

# NY UPSTATE PLANNER



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**The 2009 NY Upstate Chapter Executive Board Annual Report begins on page 13.**

## 2009 Eminent Domain Roundup: Legislative Attention in 2010?

By Patricia E. Salkin

Following the 2005 Supreme Court decision in *Kelo v. City of New London*, many states moved to adjust eminent domain laws. In New York, despite the introduction of almost two dozen bills in the state legislature, nothing changed - though some municipalities did adopt resolutions indicating their intention to avoid eminent domain for economic development purposes.

Given the number of definitional and policy questions in the state's rules, a New York State Bar Association task force recommended, among other things, the creation of a special commission to revisit the Eminent Domain Procedures Law, now almost forty years old. Here again, nothing happened. No commission was established.

So the action in 2009 remained in the courtroom where a number of cases drove home the need for lawmakers to clarify the eminent domain issue. Senator Bill Perkins, a Democrat from New York City, has wasted no time. He held initial hearings in January in New York with another set planned for Albany. The cases which point out the need for action are described below.

### Atlantic Yards raises issue of blight

Late last year, the state's highest court upheld the public purpose of eminent domain for Atlantic Yards in New York City. The case pointed out the need for the legislature to address the definition of blight.

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*Saint Joseph's Academy is an abandoned building that the Arbor Hill neighborhood hopes to see brought back into productive use.*

## Earning a Community's Trust

by Monique Wahba

There were many in the room, but one woman stood out. As I took my seat at the head of the table, she sat back in her chair, her arms tightly crossed over her chest, head cocked to one side, staring at me. She didn't say a word. She just looked at me in disbelief that I could contribute anything positive. I quickly realized that her body language represented the sentiments of many in the room, those of suspicion and distrust. That was my welcome to the neighborhood advisory committee for the Arbor Hill Neighborhood Plan.

As Senior Planner for the City of Albany, I was asked to take over management of the Arbor Hill Neighborhood Plan. The consultant team of The Community Builders Inc. and Behan Planning Associates, LLC, had already been hired, the advisory committee of twenty-five already appointed and meeting. My first obvious challenge was to gain the trust of this large and diverse group of stakeholders - residents, not-for-profits, city staff and elected officials, representatives from local churches and institutions - tasked with advising the planning process.

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## Year in Review: 2009's Most Significant Land Use Cases

By Jennie C. Nolon and Jessica A. Bacher

This article highlights a dozen of the most significant land use cases decided by the New York courts during 2009. These cases involve planning and planners in many ways, including the legal implications of delays in the planning process, the care with which blight studies must be done, and a reminder of how far rules can go to before becoming a regulatory taking. Other cases simply provide good reminders of the rules courts apply to traditional land use techniques.

The biggest case law development of the year involved eminent domain in a pair of cases involving Columbia University's expansion and the Atlantic Yards redevelopment project. On November 24, 2009, New York's highest court ruled in *Matter of Goldstein v. New York State Urban Development Corporation*, that the use of eminent domain for a large project undertaken by a private developer did not violate the Public Use Clause of the State Constitution. In December of 2006, pursuant to New York's Eminent Domain Proceedings Law, respondent Empire State Development Corporation (ESDC) issued a determination that it should use its power of eminent domain to take properties in downtown Brooklyn for the Atlantic Yards project, which includes 22 acres of mixed-use development with a new arena for the New Jersey Nets, significant transportation infrastructure improvements, 16 high-rise commercial/residential towers (mixing market-rate and affordable housing), and eight acres of public open space.

At issue in the case was whether the Atlantic Yards project properly fell within the meaning of "public use" under the State Constitution's Public Use Clause of Article I § 7(a), which, like the Fifth Amendment to the U.S. Constitution, prohibits the taking of private property for public use without just compensation. Finding the project did involve a public use, the court reminded us that "the removal of urban blight is a proper, and, indeed, constitutionally sanctioned, predicate for the exercise of the power of eminent domain."

The court also stated that the ESDC's finding that the area was "substandard and insanitary" was within the meaning of those words in Article XVIII § 1 of the State Constitution, as those terms have evolved to take on more contemporary meanings that reflect the "complexities of urban conditions" than when first used in the context of slum clearance. Citing *Yonkers Community Development Agency v. Morris*, the court

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noted: "economic underdevelopment and stagnation are...threats to the public sufficient to make their removal cognizable as a public purpose."

(See Salkin's *article in this newsletter* for further coverage of these eminent domain cases.)

In *Develop Don't Destroy Brooklyn v. Urban Development Corporation*, a decision from February of this year related to the *Goldstein* case, the Appellate Division upheld the trial court's dismissal of a challenge claiming that the environmental impact statement for the Atlantic Yards project was inadequate under SEQRA because it failed to address the risk of terrorism. The court held that, ordinarily, terrorism does not fall under the lead agency's statutory obligation to identify the significant environmental impacts of a proposed action. Noting that the Atlantic Yards project involves the creation of a venue "dedicated to routine residential, commercial and recreational purposes," the court held that an agency's determination not to address the possibility

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## ***Eminent Domain Roundup***

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In November 2009, the New York Court of Appeals cleared the way for Forest City Ratner's proposed Atlantic Yards project in Brooklyn (*Goldstein v. New York State Urban Development Corporation*). Basing



*The Vanderbilt Railyard is an eight-acre part of the Atlantic Yards project and the potential site of the transit component (Source: Wikipedia).*

its holding on state constitutional authority that accords government "broad power to take and clear substandard and insanitary areas for redevelopment," the court upheld the use of eminent domain by the New York State Empire State Development Corporation (NYSED) to acquire parcels that the project developer was unable to voluntarily buy.

The proposed project, which includes a basketball arena and 5,000 market-rate and affordable residential units in high rise buildings, was sponsored by NYSED as a "land use improvement project" in a blighted area under the New York State Urban Development Corporation Act. A number of the targeted parcels were the subject of recent blight studies which found "sufficient indicia of actual or impending blight to warrant their condemnation for clearance and redevelopment." The court said the Empire State Development Corporation exercised the power for the constitutionally recognized public purpose or "use" of rehabilitating a blighted area.

However, the court seemed to voice frustration when it commented that the bar may be set too low on what will now pass as blight. The court noted that while the

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## **Planning for the 2010 Chapter Conference**

By Eve Holberg

*Transforming Communities* is the theme for the 2010 New York Upstate APA Chapter Conference, which will be held September 22-24 at the Niagara Falls Conference Center. The landscape of the Cataract City has been transformed in the 20 years since our last conference there. The Seneca Niagara Casino and new hotels are complemented by the new state-of-the-art conference facility where we will meet. New York State has made significant investments in signature Niagara Falls State park, enhancing this world-renowned natural wonder.

Our conference schedule will provide maximum flexibility (and enjoyment) for busy planners and members of allied fields. Full and partial registration packages will be available. A full complement of technical sessions and mobile workshops will be offered beginning Wednesday afternoon and running through Friday morning. All 18 classroom sessions and four mobile workshops will be approved for Certification Maintenance (CM) through the American Planning Association. The planning committee is working with members of allied fields to ensure sessions meet the criteria for their continuing education requirements as well.

Evening activities include a dine-around Wednesday evening, and a reception and keynote presentation Thursday evening. Sessions conclude at noon on Friday, giving attendees the opportunity to stay in the area to experience the park, the spectacular Niagara escarpment or to tour the wine routes on either side of the Canadian border.

The conference co-chairs, Rich Guarino of GBNRTC, Eve Holberg of peter j. smith & company and Gary Palumbo of American Consulting Professionals of NY welcome participation by all. Contact Gary at 362-1126 or by e-mail at [gpalumbo@acp-ny.com](mailto:gpalumbo@acp-ny.com) for the date, time and location of the next committee meeting. All are welcome to help with tasks large and small.



conditions that supported the blight finding may not “approach in severity the dire circumstances of urban slum dwelling...”, the court has “never required that a finding of blight by a legislatively designated public benefit corporation be based upon conditions” replicating blight during the Great Depression.

The court also acknowledged that the precise definition of blight is not for the judicial branch to articulate, but rather something left to the legislature. Since the legislature has left the actual specification of blight to administrative agencies, the courts will uphold their decisions where, as in the Atlantic Yards case, “those bodies have made their finding, not corruptly or irrationally or baselessly.”

