



Feature Article

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***This electronic
newsletter is
published four
times annually
by the APA-STaR
Division.***

Natural Resource Protection Zoning as The Green Side of Smart Growth: Reflections and Lessons from Massachusetts

By Jeffrey R. Lacy, AICP, Robert W. Ritchie, Esq. and Joel S. Russell, Esq. (Jeff Lacy delivered a presentation on this topic at the 2011 STaR Division Dinner in Boston.)

Massachusetts planners put tremendous energy into servicing the zoning laws in their communities. But are the legitimate ends of zoning really fulfilled by the means currently available in our state for protecting natural resources, environmental quality, or community character? The authors do not believe zoning has nearly lived up to its potential, and the Commonwealth has been diminished for it.

One size has been asked to fit all in Massachusetts (and in many states). By that we mean zoning lot-size requirements of 1-3 acres per dwelling – mostly,

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From the Chair

Dave Gattis

A Time to Reflect

It's hard to believe that another year has come and gone. December is a good time to reflect on our accomplishments during the past year and, as good planners, look forward for things to come. Looking back over the past year, STAR has continued to do great things.

Kevin Fletcher continues to produce an excellent quarterly newsletter that equals or exceeds the quality of other Division and Chapter newsletters. Thanks also go to the authors and contributors who make the newsletter what it is. I invariably receive compliments from other APA leaders about our Newsletter. I also compliment Kevin on the excellent survey of STAR members conducted earlier this year.

Anne Krieg put on a great session and mobile workshop at the Boston conference last April. The session was on a transportation project that ran through several small towns in Maine, while the mobile workshop presented economic development efforts in Ipswich, Massachusetts. We also put on our first Division Dinner in Boston, with Jeff Lacy talking about Natural Resource Protection Zoning. Many people liked the intimate format to interact with other small town planners over dinner, as well as get CM credit.

Anne and the Awards Committee selected great projects and people to recognize for their outstanding contributions to small town and rural planning. Too often, the work done in small towns is overlooked even though we must be more creative with our limited resources. STAR also nominated one of our members to be a Fellow of AICP, and we hope to have good news at the Los Angeles conference. Speaking of CM credit, the Division sponsored another great webinar on *Small Town and Rural Design Standards* in November, given by Bob Barber, Belinda Stewart and Joanne Garnet with over 700 participants.

The Division sponsored three student internships in the Spring, allowing graduate students to experience planning in small town and rural settings while allowing those jurisdictions to benefit from their assistance. Kudos go to David Birchler and the STAR Education Committee for those efforts.

STAR remains active on the national policy level, providing assistance to APA's Legislative and Policy Committee in updating some of the policy guides, and walking the halls of Congress in September to support federal sustainability and CDBG programs.



Dave Gattis, FAICP,
Deputy City Manager
City of Benbrook, Texas

STaR Division

2010 - 2012 Executive Committee

Chair, Dave Gattis, FAICP, CFM, ICMA-CM

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dbirchler@birchlarroyo.com

Immediate Past Chair

Dale Powers, AICP

Zia Planning Consultants
dalepowers@ziaplanning.com

("From the Chair" continued...)

Finally, thanks to all the committee members and volunteers that have chipped in over the past year, for the strength of our Division is in our members.

A Time to Plan

December also is a good time to look forward to the New Year. We have great plans for the Los Angeles conference, with details elsewhere in this issue. Join us for our Division Dinner, conference session, mobile workshop to Catalina Island, and our Annual Business Meeting and Awards Presentation.

Our next CM session has been scheduled for February 29th covering sand and gravel mining regulations. These are free to STAR members, so take advantage of the opportunity.

Finally, 2012 will be a time for change for the Division as we elect new officers. We've identified a number of excellent candidates, so look for your ballots in January. Thanks to Jim Segedy, Mickey Rhoades, and Bob Barber who served as the Nominations Committee.

No matter how you celebrate during this season, I hope you enjoyed, and I wish a Happy New Year to you all!

Follow APA-STAR Division on LinkedIn and Facebook

You can now follow APA-STAR Division on LinkedIn (www.linkedin.com) and Facebook (www.facebook.com). Both services are free and allow members to exchange ideas.

On LinkedIn, our group is "Small Town and Rural (STaR) Planning Division—American Planning Association."

On Facebook, our group is "APA-Small Town and Rural Planning Division."

REMINDER...

STaR Officer Elections

Vote by February 2, 2012 (11:59 pm)

Candidates

The Nominating Committee is pleased to present the following slate of well-qualified candidates. We thank all those who stepped forward to run for office.

