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# PLANNING

Massachusetts Chapter & Rhode Island Chapter

## Local Plans and Regional Visioning

*Timothy Reardon, Metropolitan Area Planning Council, Massachusetts*

If all politics is local, then planning must start at that level as well. Regional planning efforts cannot rely solely on rational arguments in favor of the ‘greater good.’ Where decision making is fractious and decentralized, regional plans must capitalize on local goals and concerns, and must demonstrate the efficacy and necessity of regional cooperation as a means of pursuing those objectives.

Consequently, the Metropolitan Area Planning Council, the regional planning agency for Metropolitan Boston, has begun our current regional planning effort, known as MetroFuture, with a comprehensive investigation into local visions and values. The first phase of the program seeks to develop a regional vision through public meetings, surveys, conversations with political and academic leaders, and discussions with traditionally underrepresented constituencies such as immigrant populations. We are also working to develop alliances with organizations and institutions that have an interest in regional planning; through their networks we hope to plant a seed for social change that will transform the way residents and leaders think about their region, its future, and the role of cooperation.

In order to adequately address local concerns, however, our ambitious program has begun with a tedious task: the review of municipal planning documents from each of the 101 cities and towns in the MAPC region. Our review was conducted to identify the major goals and objectives of these plans, to ascertain primary concerns with regard to growth and development, and to determine what strategies are favored to address these concerns. Through this research, MetroFuture can capitalize on the considerable amount of research, analysis, discussion, and public participation that goes into the development of local plans.

We recognize that municipal plans are not always truly representative of the diversity of opinion within a community. Further (as every planner knows) master plans are rarely implemented in their entirety; meanwhile, many policies and goals may be articulated and advanced outside of the context of official planning documents. However, as sanctioned official documents, municipal plans come close to articulating the official policies of communities with regard to development, and this assumption was vetted through discussions with local officials at the time the plans were collected.

Plans reviewed for this study included master plans and comprehensive plans, open space plans, housing plans, community-wide transportation plans, downtown/town center plans, and other general vision statements or growth strategy documents. More technical or detailed plans such as water and wastewater plans, transportation analyses, detailed local area plans, economic development plans, and community preservation plans were only collected and reviewed only when other community-wide plans were not available. MetroFuture staff reviewed the plans in groups corresponding to each of MAPC’s subregions, and transcribed notes and quotes onto a matrix with a row for each community and columns defined based on the reviewer’s sense of the major themes for that subregion. Thus the content of various plans with regard to a specific topic (e.g., “town center strategies”) could be compared easily across communities in order to assess common themes within the subregion.

As one might anticipate, this effort confirmed that there is considerable diversity of local concerns and objectives throughout the Greater Boston Region. Urban communities in the core of the region are commonly concerned with park maintenance, redevelopment and housing rehabilitation, and economic development that will provide employment for local residents. Meanwhile, many plans from outlying suburban communities emphasize open space preservation, downzoning and growth management, and economic development to increase the nonresidential tax base.

## Massachusetts Chapter

by Peter Lowitt, AICP, Chapter President

I want to thank Tufts University's Urban and Environmental Policy and Planning Department, especially Jon Witten, Brett Baden, and Christine Cousineau, for coordinating with our chapter Professional Development Officer, Ms. Lynn Duncan, AICP to make the AICP preparation course a success. The Chapter looks forward to continuing this relationship and course with Tufts in the future. Speaking of universities and planning students, the chapter will continue its tradition of holding meetings with new planning students. We have a workshop for new students in the works with the Harvard Graduate School of Design in early September. University Planning schools are encouraged to contact board members to discuss opportunities to connect with the planning professionals and chapter activities in your area. Remember our regional planning conference is September 30-October 1, 2004 in Springfield and you can help by planning now so that your students can attend the premier planning event in New England.

Congratulations to our newsletter co-editor, Jennifer Goldson, who should be a new mom by the time you receive this issue. Ms. Allison Noreau of the City of Peabody Community Development and Planning Department will be joining Sabine Dietrich of the Pioneer Valley Planning Commission as our co-editor. Welcome Allison.

The Chapter is seeking a committed volunteer to serve as our Northeast Regional Representative on the board. Mr. Coggins has been swamped with development activity in Lowell and has graciously agreed to step aside and allow someone with more time to commit to the chapter to fill out his term. (Thanks Matt!) The Northeast Region runs from north of 128 to the New Hampshire Line and approximately east of the communities bordering Route 2.