### **No public purpose for Columbia University expansion**

The Appellate Division, First Department, dealt a surprising blow to Columbia University expansion plans and, in the process, limited the definition of public purpose. Proposed in 2003, the project will add to the university’s 36-acre campus with an additional 6.8 million square feet of space for classrooms, research facilities, administration, housing, and parking, including the redevelopment of 17 acres in the West Harlem neighborhood of Manhattanville.

While Columbia now owns or controls almost all of the parcels in the project area, the owner of a gas station and the owner of a self-storage business challenged the state’s exercise of eminent domain on behalf of the private university. The appellate division handed down a 3-2 decision that, among other things, held the government’s use of eminent domain in this case was unconstitutional under both the federal and state constitutions. Once again the New York State Economic Development Corporation was the agency involved.

Referring to Columbia University as an “elite private university,” the court said that the proposed expansion did not have the required “civic purpose” to support the government’s exercise of eminent domain.” The court explained that the statutory definition of “civic use” does refer to educational uses, but that the final clause (“or other civic purposes”) restricts the educational purposes.

While acknowledging that this the first case of its kind in New York, the court had no problem distinguishing Columbia University’s plans from other, non-educational civic projects. It pointed to the New York

Stock Exchange project that showed substantial public benefits, as opposed to the benefits here directed solely at Columbia University.

Here again, the judiciary is challenging the state legislature to address this issue by stating, that if the court were “to grant civic purpose status to a private university for purposes of eminent domain, we are doing that which the Legislature has explicitly failed to do...”

The court also found the Urban Development Corporation Act to be unconstitutional as applied since the law contains no standards for determining what constitutes “substandard and insanitary” conditions to support a finding of blight. In this case, the court called the blight finding “mere sophistry” and, after reviewing the studies and reports of the conditions of properties in the project area, concluded that there was no independent credible proof of blight. Indeed, the court wrote that the city and state engineered a blight finding in an effort to claim a public purpose and its ruling points out in detail inconsistencies in the blight findings. The court wrote that “virtually every neighborhood in the five boroughs will yield similar instances of disrepair that can be captured in close-up technicolor.”

The court also pointed to “the folly of underutilization” as a blight standard saying that such a condition “transforms the purpose of blight removal from the elimination of harmful social and economic conditions in a specific area to a policy affirmatively requiring the ultimate commercial development of all property regardless of the character of the community subject to urban renewal.”

Relying heavily on U.S. Supreme Court Associate Justice Anthony Kennedy’s concurring opinion in the *Kelo* case, the New York court found that:

1. When the City and State started to look at the expansion project, the area was not depressed;
2. There was no comprehensive development plan to address area-wide economic depression;
3. No public funds were being used to support the project;
4. No competing plans were submitted that supported the use of eminent domain; and
5. The ultimate beneficiary of the project was predetermined from the beginning - Columbia University.

All of these conditions, Kennedy found, existed and were required in the *Kelo* case, which upheld the use

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The second was to gain the trust of the broader neighborhood.

I knew the tension at that first neighborhood advisory committee meeting was not directed at me but at the failure of previous efforts, both public and private, to stimulate the revitalization of the community. The inner city neighborhood faced challenges, such as chronic drug and crime activity, a weak real estate market, and the loss of density and buying power to support desired services like a neighborhood grocery store, which these project-oriented proposals did not adequately address. The neighborhood wanted a more comprehensive and participatory revitalization effort. In response, the city initiated the Arbor Hill neighborhood plan.

To begin to win the trust of the neighborhood, rather than wait for formal public meetings, I immediately invited the community at large into the planning process. We devoted the first 15 minutes of each advisory committee meeting to anyone wanting to comment. This provided an important opportunity for members of the community to vent lingering frustrations. I next developed a clear work program. This told advisory committee members and our watchful citizenry that we were on a constructive course, which would lead to the development of a final plan. It brought focus and a clearer sense of purpose to all involved.

As we advanced in the process, we identified appropriate junctures for public meetings. The first was a workshop at a neighborhood school where, after the opening presentation, we broke into five groups. Four groups had maps of specific geographic areas while the last had one covering the whole neighborhood. We asked participants to circle problem areas and write down their comments. Facilitators gathered a lot of information from that meeting and the activity garnered interest in the plan from workshop participants.

Our consultants took that information and came back with a detailed plan identifying proposed land uses for every parcel on North Swan Street between Clinton and Livingston Avenues. We presented this plan at another public meeting and encountered considerable resistance. Gone was the focus on the broad problems of the neighborhood.

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*An Arbor Hill Public Workshop*

# Students target town-gown coordination in Albany

By Alison Bates

In the fall of 2009, SUNY Albany MRP students embarked on an ambitious studio project. The task was to compose a feasibility study investigating the potential for a stronger relationship with the Arbor Hill neighborhood in Albany. This project built upon momentum initiated by previous studios, which resulted in the creation of a mural in Arbor Hill and a plan for a community park within the troubled neighborhood. Even though town-gown tensions eased through previous cooperation, the task of fostering collaboration and a shared vision for the university and the neighborhood remained daunting.

Arbor Hill is a residential neighborhood in northwest Albany, a neighborhood of beautiful but neglected buildings. It has the energy and momentum to fulfill its promise, but needs the chance to come back. The list of community organizations aimed at making the neighborhood cleaner, safer, healthier, and more beautiful is endless. Arbor Hill faces many challenges, but apathy is not one of them.

Our work began with an investigation of existing partnerships across the United States. We looked to those schools that resembled ours: large, state institutions in mid-sized cities. We turned to San Jose State University, University of Arizona, Syracuse University, University of Washington, and SUNY Buffalo to learn about recent successes in establishing community-university partnerships. We then decided which approach we were going to take in forging the partnership.

Rather than create a top down partnership, we committed to employ what had been described in the Arbor Hill Partnership Feasibility Study as the empowerment-capacity building model, where “the community and university work alongside each other, learning from each other through collaboration on projects.” Early in our effort we committed to avoiding a paternalistic model. Our central tenet was that both the university and community would be best served by building upon resources already available, rather than intimating that we had all the answers.

After talking with many stakeholders from both the university and community, we learned just how many cooperative resources already existed. However, while the number of existing programs between Arbor Hill and SUNY Albany was high,

knowledge of these was low. In order to increase effectiveness of existing initiatives and to reduce the duplication of services and programs, we would need to enhance communication between the university and the community, so we created a three-phased scenario for partnership. Enhanced communication was the first phase towards cooperation.

In Phase 1, “the objective is to document, publicize and build upon activities formerly or currently undertaken between the University and the Arbor Hill community,” according to the Partnership Study. We recommended this be accomplished through a central database of existing programs, and a dossier of contact names and email addresses. Phase 1 would encourage communication between disparate academic programs and disparate community groups. We wrote “greater availability of information will allow community groups to learn about the diversity of departments within the university that are working with community groups.”

Further participation might bring active members of the community to speak in classes. Also included in phase 1 was the establishment of an advisory board of university and community stakeholders who would work to keep lines of communication open about existing projects, and act as a conduit to elicit further participation on future projects. Phase 1 was our first low-cost step toward sharing information and exchanging ideas.

Phase 2 transcends departmental and community boundaries to establish multi-disciplinary and multi-organizational projects. It was an effort to create more holistic and comprehensive strategies. The advisory committee would evolve into a steering committee of stakeholders, ideally with a paid staff to identify and fulfill needs by reaching out to the community and the university. This model was influenced by the University of Washington, where staff take ideas from the committee to university departments in search of support and coordinates the activities of multiple departments around a commonly-defined community-university goal.

