georgia Encyclopedia: Newton County, [www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372](http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372)

<sup>14</sup> Newton County Chamber of Commerce, <http://www.newtonchamber.com/default.aspx?scid=/xM5t3I2kj4=>

Atlanta, farmland continues to be supplanted for housing developments.<sup>15</sup> The population increased from 41,808 in 1990 to 62,001 in 2000 thereby increasing the population density from 151 to 224 people per square mile.<sup>16</sup> The racial makeup of the county was 75.27% White, 22.21 % Black, and 2.52 % other.<sup>17</sup> Population estimates predict Newton County will grow to 91, 451 with a density of 331 people per square mile by 2006.<sup>18</sup> Aside from the population increase, other impacts of Newton County's growth include overcrowded schools, increased traffic, inadequate infrastructure, poor air quality and loss of green space.<sup>19</sup>

### III. Government

Most of the local zoning and subdivision regulations now in effect in Georgia are based on the 1957 Planning and Zoning Enabling Act- derived from the model planning and zoning acts of the 1920s.<sup>20</sup> However, the state constitution adopted in 1983 makes the 1957 act irrelevant.<sup>21</sup> The applicable provisions in the 1983 constitution, often called home-rule provisions, give local governments' authority to enact any laws that could reasonably be construed to relate to zoning and planning without regard to prior statutes.<sup>22</sup> In addition, the 1989 Georgia Planning Act authorizes local governments to engage in comprehensive planning- a

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<sup>15</sup> New Georgia Encyclopedia: Newton County, [www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372](http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372)

<sup>16</sup> United State Census Bureau  
[http://factfinder.census.gov/servlet/SAFFPopulation?\\_event=Search&geo\\_id=01000US&\\_geoContext=01000US&\\_street=&\\_county=newton+county&\\_cityTown=newton+county&\\_state=04000US13&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=geoSelect&\\_useEV=&pctxt=fph&pgsl=010&\\_submenuId=population\\_0&ds\\_name=null&\\_ci\\_nbr=null&q\\_r\\_name=null&reg=null%3Anull&\\_keyword=&\\_industry=](http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&geo_id=01000US&_geoContext=01000US&_street=&_county=newton+county&_cityTown=newton+county&_state=04000US13&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=010&_submenuId=population_0&ds_name=null&_ci_nbr=null&q_r_name=null&reg=null%3Anull&_keyword=&_industry=)

<sup>17</sup> Newton County, Georgia: Information from Answers.com, <http://www.answers.com/topic/newton-county-georgia>

<sup>18</sup> United States Census Bureau,  
[http://factfinder.census.gov/servlet/SAFFPopulation?\\_event=Search&geo\\_id=01000US&\\_geoContext=01000US&\\_street=&\\_county=newton+county&\\_cityTown=newton+county&\\_state=04000US13&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=geoSelect&\\_useEV=&pctxt=fph&pgsl=010&\\_submenuId=population\\_0&ds\\_name=null&\\_ci\\_nbr=null&q\\_r\\_name=null&reg=null%3Anull&\\_keyword=&\\_industry=](http://factfinder.census.gov/servlet/SAFFPopulation?_event=Search&geo_id=01000US&_geoContext=01000US&_street=&_county=newton+county&_cityTown=newton+county&_state=04000US13&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=010&_submenuId=population_0&ds_name=null&_ci_nbr=null&q_r_name=null&reg=null%3Anull&_keyword=&_industry=)

<sup>19</sup> New Georgia Encyclopedia: Newton County, [www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372](http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2372)

<sup>20</sup> American Planning Association, Legislation and Policy: The Statehouse, James Lawfor, August 2000, <http://www.planning.org/statehouse/2000/aug00fts.htm>

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

power presumably already given under the 1983 constitution.<sup>23</sup>

Newton County is governed by an elected Board of Commissioners consisting of a full-time Chairman who is elected “at large” and five District Commissioners.<sup>24</sup> To address the issues surrounding the County’s rapid growth, Newton County has begun the process of updating its existing Comprehensive Plan, the most recent version of which went into effect in April 2000.<sup>25</sup> The County began this process in 2006 by appointing a Citizens’ Roundtable Committee (CRC) to work in conjunction with the County Commissioners in the comprehensive planning process.<sup>26</sup> Additionally, public forums, called Visioning Workshops, were held monthly throughout the early months of 2006 provide input toward development of a Comprehensive Plan Update.<sup>27</sup> Currently, the Comprehensive plan is still under revision.<sup>28</sup>

The governing body of Covington is governed is the city council comprised of six council members and a mayor.<sup>29</sup> On October 16, 2001, the city council passed the most recent version of The Covington Municipal Code.<sup>30</sup> Chapter 16 of the Code is the comprehensive subdivision and zoning ordinance.<sup>31</sup> It designates the rules and procedures to be followed in the subdivision and zoning of property within the city of Covington.<sup>32</sup> The Covington Planning commission is composed of 5 to 9 members appointed by the Major and Council and it is this body that may prepare a comprehensive plan.<sup>33</sup> The Covington Board of Zoning Appeals is comprised of 3 to 7 appointed members and has the power to review zoning decisions and grant variances, temporary

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<sup>23</sup> American Planning Association, Legislation and Policy: The Statehouse, James Lawfor, August 2000, <http://www.planning.org/statehouse/2000/aug00fts.htm>

<sup>24</sup> Newton County Chamber of Commerce, <http://www.newtonchamber.com/default.aspx?scid=ZEZ07PD9ajA=>

