

KENTUCKY PLANNER



American Planning Association
Kentucky Chapter

Making Great Communities Happen

A Publication of the Kentucky Chapter of the American Planning Association

November 2010

New Orleans 2010

**KAPA Planners at the
National Conference**

pg. 15



2010 APA-KY Executive Committee Members

President

M. Louise Allen, AICP
Oldham County Planning & Zoning Commission
(502) 222-1476 - mlouise@insightbb.com

Vice-President

Ryan Libke
Triple S Planning Commission
(502) 633-1718 - rlibke@shelbypz.com

Secretary

Amy M. Williams, AICP
HNTB Corporation
(502) 581-0985, Ext. 15713 - awilliams@hntb.com

Treasurer

Stanford Harvey, AICP
Urban Collage, Inc
(859) 519-1291 - SHarvey@urbancollage.com

Professional Development Officer

Dawn T. Warrick, AICP
Louisville Metro Planning & Design Services
(502) 574-6230 - dawn.warrick@louisvilleky.gov

Immediate Past President

Larisa Sims, AICP
City of Covington
(859) 292-2160 - lsims@covingtonky.gov

At-Large Members

Benjamin D. Peterson, AICP
City of Paducah Planning Department
(270) 444-8690 - bpeterson@ci.paducah.ky.us

Megan V. De Sola, AICP
Viox & Viox Inc
(859) 727-3293 - MdeSola@VioxInc.com

Felicia Harper
Gresham, Smith and Partners
(502) 627-8900 - felicia_harper@gspnet.com

Planning Commissioner Representative

Steve Kinkade
(270) 259-5465 - steve@kinkadecornell.com

Student Representative

Alex Molina
University of Louisville - Urban Studies Institute
alexselamm@gmail.com



2010 APA-KY Committee Chairs

Professional Development / Education Committee

Megan V. De Sola, AICP
Viox & Viox Inc
(859) 727-3293 - mdesola@vioxinc.com

Community/Public Outreach Committee

Edward Poppe
City of Elizabethtown, Department of Planning
(270) 765-6121, Ext. 247
ed.poppe@elizabethtownky.gov

Administration Committee (Co-Chairs)

Edward Poppe
City of Elizabethtown, Department of Planning
(270) 765-6121, Ext. 247
ed.poppe@elizabethtownky.gov

Karen Mohammadi, AICP
Gresham, Smith and Partners
(502) 627-8941 - karen_mohammadi@gspnet.com

Legislative/Technical Support Committee (Co-Chairs)

Robert K. Hewitt
Franklin County Planning & Zoning
(502) 875-8706 - rhewitt@dcr.net

Meghan Estabrook
Northern Kentucky Area Development District
(859) 283-1855 - meghan.estabrook@nkadd.org

Financial Committee

Stanford Harvey, AICP
Urban Collage, Inc
(859) 519-1291 - SHarvey@urbancollage.com

Sponsorship

Ryan Hutchinson
Campbell County Planning & Zoning Commission
(859) 292-3880 - rhutchinson@campbellcountyky.org

Programs/Special Events Committee (Co-Chairs)

Amy M. Williams
HNTB Corporation
(502) 581-0985, Ext. 15713 - awilliams@hntb.com

Felicia Harper
Gresham, Smith and Partners
(502) 627-8900 - felicia_harper@gspnet.com

Planning Education Library

Benjamin D. Peterson, AICP
City of Paducah Planning Dept
(270) 444-8690 - bpeterson@ci.paducah.ky.us

Newsletter Editor

Robert A. Jonas, AICP
Boone County Planning Commission
(859) 334-2196 - rjonas@boonecountyky.org

Website Administrator

Ryan Libke
Triple S Planning Commission
(502) 633-1718 - rlibke@shelbypz.com

Zoning Administration Committee

Kevin P. Costello, AICP
Boone County Planning Commission
(859) 334-2196 - kecostello@boonecountyky.org

KENTUCKY PLANNER



American Planning Association
Kentucky Chapter

Making Great Communities Happen

A Publication of the Kentucky Chapter of the American Planning Association

Table of Contents

New Orleans 2010	15
President's Report	4
From The Editor's Desk	5
Professional Development Officer's Report	6
2010 Sponsorship Opportunities	7
Implementation Planning	8
Planners Discuss Planning in Kentucky	11
APA-KY Calendar	16

Kentucky Planner

3

November 2010

The Kentucky Planner is published quarterly by the Kentucky Chapter of the American Planning Association.

EDITOR

Robert A. Jonas, AICP
rjonas@boonecountyky.org

DESIGN AND LAYOUT

Fausz Haus Design, LLC
email@fausz.net

SPONSORSHIP

Ryan Hutchinson
rhutchinson@campbellcountyky.org

PRINTER

Publisher's Printing, Inc.

NATIONAL WEBSITE

www.planning.org

APA-KY WEBSITE

www.kapa.org

THANKS & APPRECIATION

To AMERICOMM for the mailing of *The Kentucky Planner* and to PUBLISHER'S PRINTING, INC. for their dedicated service in printing this newsletter.