The final phase is dedicated to the establishment of an office or a specific program dedicated to coordinating partnership ventures. Phase 3 seeks to establish a permanent body dedicated to enhancing cooperation. Possible incarnations of Phase 3 include the establishment of a physical building or construction of a non-profit organization. Building upon the previous stages, this third phase would

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# UAlbany Planning Students Lend a Hand to Their Community's Future

by Michael Williams

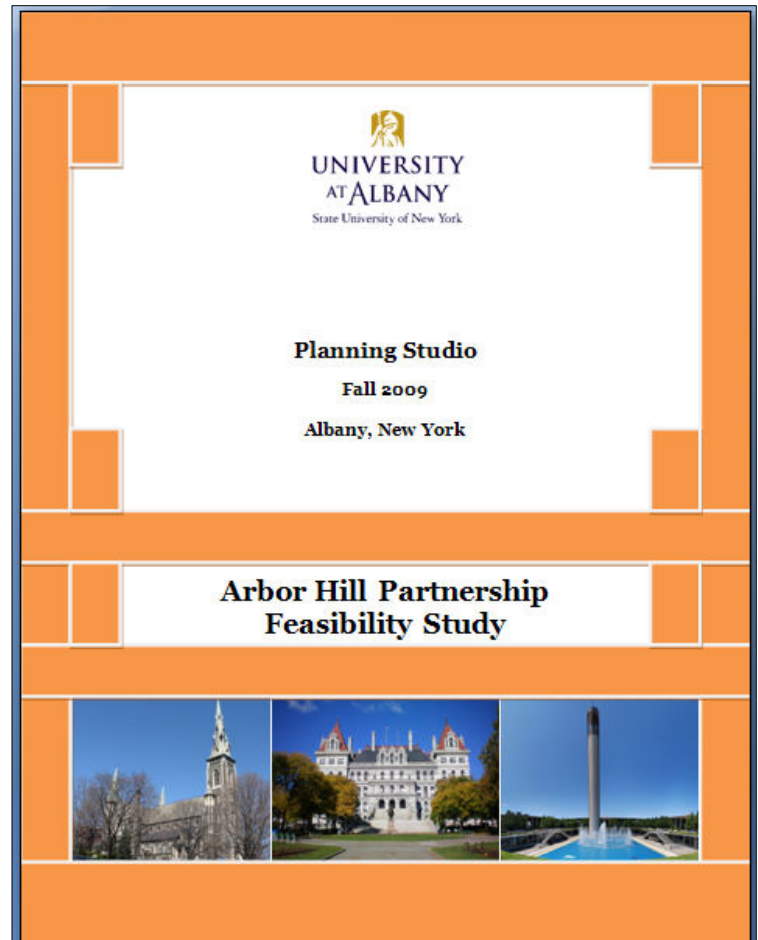
On three icy days in late January, graduate students from the University at Albany's Department of Geography and Planning helped city planners facilitate the development of the first comprehensive plan in Albany's 400-year history. The plan, "Albany 2030," was the focus of a round of forums to gather public input on the city's strengths, weaknesses, and shared vision for the next 20 years. Students facilitated the discussion and assisted small-group brainstorming sessions before allowing the entire assembly, which on one night approached 200 people, to electronically choose focus areas for the plan.

Participants identified Albany's greatest strength to be the dense, walkable neighborhoods that offer all the needed amenities of urban life. Albany, once among the 10 most populous cities in the country, is still a vital urban community, but this potentially great city has not capitalized its strengths over the past half-century. Crime is a perceived problem. Hundreds of homes are vacant or abandoned. The city's population has declined 30% since 1950, while once-agricultural towns sprouted into sprawling suburbs. These are key challenges to Albany's future aspirations.

The group sees the ideal future Albany as a place where the city's cultural, economic, and infrastructural endowments can be harnessed, "a community of choice," as one participant described, where people live because they truly desire to. In a region working to transform itself into a green, high-tech, research-intensive "Tech Valley," Albanians want their city to be a destination for immigrants, instead of the suburbs to the north and west that have accounted for the region's growth over the last 50 years.


UAlbany students continue to work on making tangible contributions from the academic community toward the future of its host city. They plan to come out in force to assist Albany 2030's next round of public forums in April, and hope to hold a campus-wide event to gather input from students and faculty who might not otherwise be able to attend public meetings. In a city whose population hovers just below 100,000, these students acknowledge the role and responsibility of their university of over 18,000 in helping to plan the place that gave UAlbany its name. 

*Williams is a Masters student in the University at Albany's Department of Geography and Planning.*



## *Town Gown Coordination in Albany* *continued from page 6*

include dedicated staff working to help community groups find student volunteers for projects and events, help students locate service learning opportunities, allow professors to learn about existing projects and to conduct relevant research, as well as help community groups increase civic participation. Phase 3 would necessitate active fundraising and would have members of the steering committee sit on a board of directors.

We presented our feasibility study and recommended next steps to university and community stakeholders. Our final product, a 50-page document, details how, through a phased scenario, the university and community could strengthen cooperative ties. If enacted, this scenario would deepen the collaboration between SUNY Albany and the Arbor Hill neighborhood in a mutually beneficial and symbiotic relationship. 

*Bates is a Master's student in the University at Albany's Department of Geography and Planning.*



Instead, everyone's attention turned to the micro level, to the proposal for each parcel on the street, and how it would affect them personally. It was like going from a visioning process, which encourages imagination and aspiration to a line-by-line budget analysis inviting only criticism. It seemed all the good will we built at our first public meeting was lost. The stakeholders were displeased. We had hit an impasse.

So we took a step back in our planning process and our consultants rallied everyone around broad goals for the neighborhood plan rather than parcel-specific land uses. Accordingly, the revised street plan showed blocks circled and labeled with land use themes like "Residential," "Mixed Use," and "Cultural." They also came up with four areas of focus for the plan based on the public comments from our first meeting. These were:

- 1) Homeownership and Rental Housing
- 2) Business and Job Development
- 3) Arts, Culture and Heritage
- 4) Quality of Life

For each category, we developed a series of guiding principles reflective of the community's values. In housing, for example, a guiding principle was to cluster affordable housing throughout the neighborhood rather than concentrate it in one area. Another was to rehabilitate existing housing where possible and build compatible infill development. This principle underscored the neighborhood's value of its historic buildings and desire that new buildings fit into the architectural context of the community. Another guiding principle was to provide a variety of housing types for all ages, family sizes and incomes. This principle stemmed from stakeholders' fear of gentrification and their desire that there be a place for everyone in the neighborhood. These principles would be used to guide the successful development of rehabilitation and new construction projects.

Once we reoriented the plan to broad land use themes and focus areas with their respective guiding principles, things proceeded smoothly. Ultimately, we reached a consensus on the final plan. And, what about those angry people who came to our early



*New Storefronts on North Swan Street*

advisory committee meetings? Some just came because they wanted a good fight and, eventually, finding found nothing objectionable in our plan, they stopped coming. Others, who were vociferous in their condemnations in the beginning, stuck with the process and participated in our neighborhood meetings. Over time their criticism turned to praise. In fact, they became our most ardent supporters.

A rough start to the planning process, an early impasse, but then consensus. Indeed, the plan engendered so much good will that it was easy to assemble an implementation team. This group continues to meet seven years after plan completion. Additionally, most of the large projects called for in the plan have been or are in the process of being implemented. Yes, the neighborhood still faces challenges. But traveling up North Swan Street between Clinton and Livingston Avenues, one can see multi-million dollar investments in housing, retail, and cultural development. The Arbor Hill Neighborhood Plan clearly illustrates that the critical first step in the successful development and implementation of a plan is earning a community's trust. ©

*Wahba is the principal of MW Planning in Albany and formerly was a senior planner for the City of Albany. She presented this project at the Upstate APA conference last October. Her presentation can be found at: [www.mwplanning.net](http://www.mwplanning.net).*



of eminent domain for economic development purposes.

### **Condemnation for Road is a Valid Public Purpose**

The Appellate Division, Third Department, upheld the taking of half an acre of private property in Binghamton to improve a road's turning radius as a public purpose (*225 Front Street, LTD v. City of Binghamton*). The landowner had claimed, among other things, that the taking of his property would serve a private purpose, not a public one since the project impacted a connector road that was primarily used by commercial traffic. The city disagreed, adopting a resolution declaring that the project would benefit the public and authorized the use of eminent domain. The court agreed with the city and noted that public purpose is broadly defined and encompasses "any use which contributed to the health, safety, general welfare, convenience or prosperity of the community." It said that the proposed project seeks to address serious traffic concerns, commenting on the large number of traffic accidents in the area as a result of the existing configuration of the intersection.

