

MASSACHUSETTS PLANNING

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American Planning Association
Massachusetts Chapter

Making Great Communities Happen

Spring 2019



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On the cover: Marijuana growing facility (Credit: Oregon Dept. of Agriculture, Flickr)



From the President

Hello APA-MA Members!

It's officially Spring and we are embracing it with new ideas, new events, new Board members, new opportunities to volunteer, and enhanced ways to communicate with you!

- **Monthly Planners Therapy** – Last year, APA-MA members told us they wanted more social events and networking opportunities. We heard you! We appointed a Social Events Coordinator, Elizabeth Wood, to create monthly social events. Our first iteration of those is Planners Therapy – evening social hours held around the State. Our first one will be *June 13th at 5 p.m. at Lovejoy Wharf in Boston*. We hope you can join us!

- **New Board Members** – In addition to our new Social Events Coordinator, we have a new Treasurer, Jessica Allan (who was our Western Region Representative), to replace Karla Chaffee, who is expecting her first child; and a new Northeast Region Representative, Erin Wortman, to replace Michael Zehner, who accepted a new position in North Carolina. Thank you to all three ladies for volunteering to take on these important roles on the APA-MA Board!

- **New Board Volunteer Opportunities** – We have two awesome opportunities to serve:

- 1) **Western Regional Representative:** As mentioned above, Jessica Allan is now the Chapter Treasurer, so her old position is now open.

- 2) **Advocacy Chair:** APA has asked us to be part of a pilot program to create Advocacy Chair positions to manage the grassroots engagement of Chapter members by coordinating with our Legislative Policy Chair and APA staff on state and federal policy issues.

Please contact [Brian Currie](#) if you are interested in serving in either of these capacities. They are both great opportunities!

- **Enhanced Communications on LinkedIn/Twitter** – We have become much more active on LinkedIn and Twitter to post events and other happenings. Please follow us on [LinkedIn](#) and [Twitter](#) to get the latest and greatest information from the APA-MA Chapter!

- **New Website** – Our website is getting a much-needed overhaul. Please be on the lookout for our new site towards the end of May!

Looking ahead: As you probably know, the Southern New England APA Conference (SNEAPA) is in Springfield, MA this year on October 17-18. Please see www.sneapa.org for the Call for Sessions and more information about the conference. I look forward to seeing you there!

Enjoy the rest of the spring and have a great summer!

Angela Cleveland, AICP
Aclevelandaicp@gmail.com

New England Planners Gather at the National Planning Conference in San Francisco

Over 80 planners from the four New England APA Chapters gathered at the Thirsty Bear Brewing Company on Saturday evening, April 13, 2019, to catch up with colleagues and friends, and to meet new colleagues. We also welcomed back Vera Kolia, long-time former Massachusetts planner, who is now a planner in a state known for its planning: Oregon. Former planners from New England are always welcome at the reception.

The New England APA Chapters would like to thank the law firm of Robinson + Cole for sponsoring and organizing this event. In particular we appreciate the support of Evan J. Seeman, Brian R. Smith and especially Karla J. Chaffee, attorneys at Robinson + Cole.

Robinson+Cole



Interactive board on the housing crises, allowing planners to offer suggested solutions with Post-it notes.



Salesforce Tower – top of the world views.



Above: Steve Magoon, Neil Angus, and Angie Cleveland at the reception.



Middle: Vijay Gupta performs at the opening keynote. **Right:** Planners helped to create this mural (using numbered stickers) promoting the NPC 2020 Conference in Houston.



NPC19 interactivity panel.



APA Tech Zone in the Exhibitors Hall.

Recreational Marijuana in Massachusetts: Insight for the Practicing Planner

by James S. Kupfer, MPA, AICP

The mission of the American Planning Association Massachusetts Chapter is to “provide leadership in the development of vital communities by advocating for excellence in community planning, promoting education and citizen empowerment, and providing the tools and support necessary to meet the challenges of growth and change.” This article attempts to further APA-MA’s mission by defining the state of recreational cannabis for the practicing planner and hopefully share some insight and best practices to better assist your community.