CHANGE OF ADDRESS

The Kentucky Planner does not maintain an address list. All lists are maintained at the national office and mailed to local chapters each month. If you have moved, write to:

Membership Department
APA National Headquarters
122 S. Michigan Ave., Suite 1600
Chicago, IL 60603-6107
(312) 431-9100

A Word From The President

Thank you to everyone who participated in the “Membership Services Roundtable Discussion and Survey” during our spring Conference. The survey and roundtable discussion was designed to get a better idea of what members think about chapter-sponsored continuing education programs, legislative activities, meetings and events, as well as other topics. Members were also asked if they would be opposed to raising the Chapter Only Dues for Kentucky Regular members.

According to the survey results, members clearly value continuing professional development opportunities as the most important service our chapter provides. Many expressed a desire for more varied continuing education opportunities such as one-day seminars concerning major issues around the state, which would be cost-efficient for smaller practitioners and jurisdictions. Other training and education suggestions included the following: use of webinar technology; smaller group settings; and regional lunch and learn sessions.

Representing planning to local governments and statewide legislators emerged as the second most important activity to our members. While most respondents did not have suggestions for change, we learned that some members would like to see the chapter disseminate more information about important U.S. and Kentucky Court decisions; provide more input on legislative issues; and inform members about legislative activities. Bringing legislative activities to the forefront through more frequent communication is currently included in our work program. In preparation for the upcoming legislative session, the Board will be working with the Legislative Chair, Robert Hewitt to develop a communication program through e-newsletters and e-mail blasts. We will also be asking each of you to develop a relationship with your legislator and help keep him/her informed of our Chapter positions; send e-mails to your Representative and Senator; and sometimes help Robert lobby at the Capitol on important legislative issues.

Other suggestions we received about improving our communication methods included more frequent communication, updating our website more often, and sending out job opportunity updates via e-mail. Along these lines, an additional important initiative the Executive Board is planning in the upcoming year is the transformation from printed newsletters to online e-newsletters that you will receive more frequently and on time! There will only be one printed newsletter each year.

Below are the final rankings for improvement of services and activities as determined by survey respondents:

1. Providing a continuing professional development program through conferences
2. Representing planning to local governments and statewide legislators
3. Promoting the profession of planning
4. Providing a common voice for the planning profession in the Commonwealth of Kentucky
5. Representing the profession on issues of education and training
6. Providing opportunities for networking
7. Publishing and mailing the Kentucky Planner Newsletter (4 times a year)

Continued on page 6.



M. Louise Allen, AICP
APA-KY President
(502) 222-1476
mlouise@insightbb.com

Deadlines

Please observe deadlines in consideration of the editor, who does this in his spare time. Late entries will appear in a later issue.

Next Deadline

November 19, 2010

Submissions

The Kentucky Planner publishes quarterly, and contributions from current or past members and other interested parties are encouraged. Articles, letters, comments, announcements, etc. submitted for publication are accepted via e-mail or on tree ware. Material accepted for publication may be edited to conform to space, readability, and basic grammar requirements. Interested persons should contact the editor via email at rjonas@boonecountyky.org.

From The Editor's Desk

Is it just me or does it seem like people are using their houses as their own personal hideaways? Just a Bob-servation, but it seems too often that people don't even set foot outside their own homes and onto the chemically treated grass of their front yards. Instead, they wake up, get ready for work and then go directly into the garage from the kitchen and into their tinted window SUV. Up goes the garage door; out they back into the cul-de-sac, and down the road toward their place of employment (if they're lucky). About 9 hours later you see the same mysterious car arrive on the scene as their garage door opens automatically in anticipation of their quick entrance. The Bat-cave shuts behind the car and the whole routine repeats itself the following morning. And who could blame them? Houses are seemingly designed around the garage after all (see: Snout House). A garage door



Robert A. Jonas, AICP
Newsletter Editor
(859) 334-2196
rjonas@boonecountyky.org

is often the most prominent and most obvious feature of newly built houses sticking out enticingly close to the road. I can understand slipping in and out of the garage unnoticed on days of foul weather, but when the sun is out and the temps are nice, what's the excuse? Short of doing social engineering, it appears that we need to try to better facilitate neighborhood interaction by lessening the emphasis on garages and instead encourage front porches, complete with a matching pair of rocking chairs. Garages have allowed us to avoid eye contact with our neighbors. The bond that kept neighborhoods strong has been cut off at the garage door. Let's get rocking and see if we can push for more rocking chairs on front porches and less Bat-caves.

**kinzelman
kline
gossman**

Landscape Architecture
 Planning
 Urban Design
 Architecture

27 W. 7th Street
 Covington, KY 41011
 859 957 0957 tel
 859 957 0950 fax

www.kkgstudios.com | Columbus | Covington | Indianapolis

URBANE PLANNING

by Robert A. Jonas, AICP

"...THEY PAVE PARADISE AND PUT UP A PARKING LOT..."

"...ROWS OF HOUSES THAT ARE ALL THE SAME..."

"...I WANT TO RIDE MY BICYCLE..."

BIG YELLOW TAXI Joni Mitchell	CARS Gary Numan
WE BUILT THIS CITY Jefferson Starship	ROAD TO NOWHERE The Talking Heads
PINK HOUSES John Mellencamp	LIFE IS A HIGHWAY Tom Cochrane
DRIVE The Cars	PLEASANT VALLEY SUNDAY The Monkees
BICYCLE Queen	DRIVE MY CAR The Beatles

A planner's oldies jukebox

Jonas@one.net

Professional Development Officer's Report

I hope everyone was able to take advantage of the well planned and executed spring conference at General Butler State Resort Park back in May. Be sure to log your credit hours with your agency (for state CEU's) or through your on-line log for AICP certification maintenance credits. Remember to maintain these logs and continue



Dawn T. Warrick, AICP
Professional Development Officer
(502) 574-6230
dawn.warrick@louisvilleky.gov

to accrue credits as they become available in your area. You may also want to mark your calendar for the upcoming **OKI Regional Planning Conference** which will be held at the Hyatt Regency in downtown Indianapolis **September 29-October 1, 2010**.