In concluding that the project has a public purpose, the court commented, "[p]utting aside the fact that commercial use of public highways has obvious public benefits, there can be no doubt but that where an intersection of two public roadways is constructed in such a way that some vehicles cannot safely negotiate it, all vehicular traffic that utilizes the area is obviously affected."


### **RLUIPA Does Not Apply to Eminent Domain**

Next to eminent domain, the Religious Land Use and Institutionalized Persons Act (RLUIPA) ranks as one of the most litigated and contentious issues in land use planning decision making. A number of courts across the country have been asked whether eminent domain is a "land use action" subject to RLUIPA. The federal district court for the Eastern District of New York recently issued a decision confirming that RLUIPA does not apply to eminent domain actions (*Congregation Adas Yerim v. City of New York*).

In 2001, Congregation Adas Yerim, a religious organization, sought to build a religious school and residential units on undeveloped property it owned in New York City that was zoned for manufacturing. At around the same time, the city's sanitation department filed an application with the Department of City Planning for site selection and acquisition of

the property for a sanitation garage. Following an environmental review, proceedings began to acquire the property pursuant to New York City's Uniform Land Use Review Procedures (ULURP), and the community board recommended approval of the sanitation department's project.

The congregation contended that the vote was motivated by anti-semitism, and constituted a de facto denial of their special use permit application. The congregation sued under the state Eminent Domain Procedure Law, seeking a permanent injunction to stop the city from condemning the site. When the state courts found for the city, the congregation took the matter to federal court alleging that the city had violated the congregation's rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The court determined that it could not hear the case on procedural grounds. However, it stated that if it had jurisdiction, it would dismiss the RLUIPA because "RLUIPA does not apply to eminent domain proceedings." The court explained that eminent domain is not a land use regulation and that under RLUIPA, the government implements a land use regulation "only when it acts pursuant to a zoning or landmarking law that limits the manner in which a claimant may develop or use property." The court commented that "had Congress wished to bring the distinct, longstanding, well-known, and important governmental power of eminent domain within the ambit of RLUIPA, it surely could have said so. That it did not is compelling." 

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## Significant Land Use Cases

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of terrorism is reasonable if the proposed development involves the creation of a venue that does not bring with it a “significantly elevated risk of terrorism and consequent environmental detriment.” The court left open the possibility that a development of the latter nature would require the lead agency to address a possible terrorist threat in its SEQRA review.

### Near total loss require for regulatory taking

Courts must be clear when instructing a jury as to how much economic loss is a regulatory taking. In *Noghery v. Town of Brookhaven*, the Appellate Division, Second Department, provides a good reminder of the nuances in the Supreme Court’s multi-factor balancing test for regulatory takings claims under *Penn Central Transp. Co. v. New York City*.

In 1985, Parviz Noghery purchased two properties in the Town of Brookhaven with the intention of building two shopping centers. In response to rapid population growth, and after a significant and informed public process, the town rezoned over 1,200 acres of land from commercial to residential property, including plaintiff’s parcels. With the zoning change resulting in a loss of his ability to develop the property as planned, Noghery sued alleging that the town’s actions amounted to a regulatory taking.

Using the judge’s instructions that a landowner must prove by a preponderance of the evidence that the rezoning resulted in “a near total or substantial decrease or significant reduction in value,” the jury found for Noghery. Reversing the \$7.5 million trial court award, the Appellate Division held that the court’s instructions did not convey the proper standard for the jury to evaluate whether a zoning amendment goes so far as to amount to a taking; specifically lacking was the level of economic impact necessary to support a taking under *Penn Central*. Under *Penn Central* the Supreme Court set forth that, although there is no exact formula for evaluating a regulatory takings claim, there are several factors to consider, which include, among other things, “the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.”

The Appellate Division sent the case back to the trial court noting that the jury instructions should state that a regulatory taking under *Penn Central*’s



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economic impact factor analysis requires a loss in value “one step short of complete” and that a rezoning is not “unconstitutional merely because it causes the property’s value to be substantially reduced.”

### The elements of standing

An early case from last year, *Bloodgood v. Town of Huntington*, offers a useful reminder of the elements of standing under SEQRA. In a hybrid Article 78 proceeding and declaratory judgment action, a group of landowners and other interested parties challenged the Town of Huntington’s zoning legislation, which added mixed-use buildings to the permitted uses in the town’s General Business District. They alleged that the town board did not take the “hard look” required under SEQRA at the law’s potential environmental impacts. Finding in favor of the town, the lower court held that the petitioner-plaintiffs lacked standing to challenge the SEQRA review.

Sending the case back to the lower court, the Appellate Division held that with respect to the

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## Significant Land Use Cases

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petitioners who are owners of commercial property within the District, “where the challenge is to the SEQRA review undertaken as part of a zoning enactment, the owner of property that is the subject of the rezoning need not allege the likelihood of environmental harm.” Likewise, the court held that a landowner within close proximity to the District, who alleged that the law would “detrimentally impact the Town’s sewage and wastewater systems, increase traffic, and negatively impact groundwater” had standing to sue.

Standing to challenge a zoning enactment under SEQRA involves a slight variation on what is generally required to establish standing to challenge an administrative action: a challenger must demonstrate that the action will have a harmful effect on the challenger; the harm is different in kind or degree from that suffered by the public at large; the interest to be asserted is within the zone of interest to be protected by SEQRA; and the harm to be suffered is environmental and not solely economic in nature. In addition, and as the *Bloodgood* court reminds us, where the challenge to SEQRA review is undertaken by a landowner with property subject to the relevant rezoning, the landowner need not allege the likelihood of environmental harm.

Finally, another case from early this year, *Residents Against Wal-Mart ex rel. Rice v. Planning Bd. of Town of Greece*, reminds us that for an organization to have standing in such a suit, the group must demonstrate “at least one of its members would have standing ... that it is representative of the organizational purposes it asserts and that the case would not require the participation of individual members.”

### Importance of clear rules and clear findings

Ambiguous zoning language must be resolved in favor of a property owner according to the court in *Lodge Hotel, Inc. v. Town of Erwin Planning Board*. The Appellate Division court annulled the denial of a site plan application for construction of a retail store based on the inclusion of impermissible “sidewalk retail” because the term was ambiguous. Citing previous case law, the court stated that “although a planning board’s interpretation of a zoning ordinance is generally entitled to great deference . . . there is a well-established but countervailing precept that zoning restrictions . . . must be strictly construed against the municipality [that] enacted and seeks to

enforce them, and that any ambiguity in the language employed must be resolved in favor of the property owner.”

Also last year, clarity benefited the Town of Ellicottville where the Appellate Court upheld the planning board’s denial of a petitioner’s application for site plan approval for a cogeneration plant that uses wood chips as a fuel source (*Laidlaw Energy and Environmental, Inc. v. Town of Ellicottville*). In its Statement of Findings and Decision, the planning board indicated “that the ‘serious increases in harmful emissions’ from the plant would result in an ‘unacceptable adverse impact.’” The court held that the board’s decision “was not ‘arbitrary, capricious, or unsupported by substantial evidence’ and the record established that the board took the requisite hard look at the evidence and made a reasoned elaboration of the basis for its determination.”

### Taking care with variances

In *Gebbie v. Mammina*, the state’s highest court offered a succinct reminder of the broad discretion granted to local zoning boards in considering applications for area variances. The decision by the Court of Appeals reversed the Appellate Division’s ruling that the board’s denial of petitioner’s application for an area variance to subdivide a lot, which would have resulted in the creation of a lot 500 square feet less than the permissible size, was not rational given that there was no evidence that the variance “would have a negative impact on the character of the neighborhood, adversely affect the physical or environmental conditions in the neighborhood, or constitute detriment to the health safety, and welfare of the community.” The Court of Appeals disagreed, holding that the board’s decision to deny the petitioner an area variance “had a rational basis and was not arbitrary and capricious” and stating that “the Appellate Division erroneously substituted its judgment for that of the agency.” Another Appellate Division ruling in *Millennium Custom Homes, Inc. v. Young* reached the same conclusion. In this case the court noted that local zoning boards have broad discretion; that “judicial review is limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion;” and that a zoning board’s determination “made after a public hearing should be sustained if it has a rational basis and is supported by evidence in the record.”

