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NEW HAMPSHIRE PLANNER INFORMATION – UPDATE

The news from Plaistow is that Leigh Komornick is now known at the “Town Planner” - a changed from “Planning Coordinator”. Leigh has been with the Town of Plaistow since June 2001 after being a regional planner for 15 years. Leigh says that municipal planning is definitely a whole different experience! Plaistow is a Town of approximately 8,000 people and borders Haverhill, MA.

The Salem Planning Board has proposed several interesting zoning amendments, including a parking proximity requirement (at least 75% of required parking spaces must be located within 400 feet of a public building entrance, with exceptions if certain criteria are met), phasing for multi-family housing, and conditional use permits to allow the Planning Board to modify parking and sign requirements.

Michael Behrendt and Ross Moldoff are teaching a 1 day class for UNH Continuing Education called “Tools and Techniques for Managing Growth”. The course will be held on May 29 at UNH-Pease and has been certified for continuing education credits by APA.

Windham is waiting patiently for a final “Investigative Report and Findings” from the New Hampshire Commission for Human Rights on the adequacy of elderly facilities at an approved and built 55-year old restricted housing development. This investigation has been on going for more than a year. An existing approved elderly housing development built in 1999 was the subject of several complaints concerning the enforcement of the restricted age limits and adequacy of the required facilities for elderly. Despite a large list of activities such as entertainment, educational and health seminars, one resident complained that the existing activities did not meet the required activities required under RSA 356-B 3. The elderly housing development was undertaking the yearly census of all residents and submitting it to the Planning and Development Department as required by the Fair Housing Act. The enforcement of the age restrictions resulted in several complaints to the Humane Rights Commission. The Investigative Report and Findings will have state-wide implications. The town continues to inventory and review the required yearly census of each elderly housing development in town for compliance with the Fair Housing Act and state law.

Just a friendly reminder that the NHPA conference will be held on May 15 and 16 in Nashua!

Peter Throop has taken on a new role as the Project Director for the Community conservation Partnership at the Monadnock Conservancy. Peter has been working for the Conservancy since the fall. In his new role as the Project Director for the Community Conservation Partnership, Peter will be assisting community volunteers and town officials to set conservation priorities, educate neighbors and build municipal funds for land conservation. Prior to his new position with the Conservancy, Pete worked as a City Planner in Keene, New Hampshire, where he gained extensive experience supporting the efforts of

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SPRING UPDATE *(continued from page 1)*

community groups: facilitating planning efforts, critically analyzing proposed development projects, and drafting a variety of natural resource protection ordinances.

Andrew Smith has joined the Keene Planning Department and comes to the City of Keene from the Pioneer Valley Planning Commission in West Springfield, MA, where he worked as a regional planner providing local technical assistance to the Commission's communities, All-Hazard Mitigation planning, and grant writing assistance. In Keene, Andrew will provide committee support, will assist in development review, and will utilize his analysis skills in evaluating and updating Keene's current site plan and subdivision regulations and processes. Andrew will also play a key role in the community visioning and comprehensive master planning process beginning in March.

Sandrine Thibault has left OEP for the greener pastures of Burlington, VT and she has left a void at OEP that cannot be filled - literally. Her position was posted and OEP had begun the interview process when the Governor announced a hiring freeze. Just before the hiring freeze, OEP did fill two other positions, Meghan McPherson, Grants Manager and Tom Franks, Energy Policy Analyst. OEP's other big news is that the office is moving to 4 Chenell Drive - a big move but a short distance to a different building just around the corner.



PLANNING FOR THE NET GENERATION

In twenty years, the last of the baby-boomers will be eligible for retirement, and the Net Generation will be middle-aged. What will their world look like? What will "community" mean in a society influenced by the internet and cell phones? What effect will global warming and the energy situation have on the way people live and get around? How do we engage the Net Generation in identifying and planning for their needs? What can we learn from educators to help us better engage today's youth in planning for their future?

For AICP members, CM credits will be available for certain sessions. This will be identified in advance of registration.

Join us for this informative and thought provoking topic. Share your ideas and help us brainstorm new ones. Catch up with your peers in Woodstock Village or the Inn's own golf course.

NHPA SPRING CONFERENCE MAY 15 AND 16 AT THE RADISSON HOTEL, NASHUA

The theme of the conference this year is **Revitalization and Sustainability – "Wholistic" Planning for Communities**. The conference will focus on these issues in practice through case studies and examples of how New Hampshire planners are using collaboration with other professions and innovative planning tools to help revitalize, redevelop and foster sustainability in their communities. Look forward to some thought-provoking sessions, mobile workshops and exploring the great City of Nashua to see firsthand how these tools have been implemented.