<sup>25</sup> Newton County Board of Commissioners, <http://co.newton.ga.us/content/view/98/31/>

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> City of Covington, <http://www.cityofcovington.org/coucillhome.htm>

<sup>30</sup> City of Covington, <http://www.cityofcovington.org/citycode.htm>

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> City of Covington, <http://www.cityofcovington.org/citycode.htm>

permits, and special exemption permits.<sup>34</sup>

#### **IV. Planning for the SmartCode in Newton County, GA**

Newton County is experiencing growth that is consistent with a predominantly rural county on the verge of experiencing the ever increasing pressures of growth in the Atlanta metro area. Due to this growth, Newton County is seeking to manage new development in the most efficient and effective manner possible. Already in Covington, a non-profit called The Center has begun to recognize the importance of planning for the coming development in Covington and the rest of the county.

The SmartCode has been proposed as a solution to growth management in the county. Essentially, the SmartCode, developed by Andrés Duany, outlines a way for urban growth to occur that makes use of a transect that cuts across several demographic and social lines. The type of development proposed by the SmartCode is currently illegal under current use-based zoning. The SmartCode paves the way for new small towns with higher density, mixed use development in the core and decreasing density moving incrementally outward. This practice is outlawed today, primarily due to the single-use zoning now in place with most cities and counties around the country.

The SmartCode implements a system of decreasing density that allows small towns to be built again due to the decreasing nature in density from urban to rural. T6 is considered the densest and T1 is the least dense. Essentially T6 represents what might be found in a large urban area, such as New York City. Building heights are tall relative to the street and the buildings usually occupy a significant portion of the parcel. Each level of the transect gradually decreases in density, with the T1 zone consisting of little or no development and preserved for natural uses. Figure 1 shows this decreasing nature of density.

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<sup>34</sup> Id.

**Figure 1 – The Transect Defined**

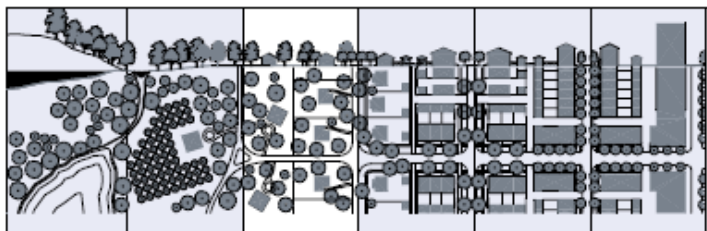
**T1** THE NATURAL ZONE consists of lands approximating or reverting to a wilderness condition, including lands unsuitable for settlement due to topography, hydrology or vegetation.



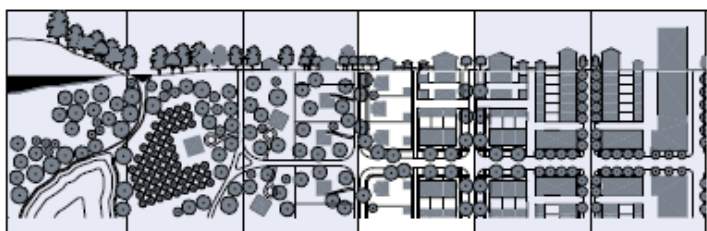
**T2** THE RURAL ZONE consists of lands in open or cultivated state or sparsely settled. These include woodland, agricultural lands, grasslands and irrigable deserts.



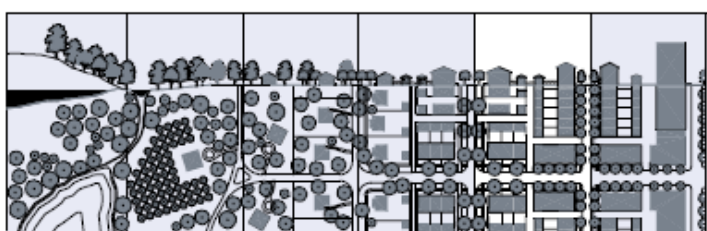
**T3** THE SUB-URBAN ZONE, consists of low density suburban residential areas, differing by allowing home occupations. Planting is naturalistic with setbacks relatively deep. Blocks may be large and the roads irregular to accommodate natural conditions.



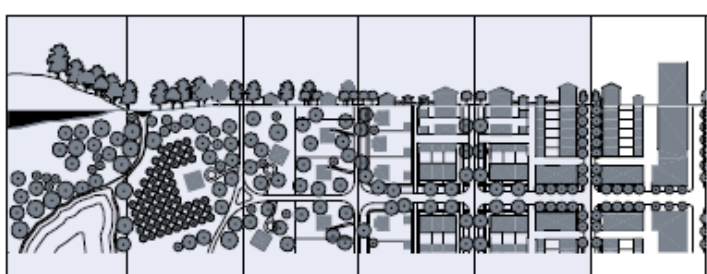
**T4** THE GENERAL URBAN ZONE consists of a mixed-use but primarily residential urban fabric. It has a wide range of building types: single, sideyard, and rowhouses. Setbacks and landscaping are variable. Streets typically define medium-sized blocks.



**T5** THE URBAN CENTER ZONE consists of higher density mixed-use building types that accommodate retail, offices, rowhouses and apartments. It has a tight network of streets, with wide sidewalks, steady street tree planting and buildings set close to the frontages.



**T6** THE URBAN CORE ZONE consists of the highest density, with the greatest variety of uses, and civic buildings of regional importance. It may have larger blocks; streets have steady street tree planting and buildings set close to the frontages.





