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HOW PLANNERS CAN (AND ARE...) ADDRESSING CLIMATE CHANGE

Planners have been addressing climate change for years. Smart growth—and its resulting compactly developed mixed use communities with balanced transportation systems are the premier solutions that climate action experts are now promoting. Daniel Lerch, in his new book, “Post Carbon Cities,” identifies five principles for the long term—actions municipalities must take to address climate change, and the first action is “Deal with transportation and land use (or you may as well stop now)”! So the first thing we planners should do to address climate change is affirm that we will continue to do what we have been doing—promote smart growth, work to prevent sprawl development, continue to protect open space, promote mixed use developments and transit, pedestrian and bicycle friendly communities.

In addition, we can work to develop and implement regulatory tools that can help reduce energy use, conserve energy and facilitate generation of clean energy. These include requirements for LEED certified green buildings, requirements for LED streetlights, promotion of local food production and consumption, etc. For more information on municipal actions, see the Clean Air Cool Planet tool kit at http://www.cleanair-coolplanet.org/for_communities/toolkit_home.php.

FIVE PRINCIPLES FOR THE LONG TERM

1. Deal with transportation and land use (or you may as well stop now).
2. Tackle private energy consumption.
3. Attack the problems piece by piece and from many angles.
4. Plan for fundamental changes, ...and make fundamental changes happen.
5. Build a sense of community.

– Daniel Lerch, *Post Carbon Cities*, www.postcarboncities.net

Bylaws/ordinances to regulate and allow clean energy generating facilities in our communities is one obvious action we can all take. We must be careful to develop regulatory tools that do not inadvertently make it harder, or even impossible, for clean energy developers to build projects in our communities.

ICLEI-Local Governments for Sustainability www.iclei.org has a Cities for Climate Protection program that offers a comprehensive approach to municipal action on climate change. Planners can help their communities join ICLEI, inventory greenhouse gas emissions-to provide a baseline assessment of the problem, develop a plan to act on climate change and then oversee plan implementation.

Please attend the Building Energy conference, sponsored by the Northeast Sustainable Energy Association (NESEA) in March 2008. There will be a special day-long inter-active pre-conference workshop for planners on climate change. Featured speakers include Professor Matthias Ruth-author of the book, “Smart Growth and Climate Change”, Solitaire Townsend, Co-founder and Managing Director, Futerra Sustainability Communications, London England, Kim Lundgren ICLEI, Rosalie Anders from the city of Cambridge, MA as well as Mikaela Engert, Keene’s planner speaking about adaptation and Angie Vincent from Nashua.

Other planning tools for climate action can be found at:
http://www.energystar.gov/index.cfm?c=home_index
<http://environment.yale.edu/climate/>
<http://www.greenplaybook.org/>

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NH Planners Association c/o Local Government Center
PO Box 617 • Concord, NH • 03302-0617

SIGNS OF THE TIMES: ELECTRONIC SIGN BAN UPHELD

Ben Frost

In an important case, the New Hampshire Supreme Court recently addressed the constitutionality of a ban on electronic signs containing commercial speech. This has significant implications for planning and zoning statewide. But stay tuned for the companion case pending in federal court (see below).

The plaintiff, Carlson's Chrysler (Carlson's), owns and operates an automobile dealership in Concord. In 2005, Carlson's submitted an application to the City to erect an electronic changeable copy sign on its property to replace an existing manual changeable sign. The proposed sign would electronically display messages advertising Carlson's vehicle inventory. The City's code administrator denied the application based upon a section of the sign ordinance that prohibits "[s]igns which move or create an illusion of movement except those parts which solely indicate date, time, or temperature." Concord, N.H., Zoning Ordinance art. 28-6-7 (2001). Carlson's appealed to the Concord Zoning Board of Adjustment (ZBA), which, after a public hearing, upheld the decision of the code administrator. Carlson's appealed the ZBA's decision to the superior court, which held that the City's ordinance violated the First Amendment to the United States Constitution as an unlawful infringement upon commercial speech.

Following the trial court's decision, the City amended its zoning ordinance to prohibit all electronic message centers, including those indicating time, date and temperature. In an entirely separate action from this case, the constitutionality of the amended ordinance was challenged in the United States District Court for the District of New Hampshire, where the district court held that the amended ordinance is content neutral and constitutes a lawful time, place and manner restriction upon commercial speech. That decision has been appealed to the First Circuit Court of Appeals as *Naser Jewelers, Inc. v. Concord*. Briefs have been filed in that appeal, including an amicus brief submitted by the American Planning Association, in which both the Northern New England Chapter and the NHPA joined. The APA's brief can be found at www.planning.org/amicusbriefs/pdf/naserjewelers.pdf.