*Please contact me if you are interested in serving the chapter (978)772-8831 xt 313.*

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## Massachusetts News

### June Is Rivers Month!

The Mass. Riverways Programs urges you to take this opportunity to invite your friends, family, local leaders, legislators, and/or a favorite reporter to clean up, paddle, protect, enjoy, and celebrate your favorite rivers and streams. Get some healthful exercise in and/or along the Commonwealth's many scenic waterways.

For the most up-to-date Calendar events, see the online version of the Rivers Month Calendar on Riverways' web page: [www.massriverways.org](http://www.massriverways.org). Many activities require reservations in advance. Please call or e-mail ahead to inquire about any restrictions, fees, rain dates, or cancellations that may apply.

## Four More Communities Pass the CPA

*Community Preservation Press, May 2004, a bimonthly e-letter on tools, techniques, efforts and events*

Four out of five communities with the Community Preservation Act on spring ballots passed the CPA; Conway, Nahant, Groveland, and Provincetown, with voters in Holden defeating the CPA. Several communities voted at Town Meeting to place the CPA on fall ballots; Concord (1.5% local surcharge), Fairhaven (2%), Groton (3%), Hadley (3%), Sharon (1%), and Topsfield (3%), and a number of others will vote over the next three months.

Conway adopted the CPA at a 1.5% local surcharge with the low-income exemption on April 15, 2004. Nahant (April 24) and Groveland (May 3) both passed at a 3% surcharge with exemptions for low-income and the first \$100,000. Provincetown adopted the Act at 3% on May 4th, also with both exemptions.

This puts the number of communities that have adopted the CPA at 65 or 18.5 % of 351 communities in Massachusetts!

On the implementation side, the Act just passed the \$100 million mark for funds appropriated for projects by local Community Preservation Committees (CPC) at town meetings or by city councils. These CPA projects have, or will soon, add 35,000 acres of new open space, put in 550 new housing units, and preserve 150 historic buildings in the communities that have adopted the Act. The CPCs are hard at work in their communities reviewing and approving even more projects that will leverage and use CPA funding.

For a full list of the communities that have passed the CPA, please visit the Trust for Public Land web site at: [www.tpl.org](http://www.tpl.org).

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## Rhode Island Chapter

by Dan Baudouin, AICP, Chapter President

The chapter has been working diligently to fulfill the Chapter Work Plan that was developed under the leadership of Marilyn Cohen, RI Chapter Past President. The main objectives of the Work Plan include:

1. Develop policy and position statements. The Chapter's Policy Committee, under the leadership of George Johnson prepared responses to the draft APA's new energy and redevelopment policies. Locally, RIAPA is working on a major policy paper on housing, particularly affordable housing. This paper will address potential changes to RIGL 45-53 but will also recommend a comprehensive approach to affordable housing.

2. Develop stronger legislative advocacy. The Chapter has designated Dan Varin as RIAPA's legislative lobbyist on Smith Hill. Dan is monitoring legislation. If you have a concern about State legislation, let him know.

3. Strengthen the Monthly Luncheon Series. Under the leadership of Blanche Higgins, the May lunch was a success with almost 50 attendees discussing affordable housing. The next lunch meeting on June 11 will showcase successful mill re-use projects.

Other Chapter activities include working with the President, the Provost, and the faculty on the future of the University of Rhode Island's Community Planning and Landscape Architecture Program. Bill Haas, Westerly Town Planner and Chair of the Awards Committee, has started the nomination process; get in touch with Bill on your ideas.

Finally, everyone I know is working too hard; be sure to attend our annual clambake scheduled for June 25. Once again, we thank Mike De Luca, of Cranston Planning for arranging this great annual event.

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## Rhode Island News

### Call for Entries: Ninth Annual Planning Awards

The Rhode Island Chapter of the American Planning Association announces a Call for Entries for awards in recognition of excellence in planning & community development as exemplified by plans, individuals, organizations, student projects, and journalism. The nomination deadline is July 23, 2004.

Certificates will be awarded at the New England Regional APA Conference in Springfield, MA on September 30, 2004 and plaques will be presented at the Annual RIAPA Holiday Gathering and Awards Ceremony. Non-members in allied fields are eligible to receive awards.

**AWARD FOR OUTSTANDING COMPREHENSIVE PLANNING PROJECT** – To a plan, program, project or assessment of unusually high merit.

**AWARD FOR OUTSTANDING IMPLEMENTATION** – To a specific planning, economic development or redevelopment project or ordinance of high merit which has been significantly funded or implemented for at least one year.

**STUDENT PROJECT AWARD** – To a student or students for academic or applied research, studio projects, community service or other works related to community research and planning. Student work from any RI college or university is eligible for the Student Project Award.