In *Waidler v. Young*, a variance approval by the zoning board of appeals was challenged by neighbors arguing that the board had rejected a substantially similar

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## Significant Land Use Cases

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application three years earlier. The Appellate Division upheld the ZBA's determination, holding, in essence, that a board is entitled to change its mind with good reason. In doing so, the court noted that so long as a board "provides a rational explanation for reaching a different result on similar facts, the determination will not be viewed as either arbitrary or capricious." The court also noted that a board "may refuse to duplicate previous error; it may change its views as to what is for the best interest of the [community; and] it may give weight to slight differences which are not easily discernible."

In *Caspian Realty v. Greenburgh*, the Appellate Division dealt with the novel issue of whether a zoning board may deny an area variance on the basis of ongoing and deceitful representations by an applicant during earlier interactions with the local boards. In the Town of Greenburgh, the zoning board grew so frustrated by an applicant's deceitful practices over time that they denied a variance based on those past lies. Unfortunately for the board, the court ruled that a zoning board must adhere to the five statutory factors enumerated under Town Law § 267-b(3) and its village counterpart Village Law § 7-712-b(3). The court noted that the standards set forth in the statute "are exclusive, thereby precluding zoning boards of appeal from considering any factors not recited in the statute." However, it also said that the zoning board may take an applicant's past deceit into account to the extent that it inextricably relates to the five statutory factors (for example, when judging the veracity of whether the applicant's stated benefit of a variance application is outweighed by the adverse impact to the Town).

### Confirming the need for vesting of rights

In the case of *Golden Horizon Terryville Corp. v. Prusinowski*, the Town of Brookhaven took six months to respond to an application for a commercial site plan; and the response included a series of conditions that the applicant must follow before facing a review. During the time between the department's response and applicant's revised submission, the area in which the property was located was designated as a historic

district, such that the applicant was required to obtain a project approval from the Historic District Advisory Committee. A hearing was held but not completed by the committee and the committee never rescheduled the matter for completion. The town then enacted a moratorium on the processing of site plan applications for the area in which the property was located. The property owner then brought an Article 78 proceeding trying to compel the town to process its site plan application under the ordinance that was in effect at the time of the revised application submission. The Supreme Court determined that the moratorium did not apply to petitioner's property and granted the petition to compel processing.

Reversing the Supreme Court's decision, the Appellate Division held that courts are to apply "zoning laws in existence at the time the decision is rendered which, in the present case, would include the zoning amendment placing a moratorium on development and the processing and consideration of site plan applications." However, "a municipality may be estopped from applying such zoning amendments upon a showing that it prevented the property owner from obtaining vested rights through some form of misconduct or extraordinary delay." Accordingly, the court said that the landowner must show that the town acted in bad faith by delaying the processing of the application while the zoning law was changed. ©

*Jessica A. Bacher is an Adjunct Professor of Law at Pace University School of Law and Senior Managing Attorney for its Land Use Law Center. Jennie C. Nolon is an Attorney for the Land Use Law Center and manages its urban law programs.*

## Sandra Misiewicz Honored at ACCVB Meeting



At its annual meeting held on February 23, 2010, the Albany County Convention and Visitors Bureau (ACCVB) celebrated the volunteer meeting planners who brought important meetings to the Capital Region. Sandra Misiewicz, NY Upstate APA Chapter Board Secretary, was honored for bringing over 200 attendees to the Capital Region for their NY Upstate Chapter American Planning Association. The designation of Albany Ambassador is given to event committee volunteers who bring in more than 100 room

nights to Albany. The thirteen 2009 Albany Ambassadors were responsible for bringing over 4,800 delegates and visitors, as well as over 7,000 room nights to the Albany area throughout 2009. ©

# 2009 NY Upstate Chapter Executive Board Annual Report

**President, Judy Breselor, AICP**

This newsletter contains reports on the activities of our Board members. Some members get confused about whether or not they are a member of APA, the Chapter, or their Section. As a member of APA you belong to the New York Upstate Chapter and can be involved in the section that you either live or work in. The Chapter is the bridge between national APA and the sections, and upon joining APA you become a member of all three groups. The Chapter Board is comprised of an Executive Committee, which includes those elected to their seat, Section Directors, and student representatives from SUNY Albany, SUNY Buffalo and Cornell. The Chapter Board also has representation from the County Planners, our Canadian members and the New York Planning Federation.

In 2009, the Board worked for better ways to reach out to our membership; we have had an active working committee on marketing, this newsletter and outreach to young planners. We have also updated our bylaws. In 2008, a Young Planners Task Force presented their findings to the APA membership at the National Conference. There was an overwhelming response from young planners to become more involved. Since then, a number of APA Chapters have started to form Young Planner Groups. Under the Chapter Board's direction, Mark Castiglione stepped in to ensure that a Young Planner's group would become an integral part of our Chapter.

In 2009, the Board also hired a part-time administrative staff and many of you have enjoyed the benefits of emails from Tanya Zwahlen pertaining to training opportunities, board updates and employment opportunities. Tanya is an AICP member and has brought a wealth of knowledge to help in our endeavors to better serve our membership.

The Certification Maintenance (CM) program involved a great deal of work to ensure that our members receive information about training required in order to maintain their AICP credits. Ellen Parker, our Professional Development Officer, has put in timeless hours to bring these programs to you.

The Chapter Board changed its election cycle this year and will be having our elections in August rather than in November, to allow our new board members to be

sworn in at our annual conference, thereby allowing our members to see who their newly elected officers are. If you are interested in serving on the Chapter Board or have any comments or suggestions to better improve our membership, please email me at [Judith.Breselor@gmail.com](mailto:Judith.Breselor@gmail.com).

**Vice President, Gary Palumbo**

## **Michael J. Krasner Memorial Scholarship**

In 2009, the Chapter awarded the sixth annual Michael J. Krasner Memorial Scholarship to Christopher Schaut. Christopher was the 2009 recipient of the \$1,500 scholarship. In 2009, we raised \$1,621 for the Scholarship fund. The fund balance is now approximately \$7,100. The 2009 Selection Committee included Ken Swanekamp, Erie County Department of Environment and Planning, Samina Raja, University of Buffalo, and me.

The Michael J. Krasner Memorial Scholarship is a competitive award for a second year graduate student in the Urban and Regional Planning Program at the University at Buffalo. The scholarship honors Mike Krasner's dedication to the planning profession and education in Western New York, as well as his commitment to APA. The scholarship is awarded to the student that best exhibits a commitment to planning issues in Western and Upstate New York, an intent to practice within the Upstate Chapter, and best reflects the ideals of Mike Krasner.

## **Annual Chapter Conference**

In 2009, I served as a resource to the Capital District's Conference Planning Committee. The Capital District organized and carried out a very successful conference for the 225 members in attendance. In 2009, planning activities also began for the 2010 Chapter Conference to be held in Niagara Falls from September 22-24, 2010.

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## **Call for Articles**

The Upstate Planner is interested in hearing about your projects and your thoughts on planning in Upstate New York and around the country. If you recently wrapped up a plan or want to discuss a particular issue, the Upstate Planner is your forum. We can help you shape your ideas and edit your text for publication. Please email your ideas or draft articles to George Homsy at [gch24@cornell.edu](mailto:gch24@cornell.edu).

## **Professional Planning Awards**

The Chapter Vice President is responsible for organizing the Annual Chapter Awards program. In 2009, 12 awards were given in 10 categories. A complete list of recipients can be found at [www.nyupstateplanning.org](http://www.nyupstateplanning.org). The following representatives from each of the Sections assisted me on the Awards Committee, to review the nominations, discuss each nomination and select winners:

Mark Castiglione (Capitol District)  
Donna Scanlon (Central Section)  
Kerry Ivers (Genesee/Finger Lakes Section)  
Frank Evangelisti (Southern Tier Section)  
Jeff Lebsack (Western New York Section)

The awards were announced at the Annual Chapter Conference luncheon.