AICP – Exam

Great news: I am happy to announce that there are two newly certified planners in our ranks! Congratulations to **Dallam Harper, AICP**, Director of the Bluegrass ADD in Lexington and to **Josh Sommer, AICP**, Planner I for the City of Paducah. Their hard work paid off and they may now include the AICP credentials in their signature

line. Their success also resulted in the state having a 100% pass rate for this past testing period. Great work gentlemen! For anyone interested in the applying for a future testing period, additional details can be found at: <http://www.planning.org/certification/index.htm>

Session Proposals for 2011 National APA Conference

I encourage everyone to consider submitting a session proposal for APA's **2011 National Planning Conference**. The event will take place in Boston, April 9-12, 2011. The deadline for most submittals is **August 24, 2010**. Forms and additional information are available on the APA website: www.planning.org

Keep in Touch

There was a lot of good discussion at the spring conference about enhancing communications within our chapter. Be sure to use the chapter's webpage as a home base for communicating with other planners in the state. The "Discussion Forum" and "Links" sections provide direct access to the chapter's Facebook and Google Groups pages as well as the discussion area of our home page. With your help, we can pick up the traffic on these sites and really use this platform for more interaction. Don't forget to contact your chapter officers if you have suggestions or concerns about anything having to do with chapter operations or activities. We are ready to assist in any way possible.

Continued from page 4.

8. Providing a website forum for members to interact
9. Providing an annual scholarship program for planning students
10. Providing a website with information for non-members
11. Providing a social networking site through Facebook

Finally, regarding the increase in the Kentucky Chapter Only Dues mentioned earlier, members indicated via the survey that the majority was not opposed to an increase at this time. At our most recent Executive Committee meeting, the Executive Committee voted unanimously to

seek approval of an increase to the Kentucky Chapter Only Dues by \$10 to \$35 annually. These additional funds will be used primarily for two reasons:

- to meet the rising costs of expenses for holding conferences that involve quality networking activities and providing additional training opportunities to help members meet their continuing education needs such as AICP CM credits and HB 55 education requirements
- to offset new fees recently imposed by the American Planning Association (\$2.92 per chapter member to help cover the APA costs of data record keeping incurred by APA for handling chapter member data).

According to Chapter By-laws, the increase in the assessment must be approved by a majority of the membership via a regular mail ballot. The 2010 Executive Committee election ballot will include this item.

Please feel free to contact me at mlouise@insightbb.com if you have any questions, concerns or comments. Have a great fall!



VIOX & VIOX

Civil Engineers, Surveyors, and Landscape Architects

466 Erlanger Road Erlanger, Kentucky 41018
Ph (859) 727-3293 Fax (859) 727-8452

www.vioxinc.com



2010 Sponsorship Opportunities

Firm/Organization Name: _____

Contact Person: _____

Address: _____

Phone/Fax: _____ **Website/Email:** _____

Please select the category that your firm or organization is interested in sponsoring by filling in the cost total in the appropriate category.

Annual Sponsorship Opportunities - Ala Carte	Cost	Total
Newsletter (4 publications a year with statewide circulation)	\$150	\$
Website Sponsor (KAPA Website)	\$150	\$
1 in-state conferences in 2010 (Sponsorship of the KAPA Conference includes one free conference registration, advertisement at the conference and recognition on the programs and mailers)	\$300	\$
Package Sponsorship Opportunities	Cost	Total
Corporate Sponsor Includes the following Newsletter/ Website Sponsor 1 in-state conference in 2010	\$550	\$
Newsletter Sponsor Newsletter/ Website Sponsor	\$250	\$
	Total	\$

Please make checks payable to KAPA and mail to:
 Stanford Harvey, AICP
 c/o Urban Collage, Inc.
 167 West Main Street, Suite 1200
 Lexington, KY 40507
 Phone: (859) 519-1291
 Fax: (859) 519-1268
sharvey@urbancollage.com



Thank you for your support!

Implementation Planning

The logical next step in the comprehensive planning continuum

by Dale Richard Powers, AICP

Overview

Once a governing body embarks on a course of action to develop policies related to land use in their jurisdiction, the traditional course of action is for it to adopt a comprehensive land use plan (or general plan in some states). This political document (which holds legal force in some jurisdictions, but not all) needs a series of enabling ordinances to establish a legal touchstone that gives the comprehensive plan valence and effectiveness. Typically, once the comprehensive plan and supporting ordinances are approved, the process ends and the jurisdiction begins its journey to provide guidance and direction to the geographic distribution of land uses.

In this author's opinion, an important aspect of the comprehensive planning process is being left out. That is due to the fact that a static document (the enabling ordinances) is used as the legal basis for enforcement of a dynamic document (the comprehensive plan).

