

# THE YANKEE PLANNER



American Planning Association  
Northern New England Chapter  
Making Great Communities Happen

A Publication of the Northern New England Chapter of the American Planning Association

## President's Message

*By Stacey Doll and Ben Frost - NNECAPA Co-Interim Presidents*

Happy Spring to everyone! As Angie Vincent leaves our region to pursue an exciting career with ICLEI, Ben Frost and I will be co-chairing the Executive Committee until our Annual Meeting in September. Ben has served on the NNECAPA Executive Committee for 4 years as the current Legislative Liaison for New Hampshire. I have served on the Committee for 3 years as the Professional Development Officer. We proudly share this role during this transitional time and will work closely with Peg Elmer, NNECAPA's Vice President/President Elect in preparation of her term which will begin this fall. We have our hands full with many new initiatives but know we will prosper and serve our membership well with the help of our strong Executive Committee.

We had a very successful Executive Committee retreat this February at the AMC Highland Center at Crawford Notch in NH. Bob Mitchell a fellow of the AICP and member of the Massachusetts Chapter of APA helped facilitate our meeting. The Committee discussed better communication with the state associations, ideas to provide more opportunities for professional development and CM, adding more dynamic features to our website, bringing a Public Information Officer (PIO) on board, and working to develop a better relationship with our universities and student involvement. From this retreat, several Committee members have embarked on taking the next steps to transpire these ideas. We have since brought Sandrine Thibault back on board as the PIO; we have formed a Professional Development Committee who will be

**Continues on Page 5**

## NNECAPA now has a Public Information Officer!

During NNECAPA Executive committee's retreat last February, we realized the need for better internal and external communications. The Public Information Officer (PIO) position was created to better our communication efforts to the membership and provide better coordination with the state associations. The PIO will be responsible for overseeing the Chapter's website, providing timely information about the activities of the Chapter to the media, chapter members, allied professional organizations, higher education institutions and general public through the use of the website, newsletter, press releases, and other appropriate means.

**Continues on Page 5**

## Volume 26, Issue 1

### Inside this issue:

Fare Thee Well, Angie	2
Signs, Signs, Everywhere Signs	3
States Grapevines	4
NNECAPA gets awarded a CPC grant	7
Events Calendar	8

### Special points of interest:

- *Book your hotel room for the 2008 Annual NNECAPA Conference NOW! (Page 8)*
- *YANKEE PLANNER is getting a makeover! (Page 2)*
- *The Vermont-New Hampshire-Maine Local Planning Photo-Sharing Online Library is coming soon! (Page 7)*

## Fare Thee Well, Angie *by Ben Frost*

At the beginning of May, Angela Vincent started a significant new chapter in her life by becoming the Director of the Northeast Office for ICLEI-Local Governments for Sustainability ([www.iclei.org](http://www.iclei.org)). While this is an extraordinary opportunity for Angie to apply her talents to the work that is her passion, it also means that she has moved to the Boston area and has resigned from her position as Chapter President. What is ICLEI's gain is clearly our loss.



To be around Angie is to be swept up in an irresistible wave of purposeful, goal-directed energy. The past several years have seen that energy directed to planning superlative Chapter Conferences, participation in APA national leadership work, and undertaking a Chapter strategic planning initiative. These efforts she engaged in while also providing superb planning work to both the City of Nashua and to the Nashua Regional Planning Commission.

Angie left her mark at NRPC (twice!) by being the moving force behind the success of the environ-

mental programs such as Brownfields program, household hazardous waste collections, water quality monitoring, as well as the NH DOT Community Technical Assistance Program, and numerous hazard mitigation, master plans, and other planning duties assigned to her.

“Angie’s bright optimism and can-do attitude will be sorely missed by me and her colleagues at NRPC” laments Kerrie Diers, Assistant Director.

As a “constituent” in an NRPC community, I witnessed firsthand the quality of Angie’s work and her dedication. Beyond that, however, she also volunteered her time as one of the founders of Nashua’s “Green Team,” and continues to energetically raise funds for the Susan B. Komen Breast Cancer 3-Day Walk for the Cure. Her commitment to the public good serves as a model for us all. But it is her kind friendship that will leave the most enduring impression on those of us who have had the very good fortune to work with her. We will miss you.