Please read the description for each position and each candidate statement. Each candidate was allowed a 300-word candidate statement and was requested to respond to a number of specific questions with responses that did not exceed 100 words. The candidates' bios and statements are found online at the following link:

www.planning.org/divisions/smalltown/elections/

Chair

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Don Threewitt

Protection Zoning—continued from Page 1

single-family dwellings – accompanied by lengthy frontages and deep setbacks. These are the predominant zoning requirements for individual building lots across the Commonwealth, from the Berkshires eastward, even into Metropolitan Boston. But instead of protecting community character, this kind of “growth management” inevitably produces the sprawl-scapes that stand in such stark contrast to the classic “town and country” landscape that is one of New England’s most iconic, and bankable, hallmarks.

In suburban and urban regions, these lot requirements are out of character with older settlements and squander available public sewer and water service opportunities. What open land remains in these communities is more rapidly consumed in one to two acre bites. In such places, these minimum lot sizes are far too large and often are exclusionary. In rural towns, minimum lot size requirements of two or three acres and greater chew up the countryside at a more rapid rate, fragment wildlife habitat, and create parcels too small to support farming or forestry.

When cluster development options or requirements are introduced and based upon the underlying conventional zoning, the results have proven unsatisfactory. While a more aesthetically pleasing way to subdivide land that affords marginally better protection for wetlands, the remainder lands preserved by most cluster development are inadequate to fulfill their resource protection purposes, whether to sustain farming or forestry or protect

habitats, scenic views, or water supplies. Reliance on the underlying zoning for purposes of determining allowable lot counts often yields too many housing units, an insufficient amount of protected open land, and layouts that destroy the natural resource and environmental value of the remaining land.

These inadequacies stem largely from a lack of planning options for rural communities and environmentally important portions of suburban and resort communities. Many Massachusetts towns view larger lot sizes, sometimes supplemented by an option to cluster, as the furthest extent to which local regulations can go to preserve natural resources and community character. Consequently, Massachusetts has relied heavily on land acquisition in fee and land protection through Conservation or Agricultural Preservation Restrictions as the workhorses of open space preservation. The effectiveness of such a system is limited because inadequate local land use regulations inflate land values, creating unrealistic and inappropriate expectations on the part of landowners, thereby ensuring that limited funds can protect only a few select parcels. As development demand heats up, the remaining properties will inexorably be divided into large lots or clustered into somewhat smaller lots with scattered filaments of open space (often wetlands and the peripheries of subdivisions). At build-out in either case, the historic town center will be stranded in a homogeneous sea of sprawling residential development. What little open land remains will largely follow stream drainage corri-



Three acre conventional zoning on the ground in Oakham, MA

Shutesbury Open Space Design Worksheet

Dwelling Units

#1. Determine acreage of the entire project.	
#2. Determine the combined acreages in the RR, TC, and/or LW zones.	
#3. Determine the acreage of constrained lands in the three zones: 1/2 of slopes >20%; and <u>all</u>	
#4. Subtract, as indicated above, either one-half or all of the acreages in #3 from the total area of	
#5. Divide the remainder acreage in the RR, TC, and/or LW zones by three (3).	
#6. Determine the acreage in the FC zone.	
#7. Determine the acreage of constrained lands in the FC zone: 1/2 of slopes >20%; and <u>all</u> freshwa-	
#8. Subtract, as indicated above, either all or one-half of the acreages in #7 from the total area of	
#9. Divide the remainder acreage in the FC zone by five (5).	
#10. Combine the results of #5 and #9 and round up or down (less than 0.5 = down, 0.5 or greater	
#11. Add in any dwelling units from density bonuses and/or TDR to arrive at the maximum dwell-	

Open Space

#12. Multiply the total RR, TC, and/or LW acreage (from #2) by 0.65.	
#13. Multiply the total FC acreage (from #6) by 0.8.	
#14. Add #12 and #13 to equal the base acreage of open space.	
#15. Add any additional open space from density bonuses, if any, to arrive at total acreage of open	

Developable Land

*Lacy et al.—Protection Zoning:
The worksheet used in Shutesbury, MA to calculate dwelling units, open space,
and developable land from basic mapped information.*

Santa Catalina Island: Small Town Planning in the West 2012 APA National Conference Mobile Workshop

Different parts of the country face unique planning challenges not experienced elsewhere. In the American West, there are several such planning challenges:

- Providing affordable housing for resident workers in resort communities with predominantly upscale housing;
- Accommodating transportation needs of residents of island communities with limited opportunities for employment and shopping;
- Allocating water supplies. (Water is a BIG issue in the American West, with interstate compacts determining how much water each state can use, as well as competing demands of agricultural and urban usage);
- Balancing good land stewardship with property rights and creating economic opportunities for residents; and
- Accommodating growth in resort communities with geographic limitations for outward expansion.