While the comprehensive plan clearly details the policy priorities of the governing body, the enabling ordinances (zoning, subdivision, sustainability, property maintenance, etc.) out of legal necessity do not. While it can be argued that the mere adoption of an ordinance establishes its priority, text alone is insufficient to communicate direction to staff on methods and styles of administration and enforcement. Consequently, staff is often left to either (a) direction from the City Manager on an administration and enforcement policy, or (b) happenstance created by the perceived health and safety threat of the violation.

This haphazard administration and enforcement method has the real potential of unintentionally thwarting the political will of the elected body when it adopted the land use policies in the comprehensive plan. Almost invariably, this thwarting is discovered after the fact. As a result, the elected officials may sense their political careers threatened, since land use controls are normally very politically sensitive.

This article introduces the concept of a post-ordinance plan that provides guidance and direction to those entrusted with administration and enforcement of the legal underpinnings of the comprehensive plan. This plan – called the “implementation plan” – provides a level of dynamism that is not present in the enabling ordinances.

The implementation plan not only provides priorities for enforcement of property maintenance ordinances. It also

establishes systems for the procedure in administration of zoning requests (CUPs, variances, plats, zoning map amendments, site plan reviews, etc.) and dealing with the inevitability of “after the fact” requests. Finally, the implementation plan can be useful in providing a tool for evaluating the performance of staff.

Elements of the Implementation Plan

From the aspect of an elected body, the comprehensive planning process is similar to buying a car. As we all know, in buying a car we order features for their derived benefits. For example, we order air conditioning so we can survive summer weather in comfort. Call the completion of the comprehensive plan the establishment of the overall benefits we seek in our new car.

The next step – drafting of enabling ordinances – is akin to matching features to benefits. Once built, the new car's features (ordinances) should be a perfect match for the benefits (comprehensive plan) desired by its owner (City Council).

There is one distinct difference – when we order a new vehicle, inside the glove box is an owner's manual that gives direction and guidance in operating it. If this



167 West Main Street, Suite 1200
Lexington, KY 40507
P 859.519.1291
F 859.519.1268
E sharvey@urbancollage.com

URBAN DESIGN
buildings & sites
schools & campuses
neighborhoods & districts
corridors & centers
cities & towns

principal
STANFORD HARVEY, AICP



NEEL-SCHAFFER
Solutions you can build upon

9900 Corporate Campus Dr., Suite 3000 • Louisville, KY 40223
(502) 429-9902

*Now providing quality engineering, planning
and consulting services to Kentucky!*

Corporate Office:
125 South Congress St., Suite 1100 • Jackson, MS 39201
PO Box 22625 • Jackson, MS 39225-2625
Phone: 601.948.3071 • Fax: 601.948.3178
www.neel-schaffer.com

guidance and direction isn't followed, the warranty can be voided. In a comprehensive planning context, the implementation plan is the "owner's manual" for the City Council in administering the comprehensive plan and enabling ordinances.

As with any other piece of machinery, there are aspects to owning a car that are vital to its continued operation (regular oil changes) and others that are mere niceties (washer fluid). The same is true with bringing a comprehensive plan to life. **Consequently, the first step in the process of creating an implementation plan is the ranking of the Council or Board's land use policy preferences.**

After this exercise (which may have been performed during the comprehensive planning process), the next step is to introduce two elements of implementation – process and compliance – and share with the decision makers some possible options to consider.

Process

There are several basic elements to the development review process: procedural, technical, legal, and political. Planners have the most influence over procedural steps, and as they gravitate from procedure through technical and legal their influence diminishes. Finally (and ideally), planners have virtually no influence over the political process. As much as planners establish a fair process for review, and as much as planners ensure that technical and legal matters are discovered and addressed, in the end it's the decision makers that make the final call.

Since procedural matters are where the planner has the most influence, consequently is the area that is most foreign to decision makers. As a professional planner that also served a term on the Clear Lake (Minnesota) City Council, I can attest to the fact that procedure can be viewed as a Rubik's cube to a lay decision maker who simply wants to approve or deny the petitioner's request and doesn't understand the need for due process. Memorializing the process for review of zoning requests such as variances, use permits, plats, zoning map amendments, and the like, benefits both the decision makers and planning staff. For the decision makers, a comfort level is established whereby a particular policy preference enabled by ordinance will be administered according to a uniform procedure known to, and approved by, the elected officials. For staff, a separate comfort level is established. In situations where the status of the petitioner may influence the review process (which is common in smaller jurisdictions), establishing a written procedure gives staff a degree of protection against retaliation. Call it similar to an insurance policy against charges of arbitrariness and capriciousness on the part of planning staff.

As part of the development of the process section of the implementation plan, the follow elements should be discussed:

1. What information about the applicant is required on the application form. While this may seem to be *pro forma*, in many urban jurisdictions a street address is sufficient to establish the definite location of the subject property. For rural jurisdictions, a legal description may be necessary to establish specificity. As well, the relevant section of the ordinance should also be noted on the application form. Finally, some thought should be given to allowing space on the application form for the petitioner to make the argument for approval of the petition. Planners are not advocates for the petition, and as such should not be placed in that role.

2. Whether agent information (e.g. legal representative, real estate agent, property owner, or other third party) should be included on the application. Surprisingly, many jurisdictions omit this on their application form. There needs to be some "standing" on the part of the petitioner that authorizes making the request. I have seen situations where a petitioner requested a variance for uncontrolled property without property owner knowledge or acquiescence. Invariably, this involves a contingent real property purchase and the property owner is out of town or otherwise not readily available to sign the application. Regardless of the availability of the property owner – or whether a third party is advocating for the petition – virtually all jurisdictions require the legal owner of the property to sign the application. By setting aside space on the application for the owner's

Continued on page 10.