**JOURNALISM AWARD** – To the creator or author of a news story, investigation, analysis, opinion, essay, book, video, or movie of any length, published and communicated in the print or broadcast media, for a significant contribution of excellence to the public or professional understanding of planning and social issues.

**PAUL DAVIDOFF AWARD FOR SOCIAL COMMITMENT TO ADVOCACY PLANNING** – To a project, group, or individual reflecting a social commitment to advocacy planning in support of society's less fortunate members.

**DISTINGUISHED LEADERSHIP AWARD** – To a professional planner, elected official, or citizen planner for sustained contribution to the profession through distinguished practice, teaching, or writing.

**THE PRESIDENT'S DISTINGUISHED SERVICE AWARD** – To an RIAPA member who has made a substantial contribution to the development and objectives of the American Planning Association.

***Nominations must be received by Friday, July 23, 2004 by 4:00 P.M.***

*Mail Submissions to:  
William R. Haase, AICP  
Westerly Town Hall  
45 Broad Street  
Westerly, RI 02891*

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## National News

### Coalition Supports Local Flexibility In New Toll Provisions

APA joined more than 40 local, state, and national organizations in calling on Congress to provide flexibility in the use of revenues generated from new tolls or HOV lane value pricing programs. Both the House and Senate have embraced the concept of value pricing. However, during floor debate the House approved an amendment that would severely restrict the use of these revenues by preventing local tolls from being used to fund transit or traffic management, targeting the funding only towards recovering construction costs for that road. Such a provision would not only hurt future transit projects but also would disrupt existing programs that support transit in communities such as San Diego and New York City.

The letter lauds "efforts in the transportation bill to expand the opportunities for transportation agencies to apply time-of-day road tolls and other market incentives to help finance transportation, improve system efficiency, manage travel demand, and expand travel choices for all Americans." But, asks Congress "to give states and communities expanded opportunities to use toll revenues to invest, operate, and manage new and expanded highways and public transportation services that enhance mobility while protecting the environment and improving equity of access to opportunities." Many of these opportunities would be foreclosed by HR 3550's very restrictive limits on state and local discretion for allocating local toll revenues.

### Brownfield Funding At Risk; Speaker To Launch New Urban Task Force

Senators Carl Levin (D-MI), Lincoln Chafee (R-RI), and Jim Jeffords (I-VT) are circulating a letter calling on Senate appropriators to fully fund brownfields programs. The letter, addressed to VA-HUD Appropriations Subcommittee Chairman Kit Bond (R-MO) and Ranking Member Barbara Mikulski (D-MD), urges \$250 million for the Environmental Protection Agency's brownfield redevelop-

ment initiative, \$25 million for the Department of Housing and Urban Development's Brownfields Economic Development Initiative, and \$7.3 million for HUD's Economic Development Loan Guarantees.

The Administration supports full funding for EPA's brownfield program but has called for the elimination of the HUD initiatives. The letter points out that communities of all sizes are struggling to find the resources to redevelop an estimated 450,000 brownfield sites. The letter also points out the positive economic, environmental, and social benefits associated with brownfield redevelopment. The Senate Subcommittee has yet to take any action on brownfields funding for FY05. The trio of Senators is also supporting legislation to establish a new brownfields program within the Economic Development Administration (S. 645). The bill would provide aid for communities to do economic development planning associated with brownfield remediation.

On the other side of the Capitol, urban redevelopment is getting a fresh look by House Republicans. House Speaker Dennis Hastert (R-IL) will formally unveil a new "Saving America's Cities" initiative. The task force will be led by former Dayton, Ohio mayor and current Ohio Congressman Mike Turner (R-OH). Rep. Turner's task force will develop a list of policies and legislation on urban revitalization to be presented to House leaders. APA is among the national organizations selected to provide input and consultation.

## Fannie Mae / Freddie Mac Bill Includes \$1 Billion for Affordable Housing

Legislation to strengthen oversight of government sponsored enterprises (GSEs), such as Fannie Mae and Freddie Mac, was reported out of the Senate Banking Committee with an amendment to boost funding for affordable housing. The amendment, sponsored by Sen. Jack Reed (D-RI), requires Fannie Mae and Freddie Mac to spend 2.5% of their pre-tax profits on capital grants to support the production and preservation of low-income housing, with an emphasis on extremely low-income households. Such a requirement would have generated approximately \$1 billion last year for affordable housing.

The bill, S. 1508, is primarily focused on establishing stronger regulatory oversight for GSEs. Although the amendment was adopted unanimously by the Banking Committee, the lack of consensus on the broader measure clouds prospects for final passage. The full Senate has not yet taken up the legislation. House legislation on GSE oversight has been introduced but not yet considered by the House Financial Services Committee.