The possession and use of cannabis became legal in Massachusetts for adults over 21 years of age on December 15, 2016. This was followed by the implementation of state regulations governing adult use Marijuana Establishments on March 9, 2018. Between those dates, practicing planners sought guidance as to how their community

wished to regulate or not regulate this new use. Local leadership across the Commonwealth, whether that is Town Council, City Council, or Town Meeting, developed next steps. Massachusetts General Law chapter 94G, §3 permits a city or town to adopt ordinances and bylaws that impose reasonable safeguards on the operation of Marijuana Establishments, provided that they

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Rick Oost, Flickr

Marijuana in Massachusetts *cont'd*

are not unreasonably impracticable and are not in conflict with state law or regulations. The law also allows for municipalities to institute a ban or impose limitations on the number of facilities permitted if they go through a prescribed process.

From day one, municipalities scrambled to fully understand the new state regulations and attempted to create local regulations, typically in the form of zoning, to properly standardize the use. However, what transpired was a hodgepodge of moratoriums, bans, overly restrictive zoning, and some who ignored the new use all together.

Today, planners are still working towards getting this right. Cities and towns continue to look to the planning profession to develop a path forward. As we plan a roadmap to properly regulate and permit recreational marijuana, we can learn a lot from states that have done so before us. At this time, ten states and the District of Columbia have legalized recreational cannabis. California, once the leader of the industry, is struggling to provide access to the retail product, as a vast majority of the municipalities still ban recreational marijuana. In addition, a heavily regulated two-pronged process of municipal and state review has become a costly proposition that has limited the equitable opportunities for many small and minority businesses. As the legalized population grows, emerging technical permitting issues rise to the forefront. All across the country, boards and committees are struggling with similar issues. Typically, under these circumstances, the federal government would

play a significant role in unifying regulations. Moving forward without federal assistance continues to be a great challenge. Operational issues and impacts have been left to each state to regulate or in many instances these issues have trickled down to the municipality. For example, Massachusetts regulations on acceptable pesticides have not been fully defined, causing confusion among some in the industry and resulting in a loss of product and revenue. In another instance, due to the pungent smells coming from facilities in Aurora and Denver, Colorado, the cities were forced to create an odor ordinance to control the impacts of marijuana production odor expelled from the facility's HVAC. Similar odors have been noted in communities all over Massachusetts; however, many of those communities do not have the same resources and capacity as a city the size of Denver.

In addition to the technical operational aspects, it is apparent that in all states a constant concern of overly restrictive local zoning has led to the heightened reality that the industry has been crowded into small sections of a city or town. Many times, these locations were selected as a result of a process that was met with the least resistance and without true land use analysis.

As the recreational marijuana industry evolves, Massachusetts and practicing planners need to remain active in continuing education in order to understand how best to develop and implement this use. In April of 2019, the Massachusetts Association of Planning Directors (MAPD) gathered to discuss this very topic. Led by Lisa Mead of Mead, Talerman & Costa, LLC, MAPD hosted a workshop to shed light on how local governments are crafting land use regulations. Ms. Mead also shared her insight on several judicial interpretations, rulings, and case law that undoubtedly will form the basis for development of future regulatory frameworks for marijuana uses in Massachusetts.

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Oregon Dept. of Agriculture, Flickr

Cities and towns continue to look to the planning profession to develop a path forward on marijuana.



Typical HVAC system a marijuana cultivation facility requires.

Judi Barrett
Principal



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Marijuana in Massachusetts *cont'd*

Following the workshop, Lisa was kind enough to conduct a brief question-and-answer session to offer guidance to municipalities as they contend with this ever-evolving industry. The questions were broken into three parts: early community engagement, permitting, and post occupancy.