HNTB www.hntb.com
502.581.0985

urban design + planning

Amy Williams, AICP 401 West Main Street, Suite 601
 Mohammad Nouri, PE, LEED AP Louisville, KY 40202
 Ron Taylor, RLA, ASLA

Community Planning • Urban Design & Landscape Architecture
 Environmental Planning • Transportation Planning

Qk4 815 W. Market Street
Suite 300
Louisville, Kentucky 40202

Architecture Engineering Planning

Groundbreaking by Design

Planning
 Highway Design / Construction Inspection
 Civil / Site Engineering
 Water / Wastewater Engineering
 Landscape Architecture

Regional Offices
 Georgia
 Indiana
 Tennessee
 West Virginia

For more information contact
 Allison T. Pullen
 Business Development
 Toll Free: 800-928-2222
 Email: engineeringinfo@qk4.com

Continued from page 9.

agent, it clarifies that someone else will be representing the property owner on this matter.

3. Submittal requirements for each type of zoning request, pre-application conferences, and timelines for submittal of required documents. It is understood that certain requests require more submittal documents. A checklist detailing every possible submittal requirement per type of request (variance, use permit, plat, zoning map amendment) should be attached to the application form. A component part of the implementation plan is the correlation between policy preferences and data requirements. For example, if the City Council establishes that downtown redevelopment is important, it could put language in the implementation plan that minimizes extraneous data requirements in order to expedite the review process. Alternatively, it could expedite review and grant “conditional” approval of the request. Many states have statutory time limitations for decisions on zoning requests. In these situations, memorializing the timelines for review (and the statutory scheme for time extensions) will give greater comfort on both sides of the table that the statute (as well as the ordinance) is being followed.

4. Internal and external staff review procedure. Depending on the complexity of the action, staff review may be simple or detailed. A simple variance on residential property might involve only a field visit and review of similar requests. On the other hand, a site plan review of a multi-store shopping center on a major highway most likely will bring county, regional, state, and/or federal agencies into the discussion. As well, some jurisdictions have “retired” from the conditional approval process, giving review agencies authority to hold up a petition until their individual concerns have been addressed to their satisfaction. Making discussion of these review requirements mandatory should be detailed in the implementation plan.

5. Policy on negotiation of conditions on use permits between staff and the petitioner. In situations where discrete conditions on use permits are not part of the

enabling ordinance, staff determination of recommended conditions are based on expert review and accommodation of perceived health and safety conditions inherent with the request. These conditions may be challenged by the petitioner as unwarranted and costly. I have worked in jurisdictions that allow staff to negotiate these conditions with the petitioner and develop a “win-win” situation walking into the public hearing. I have also worked in jurisdictions that do not want staff to negotiate these matters. In these situations, the decision makers want to lead the negotiations and get the credit for lessening their impact. As previously mentioned, policy preferences on the decision makers can have an impact on this matter. The implementation plan should chart out which land use activities the governing body authorizes staff to negotiate, and which land use activities it reserves negotiating authority.

6. Policy on whether and when the petitioner receives a copy of the staff report. While many jurisdictions issue the staff report to the petitioner concurrently with its issuance to the decision makers, some do not. This may be due to minimizing any lobbying on behalf of the petitioner with individual decision makers, who are acting in a quasi-judicial capacity and do not want to be perceived to have a priori decided the issue. This may be an important issue in that jurisdiction, and the policy on issuance of the staff report to the petitioner should be mentioned in the implementation plan.

7. Number and types of hearings and meetings where review of the request is required. Each state has statutory requirements for the number of review points and public hearings on land use matters. Other jurisdictions have additional meetings where recommendations are developed. For example, in Kendall County, Illinois a residential subdivision goes through 10 review points from the initial application to final plat approval. In Pine County, Minnesota that same residential subdivision goes through 3 review points at the County level and 2 at the township level. During the pre-application conference, the petitioner should be advised on the number and types

Continued on page 12.

Kriss Lowry & Associates, Inc.



Kristen M. Lowry, AICP
President

227 South Rays Fork Road
Corinth, KY 41010-3027
Phone: (502) 857-2800

Web: www.krisslowry.com
Email: Kriss@krisslowry.com



Lexington, KY & Louisville, KY

Planning • Engineering • Environmental

Edward J. Holmes, AICP
President

333 W. Vine Street, Ste 300
Lexington, Kentucky 40507

T 859-425-4881

F 859-254-8639

C 859-321-5643

holmes@ehiconsultants.org

www.ehiconsultants.org

Planners Discuss Planning in Kentucky

by Amy Williams, AICP
KAPA Programs / Special Events Co-Chair
awilliams@hntb.com

A Recap of the 2010 Spring Conference at General Butler

Almost 100 planners came together at General Butler State Park in May to discuss planning topics and ideas across the state. Through 16 exciting sessions, Kentucky planners learned about how communities across the state are approaching planning issues and growth strategies. Sessions included a variety of topics including green design, multi-modal planning, main street revival and many others.