## CORRECTION

A previous edition of this newsletter incorrectly identified MACP, which is the Massachusetts Association of Consulting Planners (not the Massachusetts Association of Certified Planners). We apologize for any confusion this may have caused.

## Congressional Budgets Don't Include Arctic Drilling

*From National Wildlife Federation*

The House and Senate's decision to leave Arctic drilling measures out of their respective federal budgets is a victory for wildlife such as muskoxen that call the refuge home.

Despite the inclusion of Arctic oil revenues in the president's proposed budget for 2005, both the House and Senate successfully kept similar measures out of their respective budget bills.

"This is another telling victory in the ongoing battle to permanently protect the Arctic National Wildlife Refuge from oil drilling," says Kristen Cummings, NWF's senior Alaska lands representative. "Senators and representatives rejected the president's proposal, choosing instead to side with the majority of Americans across the country who oppose sacrificing one of the largest and wildest refuges for short-term oil profits."

The two bills now go to Conference Committee, where members of both chambers will iron out the differences. "With both versions devoid of any Arctic drilling measures, we are confident that we have won a decisive early-year Arctic victory," says Cummings.

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## Coalition Welcomes Release of Climate Protection Plan in Massachusetts

*State House News Service*

On May 6th, members of a coalition of over 50 environmental, public health and religious groups praised the release of the Massachusetts Climate Protection Plan. The plan, unveiled at a press conference at the Esplanade by Governor Romney, outlines a comprehensive roadmap for achieving reductions of global warming pollution from the electricity, transportation, and government sectors. In follow-up to the regional climate change agreement signed by the New England Governors and Eastern Canadian Premiers in August of 2001, the Massachusetts plan is the first in the region to set the following in-state goals: reducing global warming emissions from current levels to 1990 levels by 2010; reducing another 10% below 1990 levels by 2020; and ultimately reducing emissions by 75-85% long term.

"Given the growing scientific consensus that supports deep reductions of carbon pollution, this Plan takes a critically important step forward by committing the state to immediate action as well as long-term reductions of these emissions," said Cynthia Luppi, Clean Water Action Organizing Director. "We urge the state to aggressively implement this Plan which will be necessary to meet these precedent-setting pollution reduction goals."

"This Plan lays out a path toward a cleaner, healthier future for Massachusetts," said Frank Gorke, MASSPIRG Energy Advocate. "We face a future with devastating levels of pollution, unless we take action now to choose a cleaner path. Putting this plan into action will make our state a leader in tackling the problem of global warming."

Key policy highlights include:

Finalizing the state's clean car requirement and supporting California's forthcoming limits on vehicle carbon dioxide emissions. Reaffirming the state's commitments to promotion of renewable energy and to reducing carbon dioxide emissions from the "Filthy Five" power plants.

Leading by example: greening the operation of state properties and reducing the state's energy use 25% by 2012. Enhanced carbon pollution reporting requirements for public projects. Commitments to address emissions from the air traffic sector. Commitments to press states and provinces throughout the region to move forward with clean car requirements and stringent appliance efficiency standards.

"Given the urgency with which we must work to slow climate change, we are pleased with Governor Romney's leadership in organizing a strong climate action plan and encourage him to press for aggressive implementation," said Union of Concerned Scientists President Kevin Knobloch. "We particularly applaud forward thinking approaches, such as promoting renewables and efficiency, and the adoption of California's automobile global warming emissions rules which will also reduce air pollutants that contribute to respiratory disease, help create new, environmentally sustainable jobs in Massachusetts, and decrease demand for imported fossil fuels."

"With global warming presenting a growing threat to human health, the environment, and the economy, this plan is an essential first step in reducing Massachusetts' contribution to greenhouse gas emissions," said Marc Breslow, Director of the Mass. Climate Action Network.

"The actions outlined in the Massachusetts Climate Protection Plan are common sense solutions that address a fundamental challenge- the disruption of our climate by pollution released in the burning of fossil fuels in cars and power plants," said Seth Kaplan, Senior Attorney and Director of the Clean Energy and Climate Change Program at the Conservation Law Foundation, adding "The initiatives in the Plan, if implemented, will improve the public health, help stabilize energy prices, and, most importantly, help build a safer future for our children."

The coalition also flags the need for aggressive implementation of this plan in order to meet the overall goals. In addition, the plan will need to develop over time to stay on a steady path of reaching the ultimate goal of deep reductions. As the plan is further developed, the groups will be pressing for clear tracking of the reductions achieved from each program to ensure the combined reductions meet the goals comprehensively.