Each one of those challenges would make a great topic for a mobile workshop especially within the 2012 National Conference's Los Angeles venue. To have all of those topics covered in one mobile workshop is a good use of your agency's training dollars.

STaR Mobile Workshop

"Santa Catalina Island: A Microcosm of Small Town Planning Issues in the West", on Tuesday, April 17, does all of that and more! For much less than the cost of several mobile workshops, you will experience firsthand how Santa Catalina Island and the City of Avalon have addressed these issues. Your learning experience will be enhanced, as well, by the breath-taking beauty of the Island community.

In addition to actually seeing how Santa Catalina Island addresses each of the five challenges listed above, you'll also be intrigued to learn more about:

- Why there is freshwater and saltwater service to each structure on City sewer and water;
- Why there is a 17-year wait to keep a car on the island; and
- Why the Casino is not for gambling, and what it is used for.

Your mobile workshop hosts will be Siri Eggebraten, Associate Planner for the City of Big Bear Lake, California; Anne Krieg, STaR Vice-Chair of Programs; and Dale Powers, STaR Immediate Past Chair. En route to the island, Siri will give an overview of California planning law, including the California Environmental Quality Act (CEQA), and the role of the California Coastal Commission in land use decisions.

After landing at Avalon, attendees will be welcomed by Amanda Cook, Planning Director for the City of Avalon. The group will be taking trolley cars up to Wrigley Memorial Gardens. During the trolley ride, Amanda will share with the group the historical context of Santa Catalina Island and how that context has influenced land use planning. At the Memorial Gardens, Mel Dinkel of the Catalina Island Conservancy which controls over 80% of the land area of the island will describe the Conservancy's role as steward of the undeveloped land and the role of eco-tourism in business development.

Partner Corner:

Rural Counties Take Action

By Erik Johnston, Associate Legislative Director,
National Association of Counties

Reprinted with permission from the author from:
www.ruralfutureslab.blogspot.com

Growing up in southwest Virginia I was oblivious to the investments made by my state, federal and local government that made life better for my family and community. That all changed in high school, when my government teacher ran and won a seat as a supervisor representing the mostly rural and suburban western portion of Roanoke County. I shadowed him and got a sense for the important role that local governments play in creating a quality of place through investments in education, infrastructure, job training, justice, public safety, health, social services, homeland security, environment, land use, community and economic development and numerous other roles.

Now I serve as the National Association of Counties' (NACo) Associate Legislative Director for Agriculture and Rural Affairs issues and work as staff liaison to NACo's Rural Action Caucus. NACo's bipartisan Rural Action Caucus serves as the voice of America's rural counties before Congress and the Administration. In my role, I've worked with county elected officials and staff from across the country who inspire me by their dedication to improving opportunity and quality of life in rural America.

However, it is clear that these public servants and the rural counties they serve are facing challenges that have not been seen in a generation. NACo's Deputy Executive Director, Ed Ferguson recently wrote a commentary regarding the difficult landscape facing county governments in NACo's County News Publication.

In the commentary, Ferguson sums up the situation facing counties, "The continuing effects of the

most severe and extensive downturn in the U.S. economy since the Great Depression of the 1930s, and increasingly negative public attitudes toward government and government employees have made the job of governing and managing counties difficult. At the same time, these pressures have presented county officials with opportunities — opportunities for improved service-delivery models, opportunities for partnering and consolidating, and opportunities for new approaches toward revenue generation and spending." A recent NACo survey reinforces the current challenges and opportunities enumerated above.

For many rural counties these challenges are not new, but have existed for decades. ERS's recently released poverty geography demonstrates the longstanding challenges facing many portions of rural America, including the 340 persistent poverty rural counties.

So what can be done in the face of such a difficult landscape? There are 3,068 counties and they all are seeking to meet these challenges in unique ways. Many are implementing improved service-delivery models, partnering and consolidating, and finding opportunities for new approaches toward revenue generation and spending.

As a representative for rural counties in Washington, DC my members are asking me to focus on three main items at the federal policy level. First, we are educating members of Congress and the Administration about the key federal investments and commitments that are critical to serving rural America and investing in its potential. This includes maintaining funding for transportation and aviation infrastructure, rural development programs, rural health funding including Medicaid and historic federal commitments to counties with public lands through Payment in Lieu of Taxes and Secure Rural Schools. See link to NACo's Rural Action Caucus Priorities.