KAPA also held its annual awards ceremony on Friday during the conference. Five awards were presented by awards chair, Ed Poppe. The awards included:

Outstanding Plan in a Small Jurisdiction: The Village Center at Simpsonville, presented to City of Simpsonville, Triple S Planning Commission and HNTB Corporation.



Outstanding Plan in a Large Jurisdiction: River Road Scenic Byway Corridor Management Plan, presented to Louisville Metro and Gresham, Smith and Partners.



Outstanding Project: Louisville Loop Design Guidelines, presented to Louisville Metro Parks and HNTB Corporation.



Outstanding Achievement in a Small Jurisdiction: Presented to Nicholasville and Jessamine County.



The William Bowdy Award: Presented to Louise Allen



Continued from page 10.

of review points so as to enhance the petitioner's comfort level. Memorializing this in the implementation plan will also give comfort to the decision makers who may not be aware of these requirements, thereby reducing stress levels throughout the organization.

8. Policy on the responsible party for required publication and mailing of public hearings. While most jurisdictions have this responsibility, in others it is the petitioner who is responsible for this. In petitioner-responsible areas, this requirement should be mentioned prominently in the implementation plan and the application form.

9. Post-approval recording responsibilities. Jurisdictions vary broadly on the responsible party for recording of variances and use permits. (Most jurisdictions require the developer to record plats after the signature blocks have been signed on the Mylar.) Identification of the responsible party should be included in the implementation plan and the application form.

It is important to note that throughout the development of the process section of the implementation plan, the governing body needs to ensure that its policy preferences are identified and the method of review procedure is reflective of those preferences. In doing so, the governing body will be drafting a document that is as dynamic as its comprehensive plan – bringing life to the plain text of the enabling ordinances.

It is not recommended that the process section be codified. This is to allow flexibility to the governing body to change its policy preferences – and their impact on elements of the implementation plan – without the fiscal expenses associated with notice and a hearing.

Compliance

Enabling ordinances are mere words on paper without a plan to enforce their compliance. A general rule is that the smaller the jurisdiction, the less likely that a uniform system of insuring compliance is established. This exposes these units of government to claims of arbitrariness and capriciousness in compliance matters (when an ordinance is enforced), as well as mandamus claims (when an ordinance is not enforced).

A systematic method of ensuring compliance with the enabling ordinances provides many benefits to the governing body. Since they are the entity directly accountable to the citizens, the governing body is more attuned to the political realities of their jurisdiction and are best able to communicate the importance of stringent enforcement of certain ordinances and *laissez faire* responses to other violations.

I believe there is universal agreement that a burning pile of tires or a home occupation that generates noise and traffic concerns not usually associated with a residential area should be addressed with measures appropriate to the health and safety concern. It is in the enforcement of property maintenance and zoning codes that are mainly aesthetic in nature – or a minor nuisance – that a compliance element is beneficial. Without said direction, the governing body runs the risk of staff substituting their own sensitivities and enforcing the ordinances accordingly. This creates a “Catch 22” situation, where staff can't really be faulted for doing their job, yet the political will of the decision makers is nevertheless compromised.

Another area of compliance has to do with theory vs. reality. Kendall County, Illinois (the fastest-growing County in the USA) adopted a conservation subdivision ordinance several years ago as a measure to preserve farmland and maintain rural viewsapes. While the County Board preferred that option in theory, when a proposal utilizing that ordinance was presented to the Board for approval, the Chairman of the Board alluded that the proposal was not what he envisioned when he voted to approve the ordinance. This level of disconnect is common when ordinances are adopted, as individual decision makers each have their own vision of what an ordinance will look like “on the ground”. To the extent that at any given time a majority of elected officials may have a different vision than what is proposed in front of them is what can create a strained relationship with staff. As it relates to ordinance enforcement, when a governing body enacts (for example) ordinance language prohibiting junk cars or junk and debris it has a particular vision in mind. However, staff is bound by the text of the ordinance and comports itself accordingly. One case I dealt with at Kendall County brings this to light. The County has an ordinance restricting off-premise signage in agricultural districts. In the collective mind of the County Board, the restriction pertained to billboards. However, a hay wagon at a busy rural intersection advertising a residential development 1.5 miles away also fit into the definition of off-premise signage. A complaint was sent to the property owner and the matter was heard by the County's code hearing officer. After hearing testimony from me and the attorney representing the property owner, the hearing officer ruled that it was not an off-premise sign at all – it was a hay wagon. I brought this to the attention of one of the County Board members, who commented to me that “that is a nice looking sign. Maybe we should allow them.”

With the previous discussion in mind, the compliance section of the implementation plan should include the following elements:

1. An understanding of what the governing body intends to enforce. Lay members of city councils and county boards cannot be assumed to have the level of experience (both practical and legal) necessary to realize the level of impact on the text of an ordinance. There needs to be communication between the decision makers and staff that clarifies the intention of the elected officials on what it is envisioning when reading and interpreting an ordinance. *This is especially important when the composition of the governing body has changed since the comprehensive plan and enabling ordinances were adopted.* Only through this clarification process can the elected officials and staff be on the same page.

2. Establishment of enforcement priorities. The comprehensive plan usually references policy priorities such as downtown redevelopment, neighborhood stabilization, business retention and attraction, and so on. Other areas of the plan, in the mind of the elected officials, are lower in priority. It stands to reason that the City Council wants ordinances that are promulgated in support of higher policy priorities to be more rigorously enforced than other ordinances adopted out of either legal necessity or in support of lower policy priorities. By establishing enforcement priorities, the governing body recognizes that staff time is limited and is giving clear direction on the highest and best use of this limited resource.