"The air pollution reductions from tailpipes and smokestacks across Massachusetts that are promised in this plan will yield important and immediate health benefits including fewer premature deaths, asthma attacks and emergency room visits due to respiratory distress," said Carlos Alvarez, Executive Director of the American Lung Association Massachusetts Chapter.

"Our religious teachings tell us that, as stewards of the Earth, we have a moral obligation to address the pressing problem of climate change," said Jill Wiley, Associate Director of the Massachusetts Council of Churches. "This

is an important step forward, and sets Massachusetts on a path to a more secure future."

"The Massachusetts Climate Change Action Plan represents a good first step in recognizing that we must act to reduce the pollution that damages God's creation," said Rachel Lessem of the Greater Boston Coalition on the Environment and Jewish Life. "By implementing this plan, Massachusetts declares that it will work to ensure that our children can inherit a clean, healthy world."

"Investments in energy efficiency and renewable energy technologies create jobs and bolster the economy," said Nancy Hazard, Interim Executive Director of the Northeast Sustainable Energy Association. "Implementation of this climate action plan will be good for the state's economy and environment."

"This Plan is an important step in improving the health and environment of communities across Massachusetts, particularly low income communities and communities of color who are most often hit the hardest by air pollution hazards," said Laura Inkeles, Northeast Organizer of EnviroCitizen.

*Massachusetts Climate Coalition*

*Contacts: Frank Gorke, 617/747-4316*

*Cindy Luppi, 617/338-8131*

*Marc Breslow, 781/643-5911*

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## DIF: A New Public Works Financing Option For MA Communities

*Scott E. Brown, Executive Director, Mass. Office of Business and Development*

District Improvement Financing (DIF), enacted last year as part of the Municipal Relief Bill, is a new financing mechanism available to municipalities within the Commonwealth to fund public works and infrastructure projects. DIF is a public financing mechanism similar to those currently used in most other states (more accurately called tax increment financing (TIF) in these states). In short, DIF allows municipalities to pledge future incremental tax revenues within a specified district to cover the debt service required to finance the infrastructure projects that will improve the district. District Improvement Financing allows municipalities to invest in roads, utilities, parking, and/or other infrastructure to stimulate private development, which typically increases assessed property values and increases tax revenues. As a result of the new DIF legislation, municipalities now have another choice – borrowing against future increases in assessed property value instead of either raising tax rates or levying a new tax.

Besides providing new financing alternatives, the District Improvement Financing legislation is highly flexible. Specifically, a municipality may pledge the increment from as little as one tax parcel up to the maximum 25% of the municipal land area. In addition, the DIF program is available to all municipalities in Massachusetts, not limited to economically depressed areas. All costs associated with the planning, financing, purchasing,

construction, improvements, etc. are eligible for DIF financing. Finally, financing terms are negotiable and may range up to 30 years.

The DIF program is initiated at the local level and approved at the state level by the Economic Assistance Coordinating Council (EACC). An interested municipality must craft a comprehensive development program which details the proposed infrastructure project. As part of the development program, the community must designate a development district from which the future incremental tax revenues will be captured. Additionally, the program must include a detailed financial plan, property assembly plan, and implementation plan. The municipality must then obtain required local approvals. Finally, the development program is submitted to the EACC for final approval by the state. (The EACC currently governs the Economic Development Incentive Program (EDIP) and is co-chaired by the Department of Business and Technology and the Department of Housing and Community Development).

The Massachusetts Office of Business Development (MOBD) is presently drafting the DIF regulations and anticipates completing the promulgation process this summer. The public hearing for the draft DIF regulations is scheduled for June 11, 2004 at the State Transportation Building in Boston.

*For additional information, please contact the Massachusetts Office of Business Development at 617-973-8600.*

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## Dighton Creates Open Space Fund With Chap. 61 Roll-Back Taxes

The Dighton Conservation Commission is pleased to announce that His Excellency, The Governor has signed House Bill 455 pertaining to the collection of fees by the Dighton Conservation Commission. It is now Chapter 82 of the Massachusetts General Laws of 2004. It reads (as voted at the 2002 Town Meeting) as follows:

“Funds collected as rollback or conveyance or forest products taxes or penalties, pursuant to General Laws Chapter 61, 61A, and 61B, be placed in a Conservation Fund to be disbursed under the direction of the Conservation Commission for the purpose of providing funds for the acquisition and management of properties for conservation purposes; or on anything relative thereto.”

Land that is taken out of Chapter 61 (Forestry), 61A (Agriculture), or 61B (Recreation) to be used for other land uses (for example, development) the landowner pays roll-back taxes. This is the money the property owner has saved over the years by keeping his/her land in Chapter. Towns have first option of refusal on purchasing these properties, however are without the funds to purchase any. This home rule bill guarantees that the rollback monies go directly into an open space fund, to be used for buying and management of land that the Town would like to acquire for the permanent protection of our natural resources, and/or greater passive recreational opportunity. Both Senator Marc Pacheco and Representative Patricia A. Haddad have worked to facilitate expeditious legislative review of this matter.