**a. Social Aspects of the SmartCode**

One of the most important aspects of the SmartCode is the ability to form community. As places grow, one of the most common complaints from residents is that they no longer feel like they know their neighbors as they once did. Growth in an area leads to higher turnover rates among residents. A common theme in the Visioning Workshops held by Newton County was creating a more walkable community based around the downtown area (Newton County Board of Commissioners, 2006). Newton County has experienced a large increase in traffic volume over the past 15 years due to the population increase by 119% over the same time period (U.S Census Bureau).

With the pressures of growth, it is critical for a plan to be in place to manage the number of people that will be moving to Newton County over the next 20 years. The transect creates four distinct types of areas where citizens can choose the type of residential living that most suits them. These four types of places are 1) The *centre*, 2) *small town*, 3) *residential partnership*, and 4) *retreat* (Brower, 2002). These four places create environments that every personality type can identify with.

**Table 1 – Four distinct settings in the Transect**

<b>Setting</b>	<b>Description</b>
<i>Centre</i>	Place that is lively and busy, with lots to see and do. It has a mix of many different people and uses, and it attracts visitors from other parts of the city and beyond
<i>Small Town</i>	Place that has the feeling of a small town, with its own institutions and meeting places. People who live here know one another and are able to recognize those who do not live there.
<i>Residential Partnership</i>	A separate residential area, a place for family and home life. Residents go to other parts of the city for work, shopping, and entertainment.
<i>Retreat</i>	A place where one feels removed from other people and their activities. People who live here tend to be independent and go their separate ways.

**Source: Brower, 2002**

Research also shows that the most important factor of residential satisfaction is the kind of people in one's neighborhood (Brower, 2002). Because of this definite correlation, it is important to recognize the nature of the people that will be living within the transect zones. Some people prefer to live in places where there is a high degree of social interaction. To these people the most important aspect of quality of life is liveliness in their interactions with others. A place that is full of surprises excites many younger people as well as empty nesters who no longer have children at home. The place that most fits these type of people is the centre. The number of people that desire a "centre" type of lifestyle is growing. The percentage of people that have a traditional (consisting of two parents and children) has shrunk to just 21% of households (Reuter, 2007). This is a trend that continues to grow as more and more people wait longer to have children and people continue to live longer, meaning more time in the "empty nest" stage of life.

Despite this growing trend of demand for more urban housing types, the most common type of housing built in America today is residential partnerships (Brower, 2002). These types of housing styles (made up of predominately single-family houses) are better suited for the traditional family lifestyle that continues to decline in terms of percentage. One of the primary reasons for this continued pattern of development is "a result of the entrenchment of the current systems of *zoning, financing, construction, and marketing*" (Volk & Zimmerman, 2002).

First, the current zoning standards in place today encourage the development of single family large lot housing. Duany characterizes this by noting that "When the only tool you have is a hammer, everything looks like a nail" (Duany, 2002). Without other tools to guide development, the course will inevitably continue to be as it is today. Large lot single family

houses will continue to dominate the new housing market, despite market demand for something different for the new demographic. The SmartCode seeks to eliminate this one-sided demand model by setting up different transect zones that accommodate many different types of lifestyle seekers.

Second, the current financing structure does not lend well to developing mixed use developments so much needed for the centre type of urban development. In order to allow for more development to occur that creates centres, the financing structure that works so efficiently will have to be changed. What is now known as a niche industry in the real estate finance world will have to become more mainstream for developers and lenders to work together to build the places the SmartCode calls for.

Construction practices are also weighed down by the current inefficiency of building anything other than the single family house. Architectural drawings are currently made for just a few houses and copied throughout the entire development. This decreases the average cost of housing by spreading out the cost over many buyers. However, this also creates places that are not suited for all the areas of the transect. In order to serve the markets more efficiently, construction practices must be updated so that more efficient ways of developing dense, mixed use places becomes more cost efficient.

Lastly, the marketing of single family houses has become almost as cookie cutter as the houses themselves. While this is cost efficient, it draws in people to buy single family houses when in fact, it may not be the best fit for their lifestyle. Clever marketing professionals determine how to best market to all demographics, sometimes without regard to the actual need of the household.

The SmartCode implements a way to encourage the type of development that can cut

across social demographics to reach every type of household and create a diverse mix of housing types and lifestyle types. With proper implementation, the SmartCode can be applied to Newton County to reach the changing demographics there. In the future Newton County could find itself being a wonderful community to live in and a more diverse place that is interesting and fun.

Single family housing and rural development will continue to occur through the designated areas of the transect. The areas T4 and lower will support single family housing for those families who continue to demand that housing type. Rural housing will also be accommodated, in places where there is little environmental sensitivity. In essence, the SmartCode is not something for Newton County residents to fear, but rather something they can embrace as their community grows. The bottom line is that the growth is coming and the biggest problem is how to grow in the smartest way possible. The SmartCode answers many of those problems.

## **V. Legal Implementation**

As written, the SmartCode is a model ordinance that is meant to be adopted as the “precise and technical” law of a jurisdiction.<sup>35</sup> In order to adopt it in a jurisdiction, the locality must calibrate the SmartCode to the local conditions. Both legal and social issues will bear on this calibration.<sup>36</sup> Thus, the calibration for Newton County and the cities within its boundaries will include changing the language of the model SmartCode to comply with applicable federal, state, and local laws, as well as, modifying the application and administration of the Code to a form that will make sense given the local conditions in Newton County.<sup>37</sup>

One accepted model for calibrating the SmartCode is laid out by Chad Emerson in his

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<sup>35</sup> Andres Duany, et al., *SmartCode and Manual*, Commentary C13, available at [http://www.dpz.com/pdf/3000-SmartCode\\_v8.0%20combined.pdf](http://www.dpz.com/pdf/3000-SmartCode_v8.0%20combined.pdf).