Meanwhile, Concord appealed the state trial court decision to the NH Supreme Court. In a decision written by Chief Justice Broderick, the court examined the special characteristics of signs as speech—namely, that the legitimate interests of the government in protecting public safety and aesthetics (the physical characteristics of signs) must be balanced against the rights of individuals right to free expression (“...the government has legitimate interests in controlling the noncommunicative

aspects of the medium, but the First and Fourteenth Amendments foreclose a similar interest in controlling the communicative aspects.”)

Observing that commercial speech is afforded a lower level of protection than other forms of expression, the Court identified the four-prong test of governmental regulation of commercial speech:

- (1) whether the advertising is neither unlawful nor misleading and therefore entitled to First Amendment protection;
- (2) whether the ordinance seeks to implement a substantial governmental interest;
- (3) whether the ordinance directly advances that interest; and
- (4) whether the ordinance reaches no further than necessary to accomplish its stated goals.

The trial court found that the advertising in question was entitled to protection, and that the ordinance sought to implement an important governmental interest, but concluded that the ordinance did not advance that interest and reached further than necessary because the City had failed to present evidence that regulating the content of electronic signs would promote aesthetics and safety.

The Supreme Court disagreed with the trial court's conclusions on the final two prongs of the test, finding that the court had incorrectly inserted its own judgment regarding aesthetics and safety for that of the City. According substantial deference to the legislative judgment of the City, the Supreme Court, citing an earlier case, said

“zoning is a legislative function, and judging the wisdom of the legislation is not the function of this court. The State zoning enabling act grants municipalities broad authority to pass zoning ordinances for the health, safety, morals and general welfare of the community. In enacting a zoning regulation, a town may consider the knowledge of town selectmen and planning board members concerning such factors as traffic conditions and surrounding uses resulting from their familiarity with the area involved. Furthermore, a municipality may exercise its zoning power solely to advance aesthetic values because the preservation or enhancement of the visual environment may promote the general welfare.”

Furthermore, the Court said “The City need not provide detailed proof that the regulation advances its purported interests of safety and aesthetics.”

Finally, addressing the fourth prong of the test, the Court said “The most effective way to eliminate the problems raised by electronic signs containing commercial advertising is to prohibit them.” This effectively repudiated the argument that to allow non-commercial speech (time, date, temperature signs) on electronic signs opened the door to requiring that commercial speech also be allowed. Instead, the Court found

that the City had appropriately circumscribed commercial speech with an appropriate legislative action.

The case is filed as *Carlson's Chrysler v. City of Concord*, and can be found at www.courts.state.nh.us/supreme/opinions/2007/carls161.pdf.

STATE RECEIVES FEDERAL HELP TO PROTECT WATER RESOURCES

Concord, NH – The New Hampshire Department of Environmental Services announced today that New Hampshire, the fastest growing state in the Northeast, is one of three states selected to receive federal assistance to address the challenges posed by growth with respect to protecting water resources. The assistance will come primarily in the form of technical expertise from four national organizations: The Trust for Public Land, the Smart Growth Leadership Institute, the Association of Drinking Water Administrators, and River Network. The expert assistance will be provided through a grant from the U.S. Environmental Protection Agency.

“New Hampshire’s government leaders and conservation organizations understand the connection between land use and water resources and recognize the need to conserve critical lands and to manage the state’s rapid growth in ways that will minimize impacts on water resources,” noted Department of Environmental Services Commissioner Tom Burack. “This project is a great opportunity to take an in-depth look at how we can harness a number of legislative and agency planning

efforts currently underway, such as the state water resources management planning process, to get our existing land and water programs – everything from stormwater to land conservation to drinking water – working together.”

Recent work by the New Hampshire Office of Energy and Planning (OEP), including a *Report to the Governor on Growth Management* for the Council on Resources and Development, calls for land use planning with consideration of the state’s natural and water resources, according to OEP Director Amy Ignatius. “This project will help the state come up with new and creative ideas to achieve both our growth management and resource protection goals,” she added.