## LOCAL PLANS & REGIONAL VISIONING *Continued from page 1*

Despite their diversity, many plans agree on the region's major assets. According to these plans, residents in both urban and suburban communities generally value neighborhood character and the sense of community that exists where they live. The diversity of the Greater Boston landscape, ranging from urban areas to bucolic rural farmscapes, is also commonly praised. Interestingly, a significant number of plans describe “distinguishing characteristics” that, they say, make their community distinct from other cities and towns that are generally perceived as less attractive, overdeveloped, or lacking a comparable sense of community or sense of place. In one subregion, five towns proximate to one another state that they have maintained a rural character while this character has been lost in neighboring communities. These results seem to favor a regional planning effort that emphasizes the uniqueness of communities instead of highlighting commonalities and similar conditions.

Town centers play a prominent role in the community visions expressed by many plans, especially suburban communities. The ideal of the New England Town Center is commonly expressed, though the definition of this ideal varies widely. Some communities seek to preserve a symbolic and historic town center with civic uses and limited commercial development. Others seek to revitalize their town center into a mixed use district and a center of commerce that serves as a destination for people from other communities. These disparate visions demonstrate that regional planners must be cautious when making general recommendations or statements regarding “town centers.”

Not surprisingly, our review noted a stated aversion to density in many plans, even in urban communities, and a general suspicion with regard to the urban environment and the “faceless” nature of urban “commotion” that contrasts with the idealized “small town feel.”

The acquisition and preservation of open space was a major theme in the vast majority of plans, which seek to a) provide land for recreation and trails; b) maintain the aesthetic quality of the community; c) preserve water quality and wildlife habitat; or d) remove land from the market so as to slow the rate of growth and increase the value of existing residences. Despite the fact that open space protection is a major theme in many communities, plans did not demonstrate a significant willingness to pay for it. Instead, most plans recommend reliance on regulations, easements, developer set-asides, transfer of development rights, and (often unspecified) “outside sources of funding.”

These findings are just a few of the major themes, commonalities, and contradictions that emerged from our review of existing plans. To download the report and to learn more about MetroFuture, visit [www.metrofuture.org](http://www.metrofuture.org)

## Recent Cases

By Robert D. Smith, Town Attorney, Barnstable, Massachusetts

After a period of several months of what can best be described as a moratorium on significant land use law developments, the courts this month stirred and produced three decisions worthy of note in the field.

First, in the case of *Cardwell v. Board of Appeals of Woburn*, the Appeals Court determined that an applicant for a chapter 40B comprehensive permit was not entitled to a constructive grant of that permit where the board voted, but did not write and file a decision, within the 40 days required by the statute. The case, which has acquired the popular name “Archstone” (for the trust holding the plaintiffs’ property), was decided May 3.

On May 4, the Appeals Court decided to allow for some carefully limited use, in the process of deliberating on zoning relief, of evidence of the past bad land use behavior of the applicant. In the case of *Cumberland Farms, Inc. v. Zoning Board of Appeals of Walpole*, the applicant had, in 1972, installed three 6,000 gallon underground tanks at its gas station, after having received municipal approval to install only three 4,000 gallon tanks. In 1994, in the process of replacing its superannuated tanks, under the order of the board of health, the building inspector at first allowed for a straight replacement of the existing 18,000 gallon capacity. However, a few weeks later, the historic fact of the 12,000 gallon legally-limited capacity came to light, and the building inspector ordered the hastily installed new tanks to be replaced with the capacity reverted to the legal 12,000 gallons, on the theory that the 18,000 capacity constituted an expansion of a pre-existing nonconforming use, sending the matter to the ZBA. The board’s denial of the special permit to expand the nonconforming use was upheld by the court, which noted:

***The decision evidences the seriousness accorded by the board to the storage of any gasoline at this location. The board noted the history of the site and, implicitly, the board’s lack of confidence in the applicant’s attention to compliance with the town’s lawful regulations. While the board’s decision sanctioned the continued existence of the two tanks, more likely than not, the board could have lawfully exercised discretion to require removal of the tanks. The board’s action here (i.e., limitation of tank usage to 12,000 gallons instead of requiring removal of the tanks) hardly seems arbitrary or capricious....***

To the extent that the board considered the problematic zoning history of the site, both the board and the court were warranted in their hesitation to credit the conscientiousness of CFI in managing gasoline storage in the watershed district.