Right now the Joint Select Committee on Deficit Reduction is making decisions that will impact rural counties for decades to come. NACo is advocating for a balanced approach. All expenditures

should be considered, including defense, foreign aid and federal entitlement reform, along with other domestic spending. Additionally, revenue enhancements should not be left "off the table". Although reducing discretionary domestic spending is part of the answer, it cannot -- and should not -- be the only sector that is considered. See NACo's recommendations to the committee.

Second, NACo's rural members are advocating for increased flexibility to collaborate within their region to deliver services and promote economic development. A major weakness of many federal rural economic development programs is that they are not structured to serve rural regions. The NACo led Campaign for a Renewed Rural Development is working to reorient and improve USDA Rural Development programs through the Farm Bill process so that the agency has greater flexibility to encourage the local and regional partnerships that are currently encouraging innovation in rural regions across the country. The Campaign's Farm Bill principles were released in September.

Lastly, NACo's Rural Action Caucus is strengthening its focus on advocating for relief from unfunded federal mandates. Unfunded federal mandates burden rural taxpayers and counties with significant costs. These mandates are especially burdensome in the current economic climate and can range from overly burdensome financial reporting requirements for small rural grants to proposed environmental regulations that threaten to force counties to obtain permits to clean county owned ditches.

Local government is often the forgotten form of government. Like me, before my introduction to the world of counties, most rural citizens do not think about the critical role that their rural public servants play in creating a thriving place. The current challenges facing rural local governments require more rural people to look under the hood and be part of the solution to the challenges facing their community. As a rural advocate, I ask you to also communicate to your state and federal legislators the critical need for the federal government and states to maintain a strong partnership with rural counties, cities and towns. Passing all problems down to the local level is not a solution for America, rural or urban.

STaR Mobile Workshop... Continued from Page 6

Lunch will be served at the beautiful Catalina Island Country Club. During lunch, a representative of Hamilton Pacific LLC will share with attendees the challenges of constructing affordable housing on the island, where the scarcity of available buildable land drives up housing costs; Audra McDonald of the City of Avalon will discuss transportation grants that help offset the high costs of travel to the mainland; Wayne Griffin of the Catalina Island Chamber of Commerce will talk about the impact of tourism on the local economy; a representative of Southern California Edison will share with the group how saltwater is converted to freshwater; and, a representative of Environ Strategy will explain why saltwater is run into structures on the island.

Of course, it wouldn't be a STaR mobile workshop without some interesting wrinkle. After the formal presentations, attendees will have 90 minutes to join in a special investigative exploration of Avalon (on foot or by golf cart) based on what was presented at the workshop; visit the Casino with its unique architecture and history; visit the various tourist attractions of the area; or simply walk around and enjoy the beauty and unique architectural styles of the City of Avalon.

Finally, on the return trip there will be a trivia contest based on a combination of learning experiences, and just plain fun! Prizes will be awarded and all attendees are guaranteed to win a memento of their experience on the island.

The all-day workshop leaves at 7:00am from the Convention Center and returns to the same place at 7:30pm. There will be a fair amount of walking on this workshop, so bring good walking shoes!

While this mobile workshop is more expensive than others, the awarding of 8.0 AICP CM credits makes the experience well worth the expense. It's like participating in 5 different workshops without paying for 5 different workshops.

If you have any questions about the mobile workshop, contact Dale Powers at (320) 493-8930 or dalepowers@ziaplanning.com.

Protection Zoning—Continued from Page 5

dors, but will hardly resemble the countryside that once comprised most of the town’s area.

Many planners and housing advocates decry the larger lots and push for universally smaller lot sizes to stimulate the production of needed housing. But the prospect of merely allowing smaller lots everywhere conjures up nothing more than denser suburban sprawl in the minds of local officials, who foresee traffic congestion and increased demands for schools and other municipal services.