3. Discussion of compliance techniques. Staff has at its disposal a wide array of tools to bring violating properties into compliance. The most extreme measure is filing an action in the judicial system; the least extreme action is ignorance. Neither of these measures is commonly used in compliance actions as an initial response. The most common tools are either a "Notice of Violation" letter (written sternly to reflect the graveness of the situation)

or a field visit to the property to discuss the matter with the property owner – with some sort of hybrid used on complex compliance issues. The implementation planning process involves discussion among elected officials, staff, and the jurisdiction's legal team detailing compliance methods and correlating them with the stated priorities (listed in #2 above) to formulate a comprehensive compliance strategy. This strategy will not only assure the governing body that proper enforcement techniques will be used by staff. Indeed, in some cases the elected officials may reserve the right to establish techniques on a case basis. This strategy will also give assurance to staff that the appropriate technique will be used in support of the policy preferences of the elected officials.

4. Identification and assignment of appropriate compliance inspectors. Most jurisdictions use building inspectors to investigate property maintenance and zoning complaints. Generally this is done because (a) the building inspector is in the field, anyway; and (b) most professional planners are neither trained nor comfortable in dealing with confrontational issues. It is my opinion that building department staff is inappropriate for dealing with most non-structural property maintenance codes and zoning ordinances. Building inspectors are accustomed with dealing with third-party contractors and only occasionally with the subject property owner. Building inspectors can talk more freely and without fear of property owner complaint with third-party contractors. The socialization of the building trades leads to use of language that would be deemed inappropriate in most professional settings. Finally, building codes are finite and specific, with little room for leeway in their interpretation or resolution. *In situations involving immediate or imminent threats to health and safety – burning tires or surface water pollution, to name two*

Continued on page 14.

M2D Design Group
Landscape Architecture
Planning and
Civil Engineering
www.m2ddesign.com
400 Old Vine St., Ste 206
Lexington, KY 40507
p. 859.389.6533
f. 859.389.6534
contact us at:
info@m2ddesign.com
m2d design group
LANDSCAPE ARCHITECTS + PLANNERS

**APA
KY
JOIN
TODAY**

By joining the Kentucky Chapter of the American Planning Association you have an opportunity to shape the future of Kentucky's communities. The chapter's excellent newsletter will keep you informed of timely topics on local and national issues. Chapter-sponsored conferences held each spring and fall offer opportunities for networking, educational enhancement, and exchange

Annual dues are \$25 payable to KAPA. Include name, address, e-mail, phone, & fax information with check.

MAIL TO:
Stanford Harvey, AICP,
KAPA Treasurer
c/o Urban Collage, Inc.
167 West Main Street, Suite 1200
Lexington, KY 40507
ph: 859-519-1291; fax: 859-519-1268
sharvey@urbancollage.com

Continued from page 13.

– the “black and white” skills of building inspectors are especially appropriate and should be utilized.

Non-structural property maintenance and zoning codes, on the other hand, allow for a shade of grey in their administration, interpretation, and negotiation of compliance terms. Additionally, invariably the staff interaction is with the property owner, and staff communication needs to have a degree of interpersonal and political sensitivity. This “grey shading” and degree of tact and diplomacy lends itself to skills usually associated with planning professionals. Planners are in a better position to ensure that negotiating compliance with property owners on violations of non-structural property maintenance and zoning ordinances is done in furtherance of the land use policy preferences of the governing body.

As with the development of the process section of the implementation plan, when completing the compliance section of the plan the governing body needs to ensure that its policy preferences are identified and the method of compliance procedure reflects those preferences.

Hiring A Facilitator

It is recommended that a facilitator be used to coordinate discussion and draft the implementation plan. Using an existing staff member as a facilitator is possible and could save the jurisdiction money. If this route is taken, it is recommended that the facilitator not come from any department involved with administration or enforcement of the comprehensive plan or enabling ordinances. This will enhance a sense of neutrality on the part of the facilitator, which will promote open communication amongst the City Council, Planning Commission, and staff.

It is important to note that the communication dynamic between the governing body and staff has the potential to be contentious. The source of the contention lies in the differing roles of the governing body (“do the right thing”) and staff (“do things right”). The potential exists that each will talk past the other, resulting in a frustrating experience that satisfies no one. It needs to be reinforced that one of the main objectives of developing an implementation plan is for the governing body to communicate to staff what it perceives as “doing things right.”

The presence of a third party consultant with facilitation experience can ensure that neither side will talk past the other. A city should strongly consider a consultant that also has experience as an elected official and planning professional. This will further ease the facilitation process, since the consultant will have empathy with the pressures faced by the governing body as well as empathy for the differing pressures faced as a staff member.

While a consultant without governing body experience could successfully facilitate and develop an implementation plan, there is an increased risk that staff and the consultant would be perceived as uniting against the elected body. This increases the possibility of to minimizing the decision makers’ role in implementing its own policy preferences, again resulting in a frustrating experience that serves no useful purpose.