<sup>36</sup> *Id.* at C15.

<sup>37</sup> *Id.*

article *Making Main Street Legal Again: The SmartCode Solution to Sprawl*.<sup>38</sup> Emerson recommends a five-step calibration process which will require Newton County to: (1) choose which local format to apply (exclusive/mandatory, overlay, or floating zone);<sup>39</sup> (2) choose which provisions of the SmartCode should be adopted, modified, or deleted;<sup>40</sup> (3) consider federal and state laws which could potentially pre-empt portions of the SmartCode;<sup>41</sup> (4) consider local laws that it may want to preserve which might otherwise be preempted by the adoption of the SmartCode;<sup>42</sup> (5) Modify the text of the SmartCode to ensure that the language used in the SmartCode will allow it to be legally enforced in Newton County.

**a. Choosing a Local Format**

Newton County has three choices for the adoption of the SmartCode. Because of Georgia’s Home Rule authority, each sovereign within Newton County will have the option to choose whether to adopt the SmartCode and, should they choose to adopt, which format will work best for them. Each sovereign may choose between three formats: (1) exclusive and mandatory format; (2) overlay/parallel format, or (3) an optional floating zone.<sup>43</sup>

The exclusive and mandatory format makes the SmartCode the only land use ordinance in the jurisdiction, replacing “all or portions of [the] existing...zoning code.”<sup>44</sup> The benefits of adopting this format are that it ensures the SmartCode will be used and it “fosters a cohesive and

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<sup>38</sup> Chad Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, available at <http://law.bepress.com/expresso/eps/954>

<sup>39</sup> *Id.* at 30.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 37.

<sup>42</sup> *Id.* at 40.

<sup>43</sup> Chad Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, available at <http://law.bepress.com/expresso/eps/954> at pp. 30-35. The floating zone format, not discussed in the paper, makes the SmartCode available as an option to developers and acts much like a variance, where a landowner petitions the planning board for permission to develop under it. *Id.* at 33. As our hope is that Newton County and the municipalities within its borders will choose to adopt a Code which allows easier access to SmartCode development, we do not recommend this option which requires some “hoop jumping” by the landowner.

<sup>44</sup> *Id.* at 31.

predictable result.”<sup>45</sup> However, it is also the format which invites the most litigation in that it represents a complete change from existing conditions, such that vested rights issues and takings issues are more likely to arise than in the other two suggested formats. One further danger of choosing this format is that local efforts to compromise with groups opposed to adoption of the SmartCode may result in the provisions of the Code being watered down to the point that key features of the Code are lost.<sup>46</sup> For this reason, this format is recommended for jurisdictions with a supportive local climate.<sup>47</sup>

In contrast, the overlay format makes the SmartCode available to developers, but allows the landowner to choose whether to develop under it or under the existing Code because it acts as an alternative to the existing zoning code.<sup>48</sup> This format avoids new legal claims regarding vested rights and takings because it increases development options, rather than changing the entire regulatory landscape.<sup>49</sup> At the same time, though, the municipalities will run the risk that developers will choose not to use the SmartCode.<sup>50</sup>

Looking at the local climate in Newton County,<sup>51</sup> it would appear to be unwise to suggest that the entire county adopt an exclusive and mandatory format because the jurisdictions, while not opposed to change, have not demonstrated an affirmative acceptance of a completely new zoning code. Consequently, our recommendation is that all areas of Newton County adopt the SmartCode as an overlay to their current Codes, except the City of Covington. Instead, our recommendation is that the City of Covington adopt the Code in the exclusive and mandatory format. It has demonstrated affirmative acceptance of the SmartCode concepts in the

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<sup>45</sup> Id. at 31.

<sup>46</sup> Id. at 32.

<sup>47</sup> Id. at 32.

<sup>48</sup> Id. at 32.

<sup>49</sup> Id. at 32.

<sup>50</sup> Id. at 33.

<sup>51</sup> See, *infra*, sections II and III.

development of areas like Clark’s Grove and East Haven, both of which incorporate the walkability, mixed-use, and diverse styles of housing that the SmartCode seeks to encourage. Also, as the SmartCode relies on incentives to promote its goals, the city’s current willingness to offer tax incentives to entice business to the area would seem to indicate its approval of such techniques to encourage smart growth. Finally, as noted in Section IV, the citizens of Covington have expressed their desire to align future development with the goals the SmartCode seeks to attain, namely lessen traffic congestion, liveliness, and interaction with others.<sup>52</sup>

#### **b. Determining What Portions of the Smart Code to Adopt**

Both the Emerson article and the commentary to the SmartCode indicate that Articles 1 (General to All Plans), 6 (Tables), and 7 (Definitions) of the SmartCode must be considered mandatory.<sup>53</sup> Although the remaining Articles are not considered mandatory, they are recommended by both Emerson and the drafters of the SmartCode and, as such, our recommendation is that Newton County adopt the SmartCode in its entirety, with some modification.<sup>54</sup> For instance, Article 1 should be modified to include a clear policy statement indicating that Newton County and the adopting jurisdictions consider sprawl development to be detrimental.<sup>55</sup> This statement will give those responsible for permitting under the SmartCode a benchmark to guide their decision-making and would hopefully work to encourage overall smart growth and use of the SmartCode, even in those jurisdictions where it is adopted as an overlay.