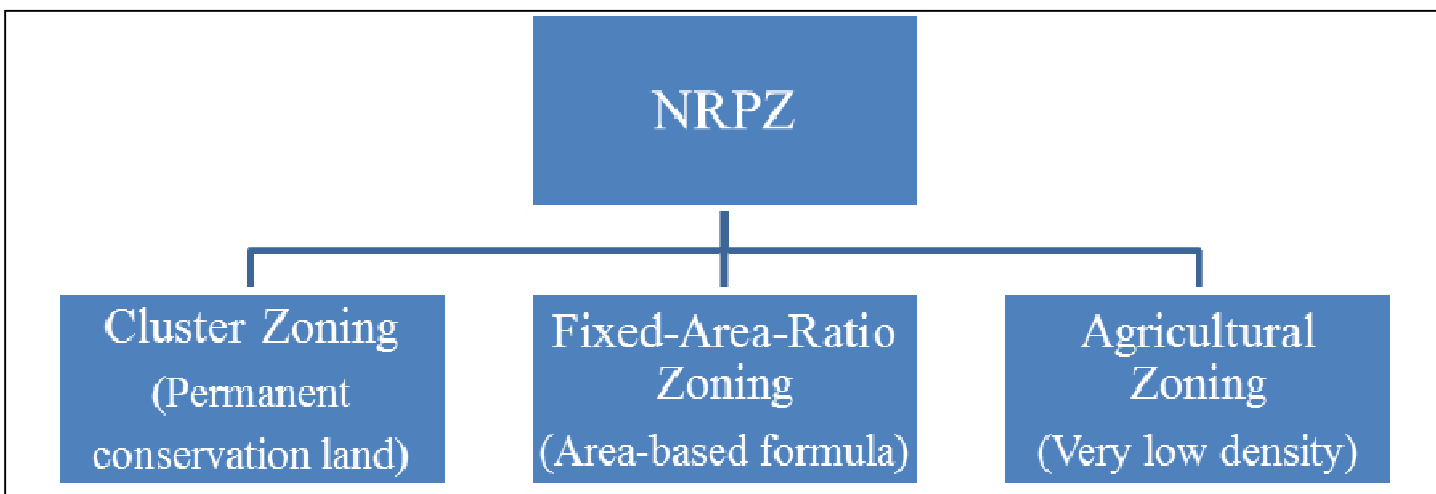
Some advocate increased densities solely in existing centers and designated growth areas. The problem with this approach is that it is too one-sided and does not represent balanced planning that responds to the full range of a town’s goals. Increasing density in planned growth areas, while highly desirable, will remain politically unpalatable unless it is accompanied by reasonable measures to curb development in other areas (which would otherwise continue apace). Without this added conservation component, the higher density areas will eventually be surrounded by the inefficient and destructive sea of sprawl described above – a zoning prescription that is completely at odds with what most towns envision for the future.

In the end, towns will cling to using ever-larger lots for lack of any better growth management strategy. Although other states have evolved significantly beyond this ineffective tool, Massachusetts continues to run circles within a box of its own making.

Natural Resource Protection Zoning

These rather dismal prospects lead us to the argument that it’s time for a new countryside zoning model in Massachusetts. Fortunately, we don’t have to start from scratch; other similar states have grappled with these issues and offer some good models to consider. Pennsylvania and Maryland have embraced a more complete vision of smart growth by complementing their higher-density new urbanism tools with lower-density techniques in areas of high natural resource value, in other words – density diversity. Around the country, tools such as these are applied using base development densities ranging from 10-160 acres per unit of housing combined with zoning mechanisms that either: 1) ensure that land is not divided into smaller units than can be viably farmed or managed for forestry; or 2) concentrate or transfer allowed development rights so that the balance of the land may remain in its current use.

One lower-density technique, inspired by some successful out-of-state models and dubbed by the authors as Natural Resource Protection Zoning (NRPZ), has already gained a toehold in Massachusetts. Versions recently have passed overwhelmingly at town meetings in Shutesbury, Brewster, and Wendell, and similar bylaws are under development in a several other towns. NRPZ borrows on successful programs used elsewhere to accomplish what its name suggests by linking meaningful land conservation to land development. NRPZ can take a number of forms, but the essence is to combine low underlying densities with compact patterns of development so that significant areas of land are left permanently undeveloped and available for agriculture, forestry,



Partner Corner—Continued from Page 8

recreation, watershed, carbon sequestration, and wildlife habitat.

NRPZ emphasizes current, natural-resource-based uses over typical development. Limited residential uses are allowed, but the overall amount is much less than in other areas of a community. Some common elements of an NRPZ by-law are:

- There is no “underlying zoning;” NRPZ is the zoning for the selected area.
 - Subdivisions must comply with NRPZ requirements in order to be a use by-right; proposed deviations, including the conventional subdivisions that are currently allowed by-right in almost every town, require a special permit. The special permit proposal must meet the objectives of the zoning district as least as well as an NRPZ plan.
 - NRPZ is an option for non-subdivision development (i.e., ANR and condominiums).
 - The number of allowed dwelling units is calculated up-front by formula (see worksheet, below). There are no “yield plans” or conventional subdivision plans drawn. Constrained lands, such as wetlands and steep slopes, are wholly or partially subtracted from the gross project area; the remainder land is then divided by a selected “density divisor” of 3–10 or more acres per dwelling unit to arrive at a unit count. Although the example below shows a reduction in dwelling units from a conventional plan, that is not always the case. Numerous examples based on actual properties have shown the same or even additional units possible under NRPZ.
- The percentages of required open space are high, from 65–90%, leaving a significantly smaller area, between 10–35%, for development.
- Developed and open space areas are carefully selected on the parcel by way of a “conservation analysis” process built into the subdivision regulations.