## A “MAKEOVER” for the Yankee Planner

NNECAPA’s own Yankee Planner is getting a makeover this summer. Make sure to read our next issue later in August and witness the changes we are proposing to improve this quarterly publication.

Here are some of the NEW sections we are adding:

- **Northern New England Community Highlight** will underline great work being done around our three states and offer a chance to local planners to present projects/plans/initiatives they are proud of.
- **The Students’ Corner** is a chance for our future planners and their teachers to shine and let us know what they are working on.
- **Sustainability in the North** will emphasize work being done on energy efficiency, climate change and/or greenhouse gas emissions and carbon footprint reduction by planners in the region or around the country.
- More NEW sections will include **Academics** and **NNECAPA in the news**.

## Signs, Signs, Everywhere Signs - Local Ban on Electronic Signage Upheld

by Ben Frost

Last fall, the Northern New England Chapter 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.

In this case, Concord, New Hampshire 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 a different case that was recently decided in the City’s favor by the New Hampshire Supreme Court. See an article on this state case at [www.nhplanners.org](http://www.nhplanners.org).

**Federal Trial.** After that action was initially filed in state court, 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.

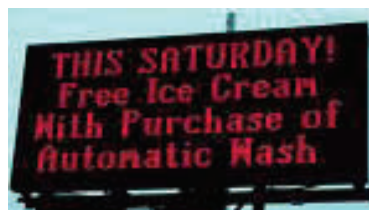
The District Court found that the ordinance that completely banned EMCs was a content-neutral exercise of the police power (not aiming to advance or suppress a particular viewpoint) that served a legitimate state interest. Naser argued that the or-

dinance 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.”



Continues on Page 6

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## State Grapevines

### **VERMONT by Tara Bamford**

Lee Krohn, AICP just published a photographic inventory of Manchester's historic districts as an update to Vermont's 1986 historic survey. This publication notes past and present uses of these historic buildings, and changes that have occurred over time. Lee notes that despite the vast changes that have occurred in Manchester's downtown over the past two decades, the four historic districts remain remarkably intact, and if anything, are in better economic and physical condition than they were in the mid-1980's. This was a fascinating and unanticipated discovery! The document can be found online at [www.town.manchester.vt.us](http://www.town.manchester.vt.us). Among many other venues, Lee's photography can also be found in recent issues of Vermont Magazine and Vermont Sports Magazine, where his images have illustrated stories about family farms, country stores, and whitewater kayaking. Stay tuned for upcoming projects covering other intriguing and wonderful aspects of life in Vermont communities.

Taking the helm at Chittenden County RPC after Greg Brown's retirement on July 1st is Charles Baker. He is currently the Land Use General Manager for Newcastle County Delaware, based in Newark, where he has worked for the past eight years. Prior to that he served as Deputy Director and then as Acting Executive Director for the MPO serving Newcastle County Delaware and Cecil County Maryland.

Jeff Arango will be leaving his position as Development Director for the Village of Essex Junction August 1 to attend graduate school in Urban Planning and Design at the University of Washington in Seattle.

Brian Shupe recently stepped down from his position as Program Director at Smart Growth Vermont

to become the Sustainable Communities Program Director at the Vermont Natural Resources Council.

### **NEW HAMPSHIRE by Mikaela Engert**

Big news from OEP! Tom Duffy retired on May 30<sup>th</sup>. He had been the senior planner in the State Data Center for quite some time and had been with OEP since about 1970. A retirement party took place for Tom on June 4<sup>th</sup> in Concord. Congratulations and best wishes!

North Country Council Hazard Mitigation Planner Dan Shallow and GIS Analyst June Garneau recently completed a step by step how-to manual for NH planners on incorporating wildlife plan requirements into the multi-hazard mitigation plan. Contact NH HSEM for a copy. Multi-talented Dan Shallow will soon return to one of his other loves as Principal of Stratford High School. Congratulations Dan!