### **Treasurer, Sandy Misiewicz, AICP**

The Chapter operated on a \$32,820 budget during 2009. Actual expenses totaled \$25,479.90 and revenue was \$21,634.84. The major expenditures included the first year of Chapter staff support (\$7,052.88), the Chapter newsletter (\$3,644.37) and Section Rebates (\$5,133.00). In addition, a \$1,500 scholarship was awarded to a Graduate Planning student at SUNY Buffalo in the memory of former Chapter President Mike Krasner. Major expenditures related to officer activities included the expenses of the President to attend National APA and Chapter President Council meetings (\$2,773.51) and the expenses associated with the Legislative Officer attending the National APA Legislative meeting (\$1,496.85). As there was no Delegate Assembly at the 2009 National APA conference, the Chapter saved \$1,000 in budgeted attendee expenses.

The primary source of revenue was the APA rebates from National APA, totaling \$14,295.83. This is approximately \$1,100 less than the amount received in 2008. However, National APA now takes the AICP Certification Maintenance fees off the top of the Chapter rebate. For 2009, those fees were \$995. Other revenues included contributions to the Mike Krasner Scholarship Fund (\$1,621.24) and Chapter proceeds from the 2009 conference held in Albany (\$5,796.05). The Section rebates, based on the number of members by type, were distributed to the Sections as follows: Capital District: \$1,746.00;

Central NY: \$584.00; Genesee/Finger Lakes: \$734.00; Southern Tier: \$701.00; and Western NY: \$1,368.00.

The Chapter Cash Fund Balance at the end of 2009 is \$54,721.33, of which \$6,653.24 is restricted and dedicated to the Mike Krasner Scholarship Fund. As a result of 2009 contributions, the Krasner Scholarship fund balance increased slightly from \$6,532 to \$6,653.24.

2010 will be a challenging year as National APA has announced a 17% cut to our Chapter Rebate. The Chapter will be exploring new sources of revenue, opportunities for cutting expenses and other options. If anyone has any questions, please contact me at [smisiewicz@cdtcmpo.org](mailto:smisiewicz@cdtcmpo.org) or call (518) 458-2161.

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## **NY Upstate APA Executive Board**

**President:** Judy Breselor, AICP  
**Vice President:** Gary Palumbo, AICP  
**Treasurer:** Sandy Misiewicz, AICP  
**Secretary:** Jason Haremza, AICP  
**Professional Dev. Officer:** Ellen Parker, AICP  
**Membership Officer:** Eve Holberg, AICP  
**Education Officer:** Andy Raus, AICP  
**Public Relations Officer:** Diane Carlton, AICP  
**Director of Legis. Affairs:** Douglas Greene, AICP  
**County Planning Officer:** Elaine Jardine  
**Canadian Officer:** Leigh Whyte MCIP, RPP, AICP  
**Planning Official Dev. Officer:** Michael Kayes  
**Member-at-Large:** Mark Castiglione, AICP  
**Webmaster:** Jean Waterbury, AICP  
**Immediate Past President:** Mike Long, AICP  
**Newsletter Editors:** George Homsy, AICP and Tanya Zwahlen, AICP

### **Section Directors**

**Capital Dist.:** Stephen Iachetta, AICP  
**Central NY:** J. Justin Woods  
**Genesee/Finger Lakes:** Katie Evans  
**Southern Tier:** Gail Domin  
**Western NY:** Rich Guarino, AICP

### **Student Representatives**

**UAlbany:** Nicholas Bruno and Joseph Donnelly  
**UBuffalo:** Jessie Hersher and Danielle Rovillo  
**Cornell:** Sueaee Shin



### **Secretary, Jason Haremza, AICP**

The secretary's position is a necessary but rather prosaic function of any organization. I've endeavored to keep the Chapter Board roster up to date, and with much appreciated assistance from time to time, I've recorded and distributed the minutes of each of the Board meetings in 2009. As requested, I've also updated the Chapter letterhead on an as-needed basis. I hope to continue these tasks, and any others requested of me, with efficiency and competence through the remainder of my term in 2010.

### **Legislative Affairs, Doug Greene**

This was my first full year as Director of Legislative Affairs for the Upstate Chapter. My activities were as follows:

- Attended a meeting of the Land Use Advisory Committee (LUAC) of the Rural Resources Commission on January 21<sup>st</sup>. Ron Branch, Executive Director of LUAC for many years announced his retirement.
- Met with a staff member of Assemblyman Cahill to discuss the State's Energy Policy and Smart Growth.
- Continued to establish lines of communication with the Directors of the State's Smart Growth Cabinet and Empire State Future.
- Attended 2 meetings of the newly started Capital District Smart Growth Council, started by Empire State Future.
- Wrote updates to our members on the Economic Stimulus Package Smart Growth and Transportation Policies in Upstate New York.

- Attended the National APA Policy and Planner's Day on Capitol Hill in October to learn about the many new federal legislative initiatives of the Obama Administration.
- Met with staffers from Senator Schumer's and Congresswoman Gillibrand's offices.
- Along with Judy Breselor, met with Erica Heintz, the new Director of the Rural Resources Commission, to lobby for the re-establishment of the Land Use Advisory Committee.
- Met with Empire State Future in December on establishing a legislative agenda and a State Smart Growth Public Infrastructure Policy Act (A8011).

I'm looking forward to continue my work as Director of Legislative Affairs in 2010 by reporting and representing the interests of Upstate planners.

### **Professional Development, Ellen Parker**

The Professional Development Officer (PDO) for the Chapter is responsible for ensuring that all APA members maintain high professional standards and continue to further their education in the field. The PDO is also in charge of administering the Certification Maintenance (CM) program for AICP planners. All AICP planners are now required to obtain 32 credits of CM-certified continuing education every two years in order to retain their certification. For all planners who had AICP credentials at the start of 2008, the first two-year cycle ended in December 2009. You have a four month grace period to continue to earn credits, and of course, you can start earning credits for the current two-year cycle (2010-2011).

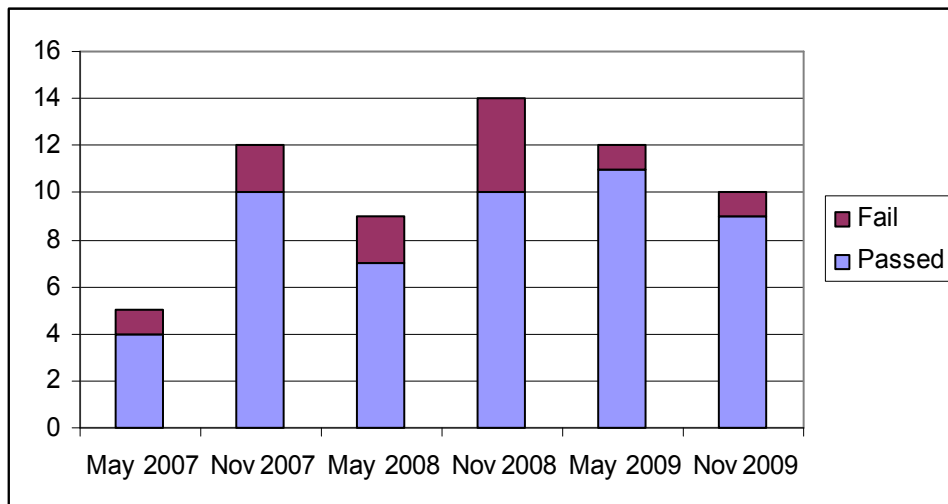
### **AICP Exam**

In 2009, 22 planners sat for the AICP exam in either May or November and 20 passed. New York Upstate continues to show much better pass rates than the national average, with a 90% pass rate in 2009, compared to 66% nationally. In total, we have 20 new AICP certified planners in our Chapter—congratulations!