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Hello to STaR members...

Final touches are happening for the conference in Los Angeles. Yes, there is a dinner on Monday night, the topic will be on Big Bear, California. Don't forget to sign up for the mobile workshop Dale Powers coordinated - it's a special trip to Catalina Island! Also remember to come to the business meeting on Monday for breakfast (I know it's early but please come!)

Also, it's awards time - the same committee from last year will be reviewing awards. The deadline is soon so get moving! I know many of you have done great work this year so please nominate those wonderful small town and rural projects and people! (See page 13 for the award form.)

I am grateful for everyone's patience these past 6 months and I look forward to better times ahead! Best wishes for fun planning for the Chicago conference in 2013!

Anne Krieg, AICP

STAR Newsletter: Submission Requirements

- Deadline for March 2012 issue: February 28th
- Short (800 word) to Longer (1500 words) pieces accepted
- Must be single space and in Microsoft Word
- JPEG pictures preferred if submitted with the article—do not embed them in the piece
- A paragraph on the biography of the author
- Email your article to Kevin A. Fletcher, Ph.D. Vice Chair/Communications
kevin.a.fletcher@gmail.com

Member Highlight/Members in the News

If you have been promoted, get a new job, received an award and/or public commendation, deployed to the war or return from deployment, appointed to a leadership position, or elected to a public office, please send us a paragraph because STaR would like to know. Send your information.

STaR Member Spotlight: Nan Stolzenburg

One of the First Advanced Credentials in Environmental Planning

STaR Division member Nan Stolzenburg was recently named one of the first individuals in the United States to earn an advanced credential as an AICP Certified Environmental Planner (AICP CEP). Ms. Stolzenburg is one of thirty-three people nationwide who have earned this recognition.

Principal Planner and founder of Community Planning & Environmental Associates in Berne, New York, Ms. Stolzenburg has a Master's Degree in Regional Planning from the University at Albany, a Masters Degree in Fisheries and Wildlife Biology from the University of Massachusetts, and a BS Degree from SUNY Environmental Science and Forestry, Syracuse. She has over 20 years of professional and technical experience in many areas of land use and the environment, with special interests in small town and rural planning, community revitalization, comprehensive planning, and agriculture and open space planning. Her specialty areas include comprehensive plans, development of zoning and land use programs and regulations, planning for community character, and environmental analysis and site planning. She has developed comprehensive and strategic plans for over 50 different communities throughout the Northern Catskills, Mohawk Valley, Capital Region, Hudson Valley, Central New York, and Northern New York, some of which have won national and state-level planning awards.

About the Certified Environmental Planner Designation

The Advanced Specialty Certification in Environmental Planning recognizes an individual's in-depth knowledge, experience, and leadership skills in environmental planning. AICP CEP recognition is awarded to certified professional planners who have achieved an exceptional level of expertise in the art and science of advanced environmental planning, including: analysis of complex environmental planning problems; creation of feasible solutions; coordination across constituencies and disciplines; and recommendations that efficiently integrate natural systems into the full set of systems necessary for healthy and sustainable communities.

CEP recognition requires environmental planners to draw not only on their knowledge but also on their experience and familiarity with natural systems, performance measures, best practices, and comprehensive planning. According to Karen Wolf, Senior Executive Policy Advisor in the Office of Strategic Planning and Performance in King County, Washington and one of the developers of the AICP Certified Environmental Planner examination, "Environmental planners constantly face challenges involving tradeoffs among growth, development, and environmental protection. The AICP CEP credential emphasizes the importance of solutions that are comprehensive, sustainable, and long term. The AICP CEP credential recognizes the role environmental planners play bridging the gap between science and planning, working in both of these disciplines to find ways to accommodate growth while also protecting the environment."

For more information about the AICP CEP visit <http://www.planning.org/asc/environment>. The application deadline for this year is February 28, 2012.

Send Us Your Updates

We congratulate Nan and invite other members to send us updates on professional achievements and milestones. Email Kevin A. Fletcher at kevin.a.fletcher@gmail.com.

Protection Zoning—Continued from Page 10

- Greater design flexibility is offered in the developable areas (e.g., shared driveways, diversity of housing types, no specified lot sizes, frontages, or yard setbacks).
- Earned density bonuses and/or transfers of development rights are available to increase the number of allowed dwelling units in exchange for public benefits such as the provision of affordable housing or public access.