Interview with Lisa Mead of Mead, Talerman & Costa, LLC:

Part 1: Early Community Engagement

Have you found a recommended approach to engaging with potential retailers or cultivators early in the site selection process and host community agreement (HCA) phase?

We would leave this up to the discretion of the Board of Selectmen or Mayor. However, early engagement does provide an opportunity to evaluate the credibility and financial stability of an applicant. In terms of site selection, one must be mindful not to favor a particular property as it might raise ethical issues; therefore, it is more appropriate to discuss site locations in general terms, such as the interest in economic development areas or avoidance of sensitive receptors. The HCA, however, is typically sought very early in the process because an executed HCA is a pre-requisite to filing the first application with the Cannabis Control Commission (CCC). At the point of negotiating the HCA, the site generally has

been selected, which equips the Board of Selectmen or Mayor with sufficient information to best evaluate the project and determine whether an HCA should be executed.

Have there been zoning bylaws that missed the mark and if so, what were some of the flaws?

In our experience so long as the zoning bylaw addresses the appropriate criteria upon which to judge a permit application, the municipality should be on good footing. The mistake a community might make is to apply the same standard special permit criteria to all establishments, retail or manufacturing. More thought needs to be given to potential impacts of each type of establishment and draft criteria to address those specific impacts in addition to the general special permit criteria. Additionally, a trap for the unwary is getting too far into the weeds as part of a zoning bylaw. Rather, the municipality may want to adopt a licensing bylaw with accompanying regulations, which provides greater flexibility.

Conversely, have there been zoning bylaws that were done well and if so, what stands out?

Those bylaws which include sufficiently detailed criteria which address the specific impacts of the specific marijuana use. For example, traffic and pedestrian safety might need to be addressed with regard to retail. Whereas odor might need to be addressed with regard to manufacturing.

There are emerging concerns about restrictive zoning and complex application processes being significant barriers to entry to equity applicants. Do you know the current status of equity applications before the Cannabis Control Commission (CCC)? Do you know

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development areas or avoidance of sensitive receptors. The HCA, however, is typically sought very early in the process because an executed HCA is a pre-requisite to filing the first application with the Cannabis Control Commission (CCC). At the point of negotiating the HCA, the site generally has



Bob Dornan, Flickr



Dank Depot, Flickr

what the CCC or towns are doing to actively address this issue? Are there examples of any municipalities that have been successful in attracting equity applicants?

The CCC has issued guidance on this issue, which can be found at <https://mass-cannabis-control.com/wp-content/uploads/2018/11/Municipal-Equity-Guidance-August-22-1.pdf>.

Among the options available to municipalities are not limiting the number and/or type of marijuana businesses, so that smaller establishments have greater opportunity. Further, the CCC suggests that municipalities consider imposing fewer restrictions or allowing greater opportunities for small-scale businesses, such as microbusinesses, craft cooperatives or other cultivators and manufacturers that agree to operate on a limited scale. Finally, municipalities may consider reducing or eliminating community impact payments for equity applicants.