### **CM Credits**

The Chapter and Sections continue to offer many opportunities to earn CM credits. Eligible credits are available for all sessions from the 2007, 2008 and 2009 APA Chapter conferences, many Section events and webcasts. You can also claim up to 8 "self-reported" credits. New

**AICP Exam Results**



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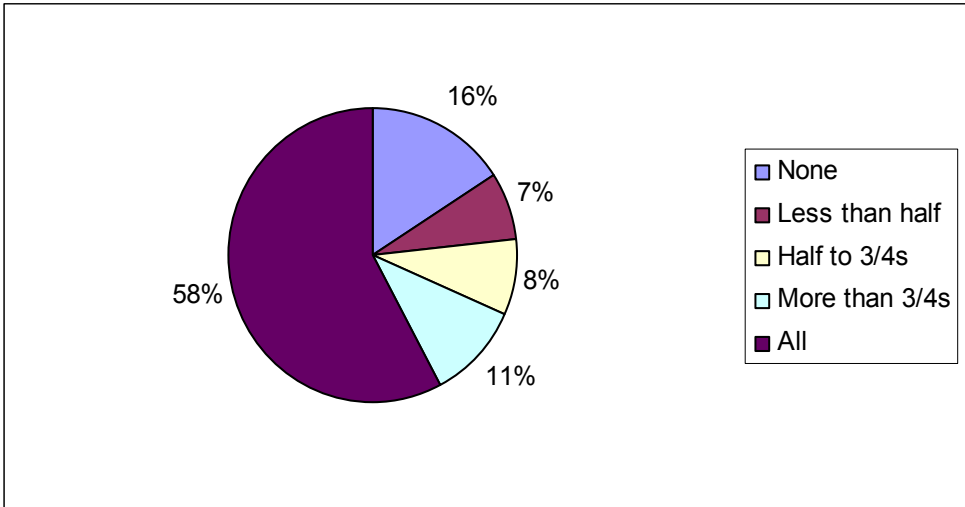
York Upstate is one of the co-sponsors of the free webcast series for CM credits. You can sign up through the Utah Chapter website. A link is on the NY Upstate Chapter website, along with links to other CM opportunities. The National APA website also lists a section of free CM credits. We continue to encourage more organizations to offer CM training. The New York Planning Federation had five sessions of this year's conference approved for CM credits. Other providers include ITE, National Trust for Historic Preservation, the Congress for New Urbanism, planetizen.net and ICLEI. While the number of non-APA offerings remains limited, it is growing. Please let me know of organizations or events you think should be offering CM credits.

CM Logging

You do not receive credit for CM credits you have earned until you log them into the APA website. As of December 31, 2009, 68% of our AICP members have at least 24 logged CM credits and 58% had all required credits. About 16% have not logged any credits, although many of these members may have unlogged credits.

If you need assistance using the logging system, let me know. If you are retired, unemployed or have other extenuating circumstances, you may be eligible for a waiver or exemption. Information about the program is available either from me or from the national website: [www.planning.org/cm](http://www.planning.org/cm).

CM Logging by NY Upstate AICP Planners:  
Proportion of Total Required Credits Logged



Public Relations, Diane Carlton

The Public Relations officer is responsible for letting the media and the public know about the work and the presence of the Chapter. The major work of the Public Relations officer is editing the Upstate New York APA newsletter. In addition to this, other duties undertaken in 2009 include writing articles for the newsletter and publicizing the results of the Chapter's annual progress.

Education Officer, Andrew Raus, AICP

The Education Officer works with Sections to build and maintain a relationship with college level planning schools and to develop and implement programs for K-12 students. I am also responsible for coordinating the fall student reception with the host planning school and leading the Chapter's involvement in the Michael J. Krasner Scholarship program at SUNY Buffalo.

In 2009, I met with the Chair of each accredited planning school to better understand how the Chapter can improve coordination with students and function as a resource in their professional growth. We developed goals to improve student involvement in the annual conference, develop a better interface to allow students to understand practice of planning and the job market, and communicate more effectively with the student associations.

At the Chapter conference, several board members facilitated a roundtable discussion that allowed students to ask practicing planners questions about the profession, job market and desirable skills. This will be a consistent event at future conferences. If you have ideas on how to improve last year's event or would like to participate, contact me.

The Board met with students from the SUNY Buffalo Planning Department in November. Representatives from three studio classes (Dr. Park's *Jobs of Past and Present: A Social and Economic Analysis*, Dr. Raja's *Kid Corridors: Taking Steps to School; An Active Commuting Plan for the Williamsville Central School District* and Dr. Cole's *Route 16 Corridor Community Partnership*), presented their projects and asked the Board for input and advice. We were all excited to see the diversity of studios underway and the quality of work presented by the students.

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## Membership, Eve Holberg, AICP

Economic stress, rising unemployment and the New York State budget crisis could have been expected to have a severe negative impact on membership in your Upstate New York Chapter of the American Planning Association. However, while our membership dropped 58 members between September 2009 and January 2010, year-to-year membership is stable with 725 members of our chapter in January 2009 compared with 718 in January of 2010. The table below summarizes chapter membership status as of January.

Your Chapter executive board has been concerned about the impact the implementation of Certification Maintenance (CM) would have on enrollment in the AICP program. We are happy to report that we have more certified members in January 2010 (280) than we did in January 2009 (263). This is wonderful news and bodes well for the continued vitality of our chapter and the professionalism of our members. Our Professional Development Officer, Ellen Parker, and Staff Consultant, Tanya Zwahlen, deserve credit for finding, organizing and communicating free and low-cost CM opportunities for members. Sections have also been proactive in this regard.

The APA offers a reduced rate to members who are unemployed. This special rate is available to members who have maintained their membership for three or more years. If you would like more information or to request this special rate (APA dues \$50, Chapter dues \$10, AICP \$25) contact APA by phone, 312-431-9100, or email [customerservice@planning.org](mailto:customerservice@planning.org). If you are unemployed, please consider maintaining your

membership. Networking opportunities include professional development and social events in your section and the annual chapter conference.

Please take the time to log on to [planning.org](http://planning.org) at least once a year to review your contact information. Chapters and sections use the national database to maintain their mailing and emailing lists. If your contact information is out of date, you could be missing important and interesting chapter and section communications regarding continuing education, social events and legislative and regulatory news.

## Planning Official Development Officer, Mike Kayes

The New York Upstate Chapter of the American Planning Association seated its Municipal Official Development Officer at its January meeting. The position attempts to raise the awareness of local municipal officials and their activities on the New York Upstate Executive Committee. The position is an officer of the Upstate Chapter appointed by the Chapter Executive Committee. The New York Planning Federation nominates the candidate for the position.

The Municipal Official Development Officer also maintains a dialogue between the APA Chapter and the New York Planning Federation. The New York Planning Federation continues to maintain an emphasis on providing education and technical assistance to its members. Its members are primarily Municipal planning and zoning officers.

In 2009, the Municipal Official Development Officer was asked to attend and summarize the presentation of the 2009 policy of the National American Planning Association. The New York Planning Federation

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NY Upstate APA Chapter Membership, January 2010

	Capital District	Central NY	Genesee/Finger Lakes	Southern Tier	Western New York	Out of Chapter	Total
Faculty	4			17			21
Life member	6	2	1	1	6	1	17
Member	152	47	62	57	115	20	453
New Planner	9	4	4	1	9	1	28
Planning Board Member	4	10	6	2	5		27
Retired	5	3	4			2	14
Staff						1	1
Student	44	2	2	56	47	6	157
Total	224	68	79	134	182	31	718



through its staff and board accomplished the following for local municipalities and their officials in 2009:

- Presented its two day Annual Conference offering more than two dozen informative sessions aimed at municipal boards, planners, engineers and elected officials. Randall Arendt provided the keynote address speaking on transforming the strip.
- Updated the publication "The Short Course: A Basic Guide for Planning Boards and Zoning Boards of Appeals in New York State."
- Prepared an amicus curiae (friend of the court) brief for a town planning board in Western New York.
- Provided assistance to communities on the formation of Conservation Councils.
- Co-sponsored and/or presented at numerous training and outreach programs.

#### **Member at Large, Mark Castiglione, AICP**

As Member-At-Large, I assist the President in carrying out the Chapter's programs and other duties as assigned by the President or Executive Board. In 2009, I have had the opportunity to assist the Chapter in advancing its goals in a variety of ways. I was honored to serve on the Chapter Awards Committee, reviewing the many worthy plans that were nominated. The review process was one of the most interesting and rewarding experiences I have had in my time on the board. In addition, I have been involved in the marketing, membership and newsletter sub-committees.