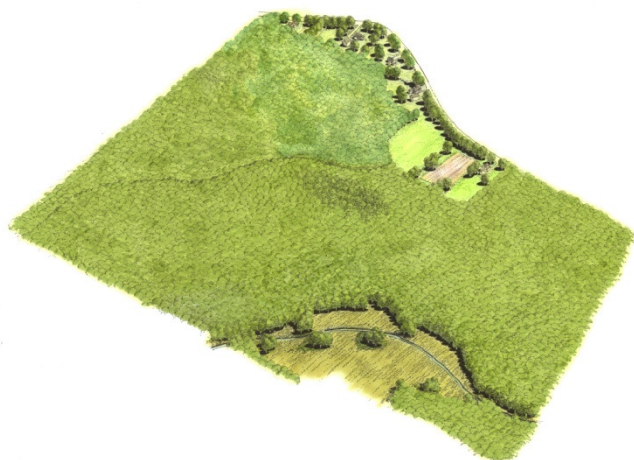
Natural Resource Protection Zoning (14 lots, >75% preservation)

Legal Analysis

Except in rare circumstances development may not be prohibited, but it may be subject to reasonable restrictions having a rational nexus to a town’s legitimate objective of preserving and maintaining its open space, natural resources, and rural character. Several recent decisions of the Massachusetts Supreme Judicial Court (state’s highest court) bear on the legality of NRPZ in Massachusetts.

Of paramount concern is any legal limit on allowable lot size or, in the case of NRPZ, allowable density. The durable bromide that 3 acres is the legal limit for lot size in Massachusetts is anchored in no state statute or court decision, but rather in a wishful misread by some of *Johnson v. Edgartown*, decided in 1997 by the Supreme Judicial Court. The Court itself, in a failed effort to forestall this interpretation of its decision, said:

This opinion should not be read as an endorsement of three-acre zoning. We have upheld the challenged zoning provision because of the special circumstances of this case, particularly the proximity of the restricted land to a coastal great pond. We are confident in the special circumstances of this case that the three-acre zoning provision has not been shown to be arbitrary and unreasonable or substantially unrelated to the public health, safety, and general welfare.



100 acre wooded site with field, stream, and trail before development



Two-acre zoning/conventional subdivision (34 lots, no preservation)

2011 APA Small Town & Rural Planning Division Awards Entry Form

Award Category (check one – complete a separate entry form for each nomination)

- | | |
|--|--|
| <input type="checkbox"/> Small Town and Rural Planner | <input type="checkbox"/> Planning Initiative |
| <input type="checkbox"/> Comprehensive Plan/Special Project Plan | <input type="checkbox"/> Student Project |

Project Name: _____

Nominee: _____

Population of Jurisdiction _____ STAR Division Member? Yes or No (Circle one)

Person Making Nomination: _____

Address: _____

City/State/Zip _____

Telephone: _____ E-mail: _____

Additional Contact: _____

Address: _____

City/State/Zip _____ E-mail: _____

Application Checklist – Complete application packages should include the following documents:

(All submittals are non-returnable)

- Entry Form – Four copies
- Nomination Summary Statement (300-500 words) – Four copies
- Plan or Program Document (Resume or Biography for Planner) – Four copies
- Letters of recommendation – Four copies
- Supporting Materials (reports, news articles, or other materials) – Four copies
(It is important that four copies are received. Copies on a CD-ROM are acceptable in lieu of large documents.)
- Video tape or other media (optional) – Four copies
- Application Fee payable to APA STaR Division \$25 for Division members, \$100 for non- members
- One prepared Press Release with forwarding address.

Additional Information about the award available on the STaR Division Website:

<http://www.planning.org/divisions/smalltown/awards/>

Submit Completed Entry Packets to:

STaR Awards Committee c/o Anne M Krieg, AICP

105 Pine Heath Road, Bar Harbor, ME 04609

Phone: 207-288-4439; annemkrieg@gmail.com

Reminder: Entries must be postmarked no later than February 10, 2012.

In other words, the reasonableness and non-arbitrariness of a by-law's lot size prescription depends on a rational nexus to "special circumstances," the permissible lot size (or density) itself rising or falling in balance with the nature and salience of those circumstances.

In *Johnson*, the Court discerned those special circumstances in Edgartown's legitimate legislative purpose of protecting a natural resource of the town, namely the protection of a coastal great pond that would be at demonstrated ecological risk by development at any greater density. So, what the Court really said is that there is no free-standing magic or pedigree to lot size in the absence of a demonstrated link between lot size and a valid zoning purpose. Inferable from what the Court said is that even a lesser size requirement, in the absence of special circumstances, might also fail, but also that an even greater lot size requirement is not legally barred, though burdened by progressively greater salience required for those special circumstances.