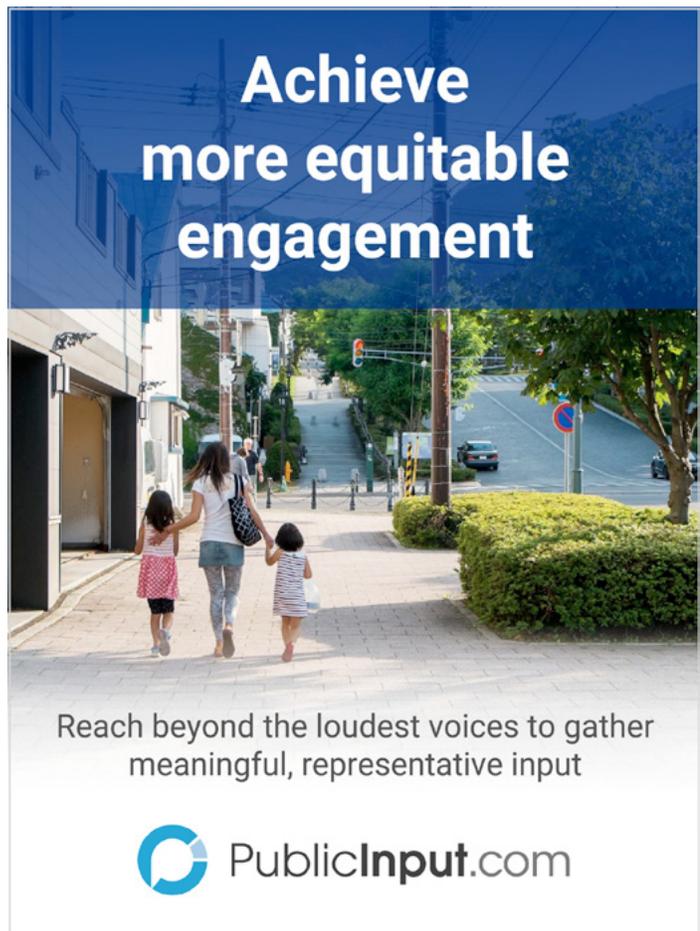
The success of equity applicants is not well-published on the CCC's website, which could be due to the fact that there are few applicants and no operators. *The Boston Globe* reported that only five empowerment applicants have submitted applications to the commission, and none have opened for business. That same article points to the fact that the CCC recently closed applications for priority under the equity program. However, the CCC's website as of April 18, indicates that the deadline for filing has been extended through May 3, 2019.

Anything else you would like to share with practicing planners and communities about early community engagement?

The public hearing process, of course, is crucial not only as a part of the bylaw adoption process, but also the special permit hearing process. Particularly, in the bylaw adoption process, the public should be made aware of the requirements under which the municipality must operate. The municipality should encourage outreach and education by any potential applicants.

Part 2 of Jim Kuper's interview with Lisa Mead will be in the Summer issue of Massachusetts Planning magazine and will address permitting, post occupancy issues, and provide a list of resources for those seeking more information.

— James Kuper, MPA, AICP is the Town Planner for the Town of Bellingham, and can be reached at jkupfer@bellinghamma.org.