New Hampshire, Maine, and Ohio were chosen from among nineteen states through a competitive application process. Similar work with other states is expected to follow. New Hampshire’s application was prepared by DES and OEP and supported by Governor John Lynch as well as legislative leaders, other state agencies, and statewide conservation groups. The project is expected to run from January through the fall of 2008.

NNECAPA UPDATES

Annual Conference in Portland, ME

Over 300 professional planners and planning historians gathered in Portland on October 23-26, 2007 for our annual conference. NNECAPA joined the Society for American City and Regional Planning History (SACRPH) for their 12th National Conference on Planning History this year.

AICP Certification now Mandatory!

For those of you certified planners out there, know that on Friday, April 13, 2007, the AICP Commission approved a plan for Certification Maintenance that makes continuing education mandatory for certified planners. Here are some highlights of these new rules:

- Within each two-year period, AICP certified planners will be required to engage in at least 32 credits of eligible professional development activities.

- Each two-year period begins on January 1.
- No minimum number of credits need be logged per year so long as 32 qualifying credits are logged in during each two-year reporting period.
- A four-month grace period, beyond the two-year reporting cycle, may be used to complete the Certification Maintenance credit requirements. Any credits used in a grace period cannot be double counted towards the next reporting cycle. A maximum of 16 excess credits can be carried over to the next reporting cycle.

To read all the specifics of the new requirements, go to: <http://www.planning.org/certification/maintenance.htm>

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NNECAPA UPDATES... *continued from first page***APA Audio-Visual Workshops scheduled in NH**

In an effort to increase opportunities for professional planners to get continuing education, NNECAPA as scheduled several APA audio-video workshops in the tri-state area. Here are the workshops scheduled in NH so far:

February 13th, 2008

****DOUBLE PROGRAM**** - *Inclusionary Housing & Mastering Density*

2:00 p.m. to 6:00 p.m. - 3.0 CM credits

NH Housing Finance Authority, 32 Constitution Drive, Bedford, NH

May 21st, 2008**Community-Based Brownfields**

4:00 p.m. to 6:00 p.m. - 1.5 CM credits

Nashua Regional Planning Commission, 115 Main Street, Nashua, NH

*Check the NHPA website
for more workshops and details!
Coming soon!*

NHPA 2007 ANNUAL MEETING AND ELECTIONS

The NHPA held its annual meeting at Jillian's in Manchester on Friday, November 9, with about 40 members in attendance. The membership took the following actions by unanimous vote:

- approved an expenditure of up to \$2,500 to hire a lobbyist to work with the Executive Committee on legislation that affects planners and their work;
- increased dues to \$40/individual, \$150/organization, \$15/student (note: this was the first dues increase in 15 years);
- amended by the bylaws to
 - create a position of Sustainability Coordinator
 - create a Student Member category, and
 - eliminate the requirement that the NHPA Legislative Liaison serve as the NNECAPA NH Legislative Liaison.

Sandrine Thibault, NNECAPA NH State Director, discussed the recent NNECAPA conference in Portland, held in conjunction with the Society for American City and Regional Planning History and she provided an overview of the new AICP Certification Maintenance requirements. She asked members to send their comments to her in writing (sandrine.thibault@nh.gov).

Awards were made in the following categories:

Plan of the Year

Land Conservation Plan for New Hampshire's Coastal Watersheds

Rockingham Planning Commission

Project of the Year

Planner's Handbook on Energy Efficiency and Climate Change

Clay Mitchell, Town of Epping

Julia Dundorf, New Hampshire Carbon Challenge

Professional Planner of the Year

John Edgar, AICP

Community Development Director, Town of Meredith

NHPA also specially recognized the contributions of Jamie Steffen, who has stepped down from the Executive Committee after serving for 10 years as NHPA Treasurer. In gratitude for his efforts, the members of the Executive Committee pooled their own financial resources to purchase Jamie a subscription to the Beer-of-the-Month Club!

Christa Koehler, Angie Vincent, and Clay Mitchell were elected to 3-year terms on the Executive Committee. Subsequent to the annual meeting, the Executive Committee elected its officers for the upcoming year: President—Jennifer Czysz; Vice President—Jim Campbell; Secretary—Becky Hebert; Treasurer—Ben Frost; Professional Development Officer—Kerrie Diers; Newsletter Editor—Pierce Rigrod; Legislative Liaison—Clay Mitchell; Public Information Officer—Christa Koehler; Sustainability Coordinator—Angie Vincent.