Article 1 should also include a statement of the benefits of adopting the SmartCode as articulated in Section IV of this report.<sup>56</sup> The remaining Articles should be modified in accordance with the recommendations set forth in Section VI of this report.

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<sup>52</sup> See, *infra*, section IV.

<sup>53</sup> Emerson, *supra* note 38, at 35 and *SmartCode Commentary*, *supra* note 35.

<sup>54</sup> Emerson, *supra* note 38, at 35 and *SmartCode Commentary*, *supra* note 35.

<sup>55</sup> See *SmartCode Commentary*, *supra* note 35, at C15.

<sup>56</sup> *Id.*

### c. Addressing State and Federal Law

Conflicting federal and state law could result in preemption of some provisions of the SmartCode.<sup>57</sup> For this reason, Newton County must ensure that applicable state and local laws will not override any provision of the SmartCode that it wishes to incorporate into its zoning ordinance.<sup>58</sup> Georgia's status as a home rule state means that there are likely no state planning laws that will conflict with the SmartCode. Furthermore, a review of Georgia's transportation rules and regulations did not reveal any state regulation on the size of roadways which could interfere with the city block design encouraged by the SmartCode.

Federal laws also must be considered. The drafters of the SmartCode point to environmental regulations as one possible conflict, recognizing that portions of Article 3 dealing with environmental conditions may be aspirational in light of federal law and the limits of local authority in environmental regulation.<sup>59</sup> Other federal laws to consider are FEMA requirements which limit how building can occur in floodplains in order for those areas to be eligible for public assistance if and when it is needed.<sup>60</sup> As our recommendation is to keep the protected environmental lands as rural and mainly undeveloped, there will be little opportunity for development of the floodplains in Newton County to run afoul of the FEMA requirements.<sup>61</sup>

Thus, in light of these laws, one calibration that should be made is to include in the language of Article 3 that the environmental provisions are optional and an acknowledgement that it may be beyond the scope of authority of the jurisdictions to include environmental regulation in light of the role of the EPA and the Georgia Department of Natural Resources.

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<sup>57</sup> Emerson, *supra* note 38, at 37.

<sup>58</sup> *Id.*

<sup>59</sup> See SmartCode Commentary, *supra* note 35, at C16.

<sup>60</sup> Emerson, *supra* note 38, at 37-8.

<sup>61</sup> See *infra* Section VI.



#### **d. Preserving Local Law**

Under our recommendations, the majority of Newton County will be adopting the SmartCode as an overlay to their existing regulations, which would ensure that no local laws would be preempted by the SmartCode. However, as we are recommending that the City of Covington adopt the SmartCode in the exclusive and mandatory format, its local laws should be considered and ones that are important to the community should be incorporated into its version of the SmartCode.

One example of a City of Covington law which the residents would probably like to preserve is the newly revised Covington Tree Ordinance.<sup>62</sup> The revision provides that a Soil and Tree Conservation Plan and Permit is required before any land disturbance can take place on any new construction site.<sup>63</sup> In addition, a Right-of-Way permit is now required for activities on public property and timber harvesting permits are required for any tree removal that precedes development or land disturbance.<sup>64</sup> As these provisions put additional permit requirements on land disturbance, it would otherwise be preempted by the SmartCode. Thus, if the City of Covington wishes to preserve the newly revised ordinance, it should be incorporated into the SmartCode.

#### **e. Putting It All Together**

Considering the information discussed in Steps A through D, the locally calibrated SmartCode for Newton County will include: (1) All seven articles; (2) A modified Article 3 to address the aspirational qualities of the environmental provisions contained therein; (3) a policy statement in Article 1 stating that sprawl is detrimental to the vitality of the community; (4) a statement of the benefits of the SmartCode in Article 1 to inform unfamiliar landowners of the

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<sup>62</sup> [www.cityofcovington.or/trees.htm](http://www.cityofcovington.or/trees.htm)

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

reasons to develop under it instead of under the existing code; and (5) inclusion of the City of Covington Tree Ordinance in its version of the SmartCode. Once this has been completed, the final step will be to check the definitions in Article 7 to ensure that the language contained in it does not conflict with the existing language in the local zoning and planning codes.

As an aid to the City of Covington, Table 2 details some of the ways in which Sarasota, Florida, which also adopted the SmartCode in the exclusive and mandatory format, calibrated it to the local conditions. By all accounts, Sarasota has both successfully calibrated *and* implemented the SmartCode in its downtown area. In contrast, the town of Fort Myers, Florida successfully calibrated and adopted a Code meant to encourage the goals of the SmartCode (in fact Duany helped Fort Myers in the adoption process), but by at least one account of a planner in the area, the officials in charge of permitting have issued permits that undermine the character of the area and the goals of the SmartCode. For instance, the city has allowed high rise buildings on the coast, stirring fears that Fort Myers will soon resemble the Florida coastline from Miami to Fort Lauderdale.<sup>65</sup> Thus, Newton County's legal implementation of the Code will only be the first step in SmartCode development in the area. In order to maintain the integrity of the SmartCode when applied to Newton County, the localities should provide training or strict guidelines for what type of character they wish to maintain and the type of development consistent with that character.