We will be requesting AICP Certificate Maintenance credits for this conference. For more information, see the events/programs page at www.nhplanners.org or contact Kerrie Diers, Professional Development Officer at kerried@nashuarpc.org

A limited number of rooms have been reserved at the Inn for conference attendees. Register now for your hotel room - mention NNECAPA to receive the discounted rate of \$160 per night. Included with your hotel stay is use of the Inn's pool, sauna, whirlpool and exercise room. See woodstockinn.com for more hotel information. Also Included with your hotel stay is free admission to Billings Farm and Marsh-Billings-Rockefeller National Historic Park, Vermont's only National Park. There are also a number of other lodging alternatives in the Woodstock, Quechee and White River Junction area for those interested in a bed and breakfast or a lower priced hotel.

Conference program and registration information will be provided in the spring. For questions, contact Tara Bamford at Tara@NNEPlanning.us.

SIGNS OF THE TIMES, PART II

LOCAL BAN ON ELECTRONIC SIGNAGE UPHELD

By Ben Frost

The last newsletter contained an article on the City of Concord's court victory over Carlson's Chrysler in a case that had the New Hampshire Supreme Court uphold Concord's ban on electronic signage as a legitimate limitation on free speech (read the case at www.courts.state.nh.us/supreme/opinions/2007/carls161.pdf). While that case was pending, Concord's ordinance was also challenged in federal court by Naser Jewelers. Last fall, the New Hampshire Planners Association joined with the American Planning Association and other organizations in an amicus curiae brief filed with the First Circuit Federal Court of Appeals in the case of *Naser Jewelers, Inc. v. City of Concord*. In this important First Amendment case, a local ordinance that prohibits the use of "electronic message center" (EMC) signs was challenged on the basis that it infringes upon a Constitutionally-guaranteed right to free speech. In January 2008, the appellate court upheld the trial court's decision in a clear victory for good planning based on traffic safety and aesthetics.

That ordinance was challenged by Carlson's Chrysler in a different case that was recently decided in the City's favor by the New Hampshire Supreme Court (see www.courts.state.nh.us/supreme/opinions/2007/carls161.pdf). Also see an article on this state case at www.nhplanners.org.

Federal Trial. Concord had adopted an ordinance that prohibited all EMCs except those that displayed time, date, and temperature. That ordinance was challenged by Carlson's Chrysler in state court, and after that action was initially filed the City amended its ordinance to enact a total ban on EMCs, including time, date, and temperature signs. The new ordinance was challenged by Naser Jewelers in Federal District Court. Early in 2007, the New Hampshire Federal District Court ruled in favor of the City. Although that order addressed Naser Jeweler's motion for a preliminary injunction, it had the general effect of ruling on the merits of the case.

The District Court found that the ordinance that completely banned EMCs was a content-neutral exercise of the police power (not aiming to advance or suppress a particular viewpoint) that served a legitimate state interest. Naser argued that the ordinance did not serve that purpose, as the City had failed to provide detailed information demonstrating that EMCs adversely affect traffic safety. But the Court held that the City "need not provide detailed proof that the regulation advances its purported interests of safety and aesthetics." Rather, the Court largely deferred

to the City's judgment: "...it is within the City's authority to determine for itself that a particular ordinance will, in fact, advance its substantive governmental interest, and such findings shall not generally be disturbed by a court unless shown to be 'palpably false.'"

The remaining substantive question before the court was whether the ordinance was narrowly tailored to meet the governmental objective. Naser argued that a total ban on EMCs was not a narrowly tailored ordinance. The Court refused to treat EMCs as a special case, however, and found that Naser had ample opportunity to use other means of communication, including static signs and manual change copy signs, though they may lack the convenience of EMCs. The Court said that "[t]he ordinance prohibits only those signs the City plausibly things will adversely affect traffic safety, or prove detrimental to aesthetic values the City seeks to promote."

Federal Appeal. On appeal to the First Circuit, Naser raised the same arguments and Concord, the same defenses. Naser alleged that the EMC ban was facially unconstitutional as an abridgement of free speech in violation of the First Amendment. Echoing the trial court, the First Circuit found that the ordinance banning all EMCs was content neutral. Quoting another case, the court said "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages, but not others."

Completing its analysis, the First Circuit also found that the ordinance was narrowly tailored to serve a significant governmental interest and allowed for reasonable alternative channels of communication. The first element of this consideration is to look to a legislative expression of intent—a purpose statement in the ordinance. The Court clearly rejected Naser's attempts to ascribe some ulterior motive to Concord's action, stating "the legislature's subjective intent is both unknown and unknowable." In this case, the ordinance cited both the promotion of traffic safety and community aesthetics as its goals. These are goals that the Court said have "long been recognized to constitute significant governmental interests."