The plaintiffs argued that the board’s stated reasons for the national were a pretext, and the real reason was punitive and in retaliation for CFI’s historic noncompliance with

zoning requirements was essentially deemed irrelevant, because

“it is ‘the board’s evaluation of the seriousness of the problem, not the judge’s, which is controlling. ‘We have also held that ‘[s]o long as “any reason on which the board can fairly be said to have relied has a basis in the trial judge’s findings and is within the standards of the zoning by-law and The Zoning ... Act, the board’s action must be sustained regardless of other reasons which the board may have advanced”’” (citations omitted).

The final case decided just before the deadline for this writing (on May 19) involves a decision by the Supreme Judicial Court in which the writer had a part. *Home Builders Association of Cape Cod, Inc. v. Cape Cod Commission* dealt with a subject matter which is of technically limited geographical effect because it is based on the Cape Cod Commission Act. However, given the groundswell of interest in zoning reform across the commonwealth, and in particular the broad-based attitude perceived outside the building community that something needs especially to be done about the grotesque results of Massachusetts grandfathering provisions, the case is noted here as an appetizer to mainland land-use professionals.

In late 2000, the Town of Barnstable, under the guidance of a new town manager willing to become involved in land use issues, set about drafting a building permit cap provision. It was to be designed to limit most stringently market-rate residential development. It would limit less stringently the development of affordable housing (to the extent that affordable housing can be limited by any local enactment). Most importantly it was to be designed to avoid the common failing that has made most building caps nearly useless and even counter-productive: the propensity for zoning amendments (zoning being, after all, the only realistic way to achieve such caps) proposing building caps to precipitate a flood of preliminary plans so as to take advantage of plan protection under section six of chapter 40A.

Although the last requirement could not have been achieved northwest of Cape Cod, a regulatory tool contained in the Cape Cod Commission Act, specifically the “district of critical planning concern” would allow the chapter 40A grandfathering to be overpowered. The DCPC device can be characterized as a supercharged zoning proposal, consisting of both a map change and the substantive text proposal. In this case, the boundaries selected were, and had to be, the boundaries of the town. The regulation was a phased-in building cap zoning ordinance which culminates in 2005 in allowing 96 market rate units to be constructed per year, as well as 36 affordable units. In essence, what the town was seeking to achieve from a planning perspective was that the number of units at the town’s projected did build out would include its statutorily-mandated ten percent affordable component; the affordable housing would be part of, not in addition to, the buildout number.

The Superior Court had found for the plaintiffs, invalidating the actions of the Town and the Cape Cod Commission. The judge found that the exercise by the Town and the commission of the power of the DCPC for

the purpose of protecting the economic resource of land available for construction of housing so as to direct it toward construction of affordable and not market rate units, to be an inappropriate use of the act, and the town-wide boundaries established for the DCPC were not based on the types of resources really contemplated to be protected by the Act

The Supreme Judicial Court, having taken the direct jurisdiction over the case on its own motion, decided that the endeavor was an appropriate utilization of the land use regulatory tool under the Cape Cod Commission Act. The boundaries of the DCPC involved, having been judged by the relevant legislative bodies (most particularly, in this case, the county assembly of delegates) to be appropriate to do the job, were not to be second-guessed by the courts, and the Superior Court judge was wrong to have done so. Finally, although the principal argument advanced by the Town and the Cape Cod Commission to the effect that the rational basis for the use of the DCPC tool was the commission act's designation of economic resources and the perception that the land remaining to develop affordable housing stock was the specific resource to be protected, was, in a word, controversial, there was no argument by anyone that the commission act, in seeking to protect groundwater, constituted an appropriate exercise of legislative power. After finding that the groundwater protection argument had been preserved by the appellants, and not waived as argued by the appellees, the court had little difficulty finding for the Town and the Cape Cod Commission.

As noted at the outset, this case represents the application of what is probably the most useful tool that is available anywhere in Massachusetts land use regulation. It must be used with care, but its availability clearly should spread from the Cape to the Berkshires.

It represents only one of a pair of cases under consideration by the Supreme Judicial Court at the moment. At any moment, perhaps even by the time you read this, the other shoe will drop and another building cap or growth control case will probably be decided. That is the case involving the town of Hadley's growth cap bylaw. It is quite likely that that will be a topic of discussion at the upcoming June meeting in Plymouth.

## Calendar

### June 18: Negotiation Skills for Conservation & Community Projects

Doyle Conservation Center, Leominster, MA. Fee \$35, pre-register by June 7. Workshop leaders: Patrick Field and Ole Amundsen. For more information contact Andrea Freeman, Putnam Conservation Institute at [afreeman@ttor.org](mailto:afreeman@ttor.org) or 978-537-4458 x315.