The Court fairly warned that "reliance on generalities concerning the public benefit of large lot zoning will not carry the day." Progressive depletion of irreplaceable farmland and forestland is a reality, not a generality. Recognizing this, the Massachusetts Legislature has enacted many statutory protections of these natural resources (illustratively, M.G.L. Chapters 61, 61A) and has committed serious funding to the protection of these resources (illustratively, conservation and agricultural preservation restrictions under M.G.L. Chapter 184) to avert natural resource disasters which might be slowed – even if not stopped – by appropriate zoning prescriptions.

We may decipher *Johnson* as rejecting any mathematical constant in the number, size, or location of potential lots within a tract of land and as allowing lot number, size, and location to be subjected to flexibilities driven by the pursuit of particular public purposes. The natural resource at risk in *Johnson* was a coastal pond, where lot size limitation was found to be an appropriate intervention. The natural resources at risk for which NRPZ is the appropriate intervention are our diminishing inventories of irreplaceable open space, forest land, and farmland, for which maximum – not minimum – lot size is a key feature, along with

lot layout. NRPZ is actually a "low density / small lot" system, and will be defended on the need for the lower density, not a larger lot size. The conservation analysis requirements that are part of NRPZ are designed to ensure that the low densities and open space protection requirements serve a valid and clearly articulated public purpose. This is a much easier case to make with NRPZ than with large lot zoning, which in most cases does little or nothing to preserve open space and its resource values.

In the decisions following *Johnson*, the Court consistently cited to a municipality's constitutional power to regulate the use of land for valid public purposes, placing squarely on any challenge to the exercise of that authority the burden of demonstrating by a preponderance of the evidence that the regulation is arbitrary, unreasonable, and unrelated to valid purposes. In *Durand v. IDC Bellingham, LLC*, the Court emphasized this by stating:

If the reasonableness of a zoning bylaw is even fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.

The next year, in *Zuckerman v. Hadley*, the Court directly addressed a town's ability to take action to preserve its agricultural resources, stating (including a pertinent footnote):

Like all such towns, Hadley may, in an effort to preserve its character and natural resources, adopt any combination of zoning bylaws,¹⁴ ... that may, as a practical matter, limit growth by physically limiting the amount of land available for development. [Footnote 14: Within reason, such bylaws might include, for example, either large-lot or cluster zoning, expanded frontage requirements, the development of exclusive agricultural districts, or any other measure permitted by statute. See generally, e.g., Comment, Preserving Our Heritage, 17 Pace L. Rev. 591, 619-623 (1997).]

Finally, we turn to *Wall Street Development Corporation v. Planning Board of Westwood*ⁱⁱⁱ. In *Wall Street* the Court found that Westwood's Major Residential Development by-law (the state's most

common form of “mandatory cluster”), was in fatal conflict with the Subdivision Control Law by making subdivision approval subject to a discretionary special permit, when it should, under state law, be a matter of right. But being “as of right” does not exempt it from having to comply with the recommendations of the board of health, the reasonable rules and regulations of the planning board, and – in the words of the Court – “other applicable constraints, such as zoning.” Under this analysis, NRPZ zoning accords “as of right” status to any subdivision complying with the by-law, but subjects deviations, including “conventional” subdivision layouts, to special permit procedures. In other words, under NRPZ there is a clear path to by-right approval of a subdivision with no other permit required as a precondition to approval. It thus holds the promise of delivering even better results than might have been sought through a Major Residential Development by-law.

The Way Forward

Engaging the public in a meaningful conversation about smart growth planning will be more successful if we pay attention to the low-density side of the equation, which has received scant attention because of a perceived lack of effective tools. Coupling this “new ruralism” with the increasingly accepted new urbanism approaches of traditional neighborhood design and form-based codes will help produce results that planners have hoped for since the beginnings of the growth management and smart growth movements.

The pictures we paint in our master plans of compact towns and villages surrounded by open countryside do not need to succumb to the advancing tide of suburban sprawl. Smart growth is not smart if it ends up being just compact development surrounded by sprawl. If we add Natural Resource Protection Zoning to our toolbox, and deploy all of the other available planning and zoning tools synergistically with it, we can make the green side of smart growth, and therefore smart growth itself, a reality.

References

- i *Johnson v. Edgartown*, 425 Mass. 117, 680 N.E.2d 37 (1997)
- ii *Durand v. IDC Bellingham, LLC*, 440 Mass 45, 7893 N.E.2d 359 (2003); *Zuckerman v. Hadley*, 442 Mass. 511, 813 N.E.2d 843 (2004)
- iii *Wall Street Development Corporation v. Planning Board of Westwood*, 72 Mass. App. Ct. 844, 894 N.E.2d 1139 (2008)

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