CONCLUSION

This article discusses the logical next step in the comprehensive planning process - the implementation plan. The implementation plan reintroduces a level of dynamism to the policy preferences of the decision makers that is taken out with the adoption of the legal framework to enforce these policy preferences. When properly developed – with interplay between elected and appointed officials, staff, and legal representatives – the implementation plan provides a road map for staff to follow, giving guidance and direction in how the ordinances are to be processed, administered and enforced. This road map is intended as a communication device from the elected officials and staff, giving comfort to the governing body that the policy preferences memorialized in the comprehensive plan is being implemented accordingly.

Dale Richard Powers, AICP, is CEO of ZIA Planning Systems in Clear Lake, Minnesota. He can be reached at 320-493-8930 or dalepowers@ziaplanning.com



ENGINEERS
PLANNERS
ECONOMISTS

WilburSmith
ASSOCIATES

Coldstream Research Park
1648 McGrathiana Parkway
Suite 340
Lexington, KY 40511

John L. Carr
Vice President/Associate in Charge

Phone: 859-254-5759
Fax: 859-254-5764
E-mail: jcarr@wilbursmith.com



GRESHAM
SMITH AND
PARTNERS

101 South Fifth Street, Suite 1400
Louisville, KY 40202
502.627.8900

Land Use Planning and Public Policy
Corridor/Small Area Planning
Impact Assessments
NEPA Documentation/CSS
Transit Oriented Development (TOD)
Urban Planning
Landscape Architecture
Master Planning
Community Design
Public Involvement Programs

ARCHITECTURE ENGINEERING INTERIORS PLANNING gspnet.com

Continued from page 11.

Participants were also able to network and relax with other KAPA planners while playing putt-putt golf and a cookout with live music. Overall, the conference was a success and we are eagerly awaiting our next conference, the Ohio-Kentucky-Indiana Regional Planning Conference in Indianapolis this fall!

Get in Gear for Indianapolis!

The fall conference will be our bi-annual regional conference, OKI. This year it will be held September 29th to October 1st in Indianapolis at the Hyatt Regency hotel. An exciting program has been compiled that consists of sustainable growth, multi-modal planning, active communities, long range planning and four mobile workshops. Participants can bike through downtown Indianapolis, visit a new downtown, experience a revived neighborhood or see how art and nature can be incorporated into a city's fabric. The fall conference offers something for all attendees, from CM credits for AICP members, impressive sessions, HB 55 hours, multiple networking events, and numerous area attractions and activities!

The conference will open on Wednesday morning with an AICP exam prep course and a citizen planning training session. An evening reception will also be held at the Blu Night Club. Sessions and mobile workshops will start on

OKI Conference at a Glance: Indianapolis

- Wednesday September 29 – AICP Prep Course, Citizen Planner Training, Evening Reception
- Thursday, September 30 – Opening speaker, exciting sessions, mobile workshops, and evening reception
- Friday, October 1 – Exciting sessions, lunch keynote, and mobile workshops

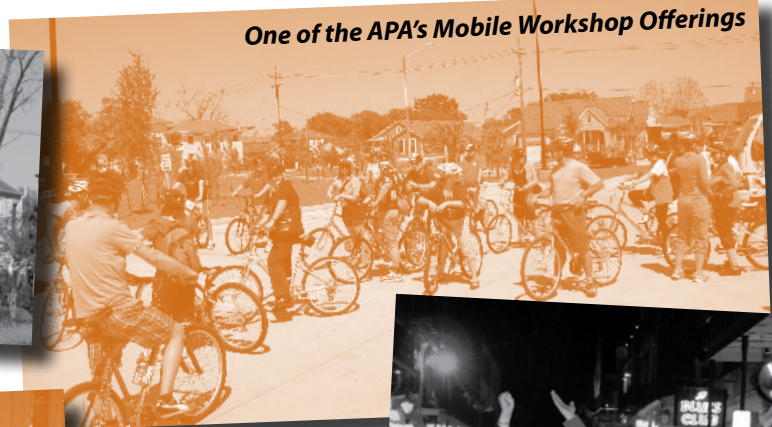
Thursday and continue throughout the day on Friday. In addition, two great featured speakers will present: Richard Longworth will open the conference Thursday and Mark Fenton will give a keynote address at Friday's lunch. The preliminary program and registration form is available online at <http://okiconference.org>. On-site registration will also be accepted.

For more information on upcoming KAPA conferences, visit the programs and special events page at www.kapa.org or contact Amy Williams at awilliams@hntb.com or Felicia Harper at Felicia.Harper@ky.gov.

KAPA at the 2010 National APA Conference



Hurricane Katrina Devastation 5 Years Later



One of the APA's Mobile Workshop Offerings



KAPA Members Catching Up on the Latest Planning Practices



Amy Williams and James Fausz Representing the Bluegrass on Bourbon Street

APA-KY Calendar Of Events

September 29-October 1, 2010

Ohio Kentucky Indiana Regional Planning Conference
(Indianapolis, IN) www.okiconference.org

October 17-21, 2010

Planning Healthy & Child-friendly Communities
(Charleston, SC) www.LivableCities.org

November 19, 2010

Article submission deadline for next Kentucky Planner

April 9-12, 2011

APA National Conference
(Boston, MA) www.planning.org

May 25-27, 2011

APA-KY Spring Conference
(Dale Hallow State Park Resort)



**Kentucky Chapter
American Planning Association
2332 Royal Drive
Fort Mitchell, KY 41071**

NON-PROFIT
ORGANIZATION
**U.S. POSTAGE
PAID**
LOUISVILLE, KY
PERMIT #1