### June 25: RIAPA Lobsterbake

North Beach Clubhouse on Narragansett Beach. Contact Mike DeLuca at 401-780-3171 or go to [www.RIAPA.org](http://www.RIAPA.org).

### July 12-16: Traffic Management for Land Development

CTPS hosts course in Conference Rooms 2 and 3, State Transportation Building by staff of the Transportation Safety Division of Northwestern University's Center for Public Safety. For more information contact Efi Pagitsas, CTPS, at [efip@ctps.org](mailto:efip@ctps.org) or 617-973-7106

### July 26-30: Can the City Be an Ecosystem?

8:30am-3:30pm, Boston College, Chestnut Hill Campus, Massachusetts. For more information contact Betsy Stubblefield at [stubblef@bc.edu](mailto:stubblef@bc.edu) or 617-552-1555.

### July 28-29: Environmental Professionals

Boston College, Chestnut Hill Campus, Massachusetts. Biodiversity, community-based ecosystem restoration, and environmental management in the urban context. For more information contact Betsy Stubblefield at [stubblef@bc.edu](mailto:stubblef@bc.edu) or 617-552-1555.

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## employment

### Transportation Planner, Louis Berger Group, Needham, MA

The Louis Berger Group is currently seeking a Transportation Planner for its Needham, MA location. This position, in the transportation planning/traffic engineering group, will involve work on corridor and area studies, municipal consulting assignments, and work for institutions and private developers. Preferred degrees are in urban planning or civil engineering. Prior consulting experience, particularly in traffic, a plus. Strong writing and verbal communication skills required.

William L. Schwartz, AICP CPSM  
Transportation Planning Manager  
The Louis Berger Group, Inc.  
75 Second Avenue  
Needham, MA 02494  
781-444-3330 x399 w  
781-444-0099 f  
617-306-9466 m

**Left to right: Virginia Adams, PAL, Inc., Gretchen Schuler, Preservation Planning Consultant, Jessica Rowcroft, DCR and Patrice Kish, DCR.**

The American Planning Association bestowed its prestigious Public Education Award to “READING THE LAND – MASSACHUSETTS HERITAGE LANDSCAPES: A GUIDE TO IDENTIFICATION AND PROTECTION” prepared by the Massachusetts Department of Conservation and Recreation. The awards program described the project: “Heritage landscapes are those aspects of a town that make residents feel familiar, at home and part of the history of their community. Unfortunately, many of these unique places and spaces are not protected from development by any long term legal mechanism. As part of its Heritage Landscape Inventory Program, the Massachusetts Department of Conservation and Recreation developed Reading the Land –Massachusetts Heritage Landscapes: A Guide to Identification and Protection. The book is a valuable tool to help residents who are concerned about the changing character of their communities identify their town’s most significant areas and use planning to ensure their lasting value.”

**DAN CAHILL**

**LANDUSE INC.**

Sabine Dietrich  
 Jennifer Goldson  
 APA Newsletter Co-Editors  
 Pioneer Valley Planning Commission  
 26 Central Street  
 W. Springfield, MA 01089

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**Employment Ads:** Employment and jobs wanted ads are \$25.00 per listing, which includes the newsletter and posting on the MAPA website. Send copy to the newsletter editor (email preferred) with a name and billing address.

**Consultant Directory:** Rates are \$35.00 per business card listing (one month) in the newsletter or \$350.00 for an annual listing (ten issues). Web only listing is \$10 per insertion. Send business card (email preferred) (2.33" x 1.4") to the editor.

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**Submissions:** We welcome articles, letters to the editor, photos, calendar items, project profiles, etc. Please do not hesitate to send anything you think of interest, or query editor to discuss an idea. We may need to edit due to space limitations. If possible, please send electronic version in MS Word or .txt format via email.

**Calendar Listings:** Please send listings in calendar format (see inside this issue).

**Send Items to:** Sabine Dietrich, APA Newsletter Co-Editor, Email: [s\\_dietrich@pvpc.org](mailto:s_dietrich@pvpc.org) or call 413-781-6045.

**MAPA Administrative Office:** Pauline Westhaver, Urban Harbors Institute, University of Mass—Boston, 100 Morrissey Blvd., Boston, MA 02125-3393. Phone: (617) 287-5607; email: [ma.apa@umb.edu](mailto:ma.apa@umb.edu)

**INFORMATION FOR THE  
 JULY/AUGUST ISSUE  
 IS DUE NO LATER THAN  
 MONDAY, JUNE 21, 2004.**