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<sup>65</sup> <http://www.spikowski.com/FortMyersSmartCode.pdf>

Table 2:

<b>SUMMARY OF DIFFERENCES</b>		
<b>April 2003 Staff Draft</b>		
	<i>SmartCode</i>	01-ZTA-04 Downtown Zone Districts
1	Model code that can be applied from Sarasota to Seattle.	Downtown Districts are specifically tailored to Sarasota based on the principles identified in the <i>SmartCode</i> and <i>The Lexicon of New Urbanism</i> .
2	Format does not “fit” with the Sarasota’s existing Zoning Code format.	Format revised to fit into existing Zoning Code.
3	New terminology and definitions introduced.	Existing terminology and definitions retained where possible. Where necessary, some new terminology introduced and some existing definitions modified.
4	Project approval, “warrant and exception” and appeal process defined with little detail how the process will work.	A major change provides more precise detail how projects are approved; “adjustments” to standards granted and appeals of administrative decisions are made.
5	Use categories relatively ambiguous.	A major change includes more precise definition and regulation of allowed uses.
6	Some development standards changed with each edition.	Differences among various editions of the <i>SmartCode</i> and <i>The Lexicon of New Urbanism</i> reconciled and tailored to the City of Sarasota.
7	Application of “recommended” retail frontages are not clear-cut.	“Recommended” retail frontages changed to “required” retail frontages.
8	Application of “recommended” arcade frontage type is not clear-cut.	Some “recommended” arcade frontages changed to “required” arcade.  Required shopfront and awning, gallery, and arcade frontage types prescribed for other required retail frontages.
9	Requirements for terminated vistas, pedestrian passages, and civic reservation sites are not clear-cut and create “taking” (property rights) issues.	Deleted requirements for terminated vistas, pedestrian passages, and civic reservation sites.
10	Maps not parcel specific.	Maps are parcel specific.
11	Street and streetscape standards conflict with Engineering Design Criteria Manual (EDCM)	Street and streetscape standards included within Engineering Design Criteria Manual (EDCM).

Source: <http://www.sarasotagov.com/Planning/DowntownCode/DowntownCodeHP.html>

## **VI. Calibrating the SmartCode to Newton County, GA**

The implementation of the SmartCode relies heavily on the ability to adapt and calibrate the code to the specific jurisdiction, based on the existing framework and the desires of the citizens for the future of their community. Based on the information gathered in previous sections, a series of visual diagrams were created to physically apply the SmartCode to Newton County. These visual diagrams are generally broken into three categories; Sectors, Communities, and Transect Zones. Through these maps and diagrams, visual documentation is provided to guide the growth of Newton County.

In Section II of the SmartCode the jurisdiction is viewed from a larger perspective, often referred to as a Regional or Comprehensive Plan, in the SmartCode it is described as a Sector Plan, this document focuses on the county as a whole and guides future growth in specific directions. The Sector Plan is broken into seven categories ranging from Preserved Open Space(O1) to Infill Growth(G3), creating a series of growth designations that helps the county determine where future growth should occur. Listed below are the technical definitions of each the Sector Zones as defined by the SmartCode.

### **(O-1) PRESERVED OPEN SECTOR**

The O-1 Sector is casually called “the Preserve.” It is one of two Open Sectors (see 2.4). There is no development permitted By Right in either of them. Protection of Preserved Open lands generally occurs by environmental regulation or conservation measures, such as purchase of the property by a land trust, grant of a conservation easement, or the sale of development rights to the property. The adopting jurisdiction should consider what other sorts of areas should be included in their Preserved Open Sectors, and provide for the same under paragraph 2.3.2. As this Sector is intended to be permanently protected from development, any development or construction within the Sector must be in accordance with legislation adopted by federal, state, or local Legislative Bodies.

### **(O-2) RESERVED OPEN SECTOR**

The O-2 Sector is casually called “the Reserve.” It is one of two Open Sectors (see 2.3). There is no development permitted by Right in either of them. The adopting jurisdiction should consider what other sorts of areas should be included in their Reserved Open Sectors.

### **(G-1) GROWTH SECTOR 1, RESTRICTED**

The Restricted Growth Sector is usually rural in nature and consists of open space that is valuable as open space, but is neither permanently protected from, nor could be permanently protected from development. New community development is in the pattern of Clustered Land Development (CLD)s, defined as “incomplete Neighborhood[s], standing free in the countryside, which by virtue of a location away from transportation, may have a weak center”

and consisting of “no more than one Standard Pedestrian Shed with a high portion of its site assigned to the Transect Zone T-2 (Rural).

**(G-2) CONTROLLED GROWTH SECTOR 2**

In (G-2) the Controlled Growth Sector, communities in the pattern of Traditional Neighborhood Development (TND)s are permitted by right, in addition to Clustered Land Development (CLD)s. A “Traditional Neighborhood Development (TND)” is defined as a “community consisting of one or more Pedestrian Sheds plus a mixed-use center or corridor.”

**(G-3) GROWTH SECTOR 3, INTENDED**

In the Intended Growth Sector, Regional Centers are permitted by right. These are 160 acres minimum and must have a Long Pedestrian Shed .

**(G-4) GROWTH SECTOR 4, INFILL**

The Infill Growth Sector may consist of traditional urbanism and/or conventional suburban developments. Both are subject to Infill or revitalization according to Article 4. Such areas may include conventional suburban developments, greyfield and brownfield sites, and historic urban areas.