### **MAINE by Carl Eppich**

Planning consultant Bruce Mayberry announced that he has moved to the office campus at Pineland Farms in New Gloucester, Maine. His new email address is [bcmplanning@securespeed.us](mailto:bcmplanning@securespeed.us) and the telephone number is (207) 688-8433. The business address is 49 Pineland Drive, Suite 202B, New Gloucester, ME 04260

Daniel Stevenson has left his position as Director of Tax Incentive Programs for the State of Maine Department of Economic and Community Development (DECD) and accepted a consultant position with the Eaton Peabody Consulting Group, LLC. Dan was a former Biddeford City Planner and a CDBG Project Manager for the Office of Community Development. Best of success in your transi-

**Continues on Page 7**

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## President's Message (Continued from Page 1)

meeting with the state associations in late June to discuss Certification Maintenance and professional development opportunities; we have engaged our website consultants who are in the process making changes to our site; and we have formed a committee of representatives from the university system, Steve Whitman from Plymouth State, Mary Robertson from University of New Hampshire, and Peg Elmer, NNECAPA Vice President, from Vermont Law School, as well as Melissa Mooza as our student liaison. We are excited about these new developments and will provide updates to our membership, as well as ways to get involved, as these initiatives grow.

Thank you for your continued support; we look forward to a very exciting year! Enjoy the spring sun and warmth!

## NNECAPA now has a Public Information Officer! (Continued from Page 1)

More specifically, the PIO will be tasked with:

- Acting as the Chapter coordinator for all media relations, working closely with the Chapter President, a Chapter Editorial Board and other members of the Executive Committee.
- Start establishing a database of expert/spokesperson contacts on different subjects as a resource for the newsletter and media articles/letters to the editor.
- Acting as the new Chapter newsletter editor, working closely with other members of the Executive Committee.
- Establishing and maintaining relationships with other APA chapters, planning organizations and allied professional organizations regarding workshops, conferences, planning concepts, legislation and other appropriate matters.
- Working with the faculty liaisons and student representatives to establish and maintain relationships with higher education institutions.

Sandrine Thibault, past NH State director until she accepted a position with the City of Burlington, VT earlier this year, was appointed Public Information Officer in April. We welcome her back! Sandrine is excited to join NNECAPA again and has hit the ground running. She has already started work on a re-design of the newsletter so make sure you check out our next publication.

### **Are you working on an innovative project in your community?**

### **Have you just finalized the creation or update on a plan you are proud of?**

Please share your successes with your peers and submit an article for the NEW Northern New England Community Highlight section of the Yankee Planner!

Contact NNECAPA PIO Sandrine Thibault ([sthibault@ci.burlington.vt.us](mailto:sthibault@ci.burlington.vt.us)) for information and publication deadlines.

## Signs, Signs, Everywhere Signs - Local Ban on Electronic Signage Upheld (Continued from Page 3)

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 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 Chapter’s Participation.** Until recently, the APA filed amicus briefs without consulting with the chapter from where the case originated. Because of policy changes by the APA’s Amicus Committee, the APA now requests the input of the chapter, as was done here. In the fall of 2007, the City of Concord sought the participation of the American Planning Association, which deemed the case of sufficient importance to file an amicus brief. As part of its new process to develop a brief, the APA’s Amicus Committee sought the Chapter’s viewpoint and participation. The Chapter’s executive committee agreed to join with the APA in filing the brief with the First Circuit, although concerns were raised about the appropriateness of the Chapter participating in an ongoing legal action, in part because of the diversity of the Chapter’s membership. This issue was subsequently discussed at the Chapter’s business meeting at the annual conference in Portland, Maine in October 2007. The conclusion of that discussion was that it was generally appropriate for the Chapter to participate in such matters, but that it would be beneficial to seek the input of the membership through the Chapter’s listserv.

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

## State Grapevines (Continued from Page 4)

tion to the private sector side of the ledger. Maybe more \$\$\$?