The Court then devoted significant energy to the question of alternatives and whether there was a requirement for

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SIGNS OF THE TIMES *(continued from page 3)*

the City to have used the least restrictive regulation possible. According some deference to the “common-sense judgments of local lawmakers”, the Court concluded that billboards are “real and substantial hazards to traffic safety.” The Court then continued “It follows that EMCs, which provide more visual stimuli than traditional signs, logically will be more distracting and more hazardous.” The Court rejected Naser’s plea that studies must be done by the City to substantiate this claim, stating that such analyses “would impose great costs on local governments.” Similar support of Concord’s defense of aesthetics was also offered in the Court’s opinion. Regarding less restrictive alternatives, the Court concluded that the City “was not required to adopt them if they would serve its interests less effectively.” Naser tried to characterize EMCs as their own unique medium of communication, an argument rejected by the Court. But even if it were a unique

medium, the Court said “When the medium itself is the ‘evil the city [seeks] to address,’ then a ban on that entire medium is narrowly tailored.”

Finally, the Court observed that alternative means of communication remained open to Naser. Static and manually changeable signs are still available for use. Naser argued that it would lose customers if it were restricted to these alternatives, but the Court said “The maximizing of profit is not the animating concern of the First Amendment. ... ‘The First Amendment does not guarantee a right to the most cost-effective means of [speech].’”

The APA’s amicus brief in the Naser Jewelers case may be found at www.planning.org/amicusbriefs/pdf/naser-jewelers.pdf. The Court’s decision may be read at <http://www.ca1.uscourts.gov/pdf.opinions/07-2098-01A.pdf>

OEP ACCEPTING HOUSING AND CONSERVATION PLANNING PROGRAM GRANT APPLICATIONS

CONCORD, NH - The New Hampshire Office of Energy and Planning (OEP) is now accepting applications for Housing and Conservation Planning Program (HCPP) grants. This new grant program enables municipalities to purchase technical planning assistance in order to plan for housing and conservation through a unified approach. The program awards grants through four progressive grant stages:

- Stage 1: Research, mapping, and data analysis – grants up to \$20,000
- Stage 2: Growth and development strategy planning – grants up to \$15,000
- Stage 3: Master plan updates – grants up to \$15,000
- Stage 4: Implementation into the regulatory framework – grants up to \$30,000

A total of up to \$200,000 will be awarded to municipalities during this first application cycle. Another \$200,000 will be awarded during two more grant rounds to be offered during the fall of 2008 and spring of 2009.

Applications, guidance, and additional program information are available online at www.nh.gov/oep/programs/HCPP/

[grants_application.htm](#) and may also be obtained by contacting OEP. Completed applications must be submitted to OEP by April 11, 2008, 4:30 PM. Grant awards will be announced by April 25, 2008.

OEP will provide assistance to municipalities throughout the application process. Candidates are encouraged to submit draft applications through March 28, 2008 for an optional pre-screening; these applicants will be informed of any unfulfilled requirements or necessary clarifications. Additionally, OEP will offer two opportunities to attend an application preparation workshop. Workshops will be offered on February 25, 2008, 1:00 PM, at the Local Government Center, 25 Triangle Park Dr, Concord, NH and on March 20, 2008, 6:00 PM, at OEP, 4 Chenell Drive, Concord, NH. Please RSVP to Dari Sassan for the workshops, by calling 271-1765.

Please contact Jennifer Czysz, Senior Planner, or Dari Sassan, Assistant Planner, with any questions or for assistance during the application process. Jennifer may be reached at jennifer.czysz@nh.gov or 271-8009 and Dari may be reached at dari.sassan@nh.gov or 271-1765.



DES DRINKING WATER PROTECTION WORKSHOP

MONDAY, MAY 19, 2008
9AM - 4PM

Audience: Community planners, health officials, conservation commissioners, and water system managers

Location: New Hampshire Technical Institute
31 College Drive
Concord, NH

Directions: www.nhti.edu/about/directions.htm

Topics will likely include: Land and Water Conservation Project GIS training with UNH staff
Local Implementation of Source Water Protection Strategies Legislative and Regulatory Changes
Affecting Water Supplies Community Forests and Their Role in Water Supply Protection

Sponsored by the American Ground Water Trust

Register online at www.agwt.org/workshops.htm

**HAVE
QUESTIONS?**

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