**(SD) SPECIAL DISTRICTS**

Some areas or structures may not conform to the normal requirements of any of the six Sectors. These must be assigned Special District designations and coded. Note that the SmartCode covers Special Districts at both the Sector scale and the Community scale. Conditions can be determined in a public hearing like a PUD.<sup>66</sup>

Within the Sector Plan a Transect, discussed in Section IV, of the area is utilized to further direct what the physical formation of spaces begins to look like. The application of the Transect is what allows the SmartCode to be designated as a form based coding system. The creation of drawings depicting specific physical scales of enclosure provides developers and architects with a vision for the community while still allowing the opportunity for creativity and interpretation within those guidelines. While every environment is made up of a transect it is the conscious process of creating a transect that depicts what is desired by a community, that pushes development in a positive direction. Studying the existing landscapes of Newton County, a series of transect drawings were prepared. Several of the drawings depict what the current zoning codes promote while the others recognize the spaces that are desired and valued by citizens of the community. These diagrams may be found in Appendix I.

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<sup>66</sup> A.Duany, SmartCode & Manual. V8.0

The first three drawings demonstrate the existing suburban zoning conditions. These codes promote a Euclidean, use based zoning system, dominated by separated single-uses. This pattern of growth has created a landscape that is reliant on, and dominated by automobiles. Uses are spread thinly over the landscape and designs are governed by the dimensions and capacities of the automobile rather than the human being. There are seven key components to the production of sprawl:

- single-use pod zoning
- precise statistical requirements but relaxed physical ones
- federal road building programs with normative standards
- public works practices and their system of arterial and collector roads
- insufficient variety of subdivision, setback, lot size, density, and parking requirements
- segregation of the various development, design, engineering and permitting authorities and professionals
- federal and institutional financing programs that recognize only certain standard development types<sup>67</sup>

The replication of these issues has multiplied time and again to create the sprawling environments found across America today.

The second set of images illustrates a traditional transect. Many of these spaces were created prior to the invention of zoning, and would typically be deemed illegal if they were to be proposed today, under current zoning conditions. Yet, these are the spaces that citizens value and enjoy the most in their community. These spaces are designed based on the human form. Their scale and proportions are not driven by an automobile; they are determined by the users of the space. These two opposing transect types are illustrated below.

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<sup>67</sup> A.Duany, SmartCode & Manual. V8.0. pg.C3



The idea of the transect is the core instrument for directing design within the SmartCode. It is through this document that ideas of spatial form become reality. The ability of the SmartCode to operate as an enabling act that encourages positive development, rather than a limiting act that impedes and simply slows the inevitable growth of an area, is one of its key assets. The SmartCode accepts the idea of growth as a positive and attempts to harness that potential growth into a form that is cohesive with the community's desires. As defined by the SmartCode, the Transect is:

- A framework that identifies a continuous range of habitats from the most natural to the most urban.
- The continuum of the Transect, when subdivided, lends itself to the creation of zoning categories.
- These zoning categories include standards that encourage diversity similar to that of organically evolved settlements.
- The standards specified by the zoning categories overlap, reflecting the successional ecozones of natural and human communities.
- The Transect integrates environmental and zoning methodologies, enabling environmentalists to assess the design of social habitats and urbanists to support the viability of natural ones.<sup>68</sup>

The final level of organization within the SmartCode is that of Community types described within sections III, IV, and V of the SmartCode. Section III discusses New Community Plans, Section IV Existing Community Plans, and Section V Building Plans. These

<sup>68</sup> A.Duany, SmartCode & Manual. V8.0. pg.C8

three levels of plans are each unique yet also interact with each other on most levels. Within New Community and Existing Community Plans there are four specific types of communities noted within the SmartCode: Clustered Land Development, Traditional Neighborhood Development, Regional Center Development, and Transit Oriented Development. These are all governed by the underlying structure of the Sector Scale Plan and the Transect.

Within the City limits of Covington in Newton County there are several communities already under construction or in planning that follow the tenants laid out by the SmartCode. From large scale projects such as the U.S. 278 Livable Centers Initiative(LCI), the Covington Greenway Masterplan, and Clark's Grove Neighborhood all the way down to individual building infill on the central town square, Covington has shown an ability to move forward and create positive results, remedying the trend of unhealthy development that has occurred in the past. The implementation of the SmartCode will help Newton County join Covington in the fight to continually create superior environments.

## **VII. Public Participation and Communication Plan**

An essential element of SmartCode is public participation. The future of the community depends on the citizens' input. SmartCode can protect and shield the community's vision so that future development can be regulated according to citizen wishes. Another major benefit to the public that SmartCode produces is ownership. Public participation allows individuals to be able to have a sense of ownership in their community's future. In order to attain public participation of adequate magnitude, we have developed a 5 – step program.

The first step in public participation is public awareness. Before anything can get started the community needs to be made aware of the SmartCode. The SmartCode planning process will be in an infancy stage at this point. It is important to get out information regarding SmartCode,



possible future meetings, and objectives of community's future. Example methods that can be used to facilitate awareness include direct mail, press releases, or displays/exhibits (<http://danedocs.countyofdane.com/webdocs/PDF/PlanDev/ComprehensivePlan/publicparticipation.pdf>).

The second step is public education. The public needs to understand what SmartCode is and how it works. We would like to provide the public with balanced and objective information to assist them in understanding the problem, alternatives, and solutions. Honestly speaking, the topic of SmartCode is not on any citizen's radar upfront. It is a foreign word to them and a good education session is needed to produce smarter citizens that can make informed decisions about their future. SmartCode does not need to be marketed like McDonalds or any other corporate organization in a market that sells goods and services. SmartCode needs to be taught to those citizens that seek an interest in making decisions about their community's future. Example methods for achieving public education include public education meetings, websites, newsletters, and tours.