Erik Carson has left his position as the Director of Economic and Community Development for the City of Westbrook and accepted the position of Assistant City Manager/Economic Development Direct for the City of South Portland. Erick was formerly with the State Planning Office

Augusta's first Assistant Planner, Crystal Hitchings, is leaving Maine for a full-time planning position in Portland, Oregon. Crystal leaves her twenty-five hour a week position with Augusta (pop. 18,600), where she assisted the full-time planner and one support person, for a full-time position in Portland (pop. 568,300) where there are seventy-four full-time planning positions and sixteen support staff. Crystal's exit is a loss to the state of a person that was new to the planning field. Given how challenging it is to attract young planners to a state with few job opportunities and even fewer advancement opportunities for planners, her departure is particularly difficult. Crystal had been with Augusta since October of 2006.

Carolyn Tukey has moved from Topsham to become the Town of Harpswell's Town Planner. She started there at the end of December after about a year and a half in Topsham's Planning office.

Jamie Francomano is the new City Planner in Presque Isle.

The Town of Waldoboro has created the new position of Planning and Development Director. The new job also includes collateral code enforcement responsibilities.

## NNECAPA gets awarded a CPC grant!

NNECAPA recently received a \$2,500 APA Chapter Presidents Council (CPC) grant for a project called the "Vermont-New Hampshire-Maine Local Planning Photo-Sharing Online Library". The goal of this project is to develop an innovative communication mechanism, through internet-web technology, for the graphic and illustrative sharing of planning knowledge and tools.

Only through a photographic medium can enough detail about the physical manifestation of planning language be understood. Comprehensive understanding can best be achieved through photographs and images for analyzing if specific innovative solutions are appropriate for an individual's own locality. Key components to its success will be broad openness to the community and its dynamic nature.



Sachem Village, Lebanon, NH

The end product will be a photographic library, tagged and searchable which is distributable through the internet/web. Keep reading the Yankee



Burlington Cohousing, Burlington, VT

Planner for more information as we start working on this great project and ask for your help.

## **NNECAPA's Executive Committee**

### **Co-Interim Presidents**

Stacey Doll, AICP  
Benjamin Frost, AICP

### **Vice-President/President-Elect**

Peg Elmer, AICP

### **Past-President**

Donna Larson, AICP

### **Secretary**

Dawn Emerson, AICP

### **Treasurer**

Herbert Durfee

### **Professional Development Officer (PDO)**

Stacey Doll, AICP

### **Assistant PDOs**

Anna Breinich, Maine  
Lee Krohn, AICP, Vermont

### **ME State Director**

Carl Eppich

### **NH State Director**

Mikaela Engert

### **VT State Director**

Tara Bamford

### **NH Legislative Liaison**

Benjamin Frost, AICP

### **VT Legislative Liaison**

Sharon Murray AICP

### **Chapter Historian**

David White, AICP

### **Public Information Officer**

Sandrine Thibault, AICP

### **Faculty Liaisons**

Mary Adamo Robertson  
Steve Whitman, AICP

### **Student Representative**

Melissa Mooza

## **Events Calendar**

### **A Natural Approach to Landscaping & Streetscaping**

**Date:** June 26, 2008

**Time:** 6:30-8:30 pm

**Venue:** Nashua Regional Planning Commission, 115 Main St. , 3rd floor ([directions](#))

**Speakers:** Mary Tebo, Community Forestry Educator at UNH Cooperative Extension and Nick Caggiano, Superintendent of Parks & Recreation for the City of Nashua

**RSVP:** by June 23 to [Karen Baker](#), 603-883-0366 x11.

**Details:** Well designed landscapes and streetscapes do more than beautify a community and enhance property values. Landscapes that are designed to mimic the natural ecosystem provide wildlife habitat, promote biodiversity, reduce pollution, protect soil & water quality, and can save communities money. This interactive workshop will include an outdoor component along Main Street.

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### **2008 NNECAPA Annual Conference**

**Date:** September 4 & 5, 2008

**Venue:** Woodstock Inn, Woodstock, VT

**Details:** Preliminary Program is available on the NNECAPA's website at: [www.nnecapa.org/resources/](http://www.nnecapa.org/resources/)

Book your hotel room now by calling the Woodstock Inn at 800.448.7900. Discounted overnight rate is \$160.

Registration will be open shortly and material will be available on the NNECAPA's website.