In 2009, I was charged with helping to establish Young Planners Groups (YPGs) around Upstate. APA has made it a priority to establish young planners groups to connect young professionals with one another to provide networking opportunities for students, recent graduates, and planners that are in the first half of their careers. In addition to the obvious benefits of networking, facilitating these connections through a YPG will help ease the transition into the professional field for recent graduates. By connecting them with their peers in the professional world, they can hopefully glean all the stuff they did not learn in planning school. See the sidebar on this page for more details on the YPG.

I have also created an Upstate APA LinkedIn group (search American Planning Association - New York Upstate Chapter) so that Upstate planners can network even when they cannot get together face to face.

In 2010, I will continue to work with section members to establish YPGs across upstate. If you are interested in taking a leadership role in a YPG, please contact me. In addition, I'm excited to be working on developing a new Chapter website.

#### **Genesee/Fingers Lakes Section, Katie Evans**

After a very successful Chapter Conference in 2008, 2009 was a quiet year for the G/FL Section. We held the annual Dinner-Meeting-Election at the Tripphammer Grill restaurant in Rochester's historic High Falls district in February 2009, and co-sponsored of the Larry Stid Memorial Lecture on April 16, 2009. This lecture featured Mayor George Heartwell and Suzanne Schulz, AICP, Mayor and Director of Planning, respectively, of Grand Rapids, Michigan. The lecture is part of the Reshaping Rochester series of lectures on architecture, design, and planning, organized by the Rochester Regional Community Design Center.

In August, 2009, we hosted a luncheon at the Staybridge Suites Hotel in Rochester's newly revitalized Brooks Landing area featuring Don Hannon, who is leading the NYSDOT's high speed rail initiative.

We will again be co-sponsoring a Reshaping Rochester lecture in 2010, which will take place on March 23, and feature Dr. Ellen Dunham-Jones, AIA, whose research at the Georgia Institute



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of Technology deals with retrofitting suburbia for a more sustainable future. More information on the Reshaping Rochester series can be found at [www.rrcdc.org](http://www.rrcdc.org).

### **Southern Tier Section, Gail L. Domin**

The Southern Tier Section had a productive year with several meetings and programs. Our Professional Development Director hosted regular webinars and teleconferences on a variety of planning issues from digital billboards to sustainable development and initiated a DVD library for section members to borrow for AICP credits. Our Program Director organized an exciting behind the scenes tour of the Cornell Orchards that included an inside look of the research facilities and current testing procedures for crop analysis, a “chilly” look at low-oxygen produce storage environments that extend seasonal sales and the impressive new student wet lab for teaching the next generation of grape-growers and wine-makers.

There is another exciting program planned for the spring at the Broome Regional Airport. We will hear a presentation on the economic impacts of airports and regional involvement with Aviation System Planning. We will tour the EMAS (Engineering Material Arresting System) and de-icing containment systems on the runways. In 2010, with Marcellus Shale natural gas drilling to increase exponentially, we hope to educate ourselves and provide pertinent information to our section planners with regards to the varied aspects of community planning that will most assuredly come with this booming industry.

### **Central New York Section, J. Justin Woods**

2009 was a transitional year for the Central NY Section and the CNY section would like to thank Janet Marsden for acting as the Section Director, Secretary and Treasurer for the entire year. In August, we had a Section meeting to review and edit a draft of the Section’s Bylaws and nominated a new leadership team that consists of 3 people: J. Justin Woods as CNY Section Director, Janet Marsden as Assistant Director for Administration, and Geoff Milz as Assistant Director for Programming. Janet Marsden officially stepped down as Director on December 31 and I am Acting Director pending the Section vote on the bylaws and nominations, which

should happen in early 2010.

The CNY Section is supportive of further discussion about realigning the Sections and having separate Central New York and North Country Sections. However, in the meantime, the Section is preparing a list of Section events that will be publicized for 2010. The section joined the Black River Valley Club in Watertown as a not-for-profit member. The cost for the year’s membership was only \$50 and this gives us a regular meeting facility. Any APA members visiting Watertown are welcome to use the Club under our membership for business or social entertaining in either of the two main dining rooms, five private rooms, card room, and the large banquet hall. Most importantly, the Section is looking for Central New York Section Members and others to sit on the CNY Section 2011 Conference Committee, which

*Continued on page 20*

## **Sections Begin Developing Young Planners’ Groups**

Young Planners Groups (YPGs) are based on an initiative started at National APA to target the next generation of planning professionals and future leaders of the field. The YPG focuses on helping young professional planners foster social and professional relationships with their peers and more experienced professionals. The YPG is open to professionals 35 years old and under and to students.

Under the leadership of Angela Keppel and Danielle Rovillo, the Western New York Section is the first to start a YPG. The WNY Young Planners Group kick-off event was held on March 30<sup>th</sup>. To find out how you can get involved and to be added to the WNY Young Planners Group e-mail list, send an e-mail to Angela Keppel and Danielle Rovillo at [youngplannerswny@gmail.com](mailto:youngplannerswny@gmail.com).

The Capital District Section is also in the early stages of establishing a YPG. To find out how you can get involved, contact Kisha Santiago [kishasantiago@gmail.com](mailto:kishasantiago@gmail.com).

If you’re interested in starting a YPG in your own section, please contact Mark Castiglione [mark.castiglione@hudsongreenway.state.ny.us](mailto:mark.castiglione@hudsongreenway.state.ny.us) for more information.

we are tentatively thinking about hosting in either Syracuse or at the Turning Stone Resort.

### **Western New York Section, Richard Guarino, AICP**

Last year was a positive year for the Western New York Section. We once again improved the services that we provide to our members. Here are some of our major accomplishments in 2009:

- We remain financially sound. In these times, that is not easy to do.
- We held three successful dinner programs and a social. Dinner topics included the Richardson Complex, South Buffalo BOA and Food Planning. The social in October grouped professional and student planners together in an open, casual atmosphere to discuss private/public sector planning and career opportunities in planning.
- We have five CD-ROM training titles in our Lending Library. These titles are all Certification Maintenance (CM) eligible and can be viewed/borrowed from our web site wnyapa.com
- Samina Raja is serving on the Executive Committee as the UB Faculty Liaison. This position is very important in linking the academic and professional planners in the Section.
- Our newsletter is now being published electronically.
- Our Awards Dinner continues to showcase and award great planning going on in Western NY.
- Our section hosted three APA/AICP Audio Conferences - Planning Law Review, Monetizing Sustainability and Performance Measures in Transportation Planning. These conferences were offered free to our members.
- We organized numerous local planning lectures and events for CM credits.
- We presented a national APA award to the Village of Kenmore for designation as one of the "Great Places in America" in the "Great Neighborhoods" category.
- We raised over \$1,600 for the Michael J. Krasner Scholarship Fund.

I look forward to serving my members, Executive Committee, and Chapter again 2010.

### **Capital District Section, Stephen Iachetta, AICP**

The Capital District Section, dba Capital District Planners Association, hosted five professional planning presentation luncheons in January, February, April, May and December 2009, supplemented by five APA-AICP webinar/audio conferences in support of ongoing AICP professional development credit.

The highlight of the year was a very successful Chapter conference, entitled "Plan-400 Honoring the Past-Planning the Future." The conference was attended by 225 professional planners in downtown Albany, coinciding with the city's historic Quadracentennial. The conference netted proceeds of approximately \$5,700 to both the Chapter and Section to support ongoing professional development. The conference committee, chaired by Sandy Misiewicz, AICP, and Jaclyn Hakes, AICP, met nearly weekly leading up to the historic triple track conference event. The keynote address "A Vision for a Sustainable Community" was presented by Michelle Wyman, Executive Director for ICLEI Local Governments for Sustainability. Conference presentations, including the keynote are available at the Chapter website linked from the CDPA site, [www.CDPAplanning.org](http://www.CDPAplanning.org).

CDPA sponsored the "Future Cities" regional Middle School Competition at the Hudson Valley Community College and the 2009 Transportation and Planning Symposium, in association with the Albany Society of Engineers, American Society of Civil Engineers, Institute of Transportation Engineers and New York State Society of Professional Engineers, at the Century House in Latham. The Section approved \$1,450 to expand professional development opportunities including the CD lending library housed at the Capital District Planning Commission. 