The third step is public input. The objective of public input is to obtain public feedback on issues, alternatives and or decisions. Input is needed to outline specific issues regarding local communities. The information gained by public input can help calibrate the SmartCode to the local features. As the SmartCode must be legally calibrated it also must be locally calibrated. In order to attain such public input agencies could setup open houses, public hearings, visual preference surveys, opinion surveys, and focus groups. A couple of definitions to be familiar with are open houses and public hearings. An open house is an informational session, held by a planning department that will have one or more of the following qualities; to provide information about a specific planning project, or to solicit comments from the general public about the draft

of a completed planning project. A public hearing is a public comment session, held before either the plan commission or the common council, where general public has an opportunity to address their appointed or elected official with concerns about a specific planning project. The specific project may be put in front of the commission for recommendation to the common council. The public may then provide comments to the commission or council on the subject matter ([www.city.fitchburg.wi.us/files/2550905.pdf](http://www.city.fitchburg.wi.us/files/2550905.pdf)).

The fourth step is public interaction. The objective of public interaction is to work directly with the public throughout the process to ensure that public issues and concerns are consistently understood and considered. Effective interaction depends on the amount of success the first three steps had. Once again the public has the opportunity to work together with planning professionals to develop a SmartCode for their community. Methods involved through interaction include visioning sessions, workshops, and charettes. Charettes are very popular today in the planning community. They allow citizens and planners to come together and make plans. Charettes are a work session in which the Planning department and the public, together, draft the planning project. A charrette may incorporate qualities of an open house, but the charrette goes way beyond an Open house by allowing the public a direct opportunity to participate in the construction of the planning project. The outcome of a Charette is a draft of the project (be it a plan, map, or vision) that the public has created, with the technical help of the planning department staff ([www.city.fitchburg.wi.us/files/2550905.pdf](http://www.city.fitchburg.wi.us/files/2550905.pdf)). Charettes are happier discourses than public hearings. The collaborative environment calms everyone down a lot more. It is hard to say that big brother is ignoring your wishes if representatives of the planning department take time to educate and make plans with the public right alongside.

The fifth and final step is public partnership. Ultimately we want the public to be

involved in the decision-making process. In order to do so, we intend to setup a SmartCode design review board made up of citizens, planners, and architects. This review board will make sure that future development adheres to the SmartCode produced and agreed upon. Without such a body to measure future development it is unsure whether the SmartCode will survive as produced. SmartCode is intended to be law of the land, however close attention needs to be made to ensure that the design and standards are met. Other methods for public partnership include citizen planning committees and work groups. Once these five steps for public participation are met, planning professionals can be assured that the public's voice has been heard. Another point to be addressed further is the communication plan.

Implementation of a public participation plan as above requires careful attention to a communication plan. Communication plans impose discipline and clear thinking that will help clarify objectives and target audiences, sharpen messages and help better understand the environment in which the messages will be delivered ([www.impacs.org/files/CommCentre/communications\\_planning.pdf](http://www.impacs.org/files/CommCentre/communications_planning.pdf)). Most local planning organizations lack excessive funding or time. It is important to use funds appropriately and efficiently. The communication plan can outline current constraints and provide specific time tables in which to implement a media strategy. There are five crucial steps in a communication plan.

The first step is to determine communication objectives. What is your ultimate objective? What do you want your target audience to do, exactly? What is your call to action? How will you measure success? What will your benchmarks be? These are all crucial questions to start asking. Once these questions have been answered, the second step is selecting your target audience in detail. Organizations need to select specific "A" list primary audiences.

These must include specific names. “Business leaders” is not good enough. You want to influence the Chamber of Commerce Director or maybe the Alderman in control of your area of focus. Then dig deeper and figure out if the Director has a secretary or if the Alderman has office hours or another means of communication. Once your “A” list has been articulated develop a “B” list of audiences that could be contacted. Label who your supporters are and who in the media you have worked with before. After you have disclosed your audiences discuss what key messages you want to produce.

“There are many ways of communicating about the same issue. It is important to know which words will resonate with your audiences; which words or ideas the public will embrace. Some research, such as informal focus group testing or direct mail questionnaires may be required to fully understand your audiences’ motivations (www.impacs.org/files/CommCentre/communications\_planning.pdf).”

What is your hook? Try to state your message in one clear sentence. A key message will help get your word out effectively. The fourth and fifth steps go together. They are strategies and tactics. Media relations are one kind of strategy. However if you are able to sit down and brief a key “A” list audience member, a big media strategy may not be effective. Strategies all depend on who the audience is and what the objective requires. Tactics involve determining how to utilize your resources. How big is your budget? What personnel resources are available to you? How much time will they be required to spend on communication efforts? After analyzing your resources support tactics that work the best with your strategies, audiences, and objectives. A creative communication plan that does not waste resources and gets your message out effectively will help any organization reach their communication goals.

Public participation and a communication plan will produce a favorable SmartCode for

Newton County, Georgia. By observing the actions and mistakes of surrounding counties that developed earlier, Newton County residents recognize that they are not willing to accept the poorly designed sprawl that has slowly consumed counties on the edge of metropolitan Atlanta. Newton County desires an option for something better. That option is available through county-wide adoption and adherence to SmartCode.

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