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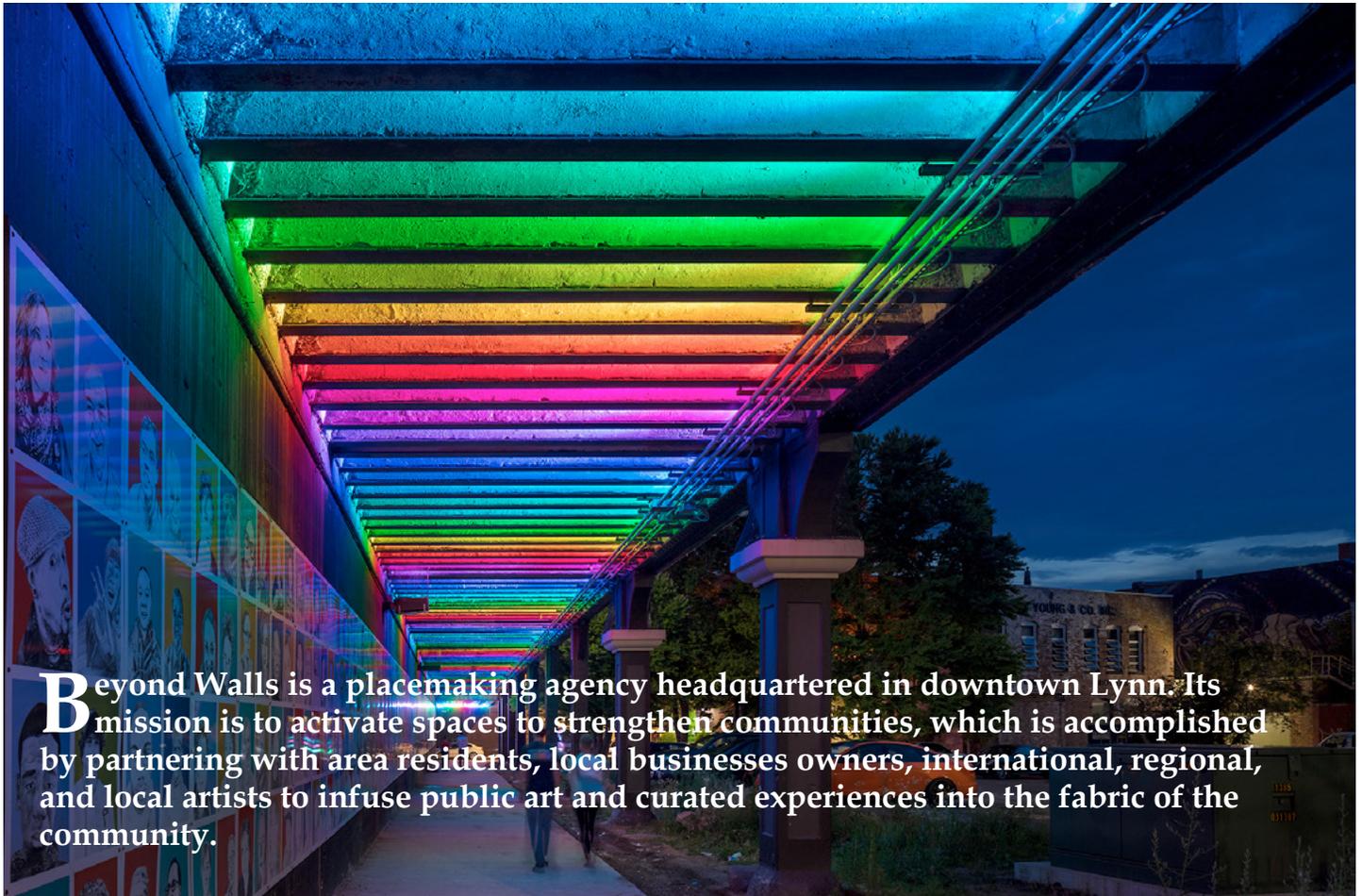
SNEAPA 2019 OCTOBER 17-18

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Propose a session! See page 14 for more information.

Beyond Walls: Placemaking in Lynn, MA

by Pedro Soto, Associate Director, Beyond Walls



Beyond Walls is a placemaking agency headquartered in downtown Lynn. Its mission is to activate spaces to strengthen communities, which is accomplished by partnering with area residents, local businesses owners, international, regional, and local artists to infuse public art and curated experiences into the fabric of the community.

In 2016, MassDevelopment contracted with Interface Studios, a Philadelphia-based planning and design firm to work with community partners to develop a downtown action plan. The goals of the engagement were to work with local stakeholders to assess the need for place-specific design improvements for public spaces, streetscapes, and potential development sites through the downtown. The final report recommended investing in pedestrian-focused lighting and improved walkability throughout the Downtown Cultural District. Beyond Walls was born when a group of volunteers led by Al Wilson began the work to implement this action strategy. Our projects include the design and installation of 600 linear feet of interactive LED underpass lighting; 46 large murals created by top international, regional, and local street artists; the installation of 11 vintage neon art pieces; and a public sculpture paying homage to Lynn's industrial past. The success of Beyond Walls' projects has not gone unnoticed – Beyond Walls received a Gateway

Cities award for its work in November 2017, and was recognized at the National Main Streets Conference in Kansas City (2018) and the American Planning Association National Conference in New Orleans (2018).

We are humbled by the notoriety and buzz our first projects have garnered, and we are excited that the inaugural projects have started to encourage other artists and community partners to become more active in helping improve our community from the inside out. It has been truly transformational. An overview of Beyond Walls' major projects follows.

Project Summary: Lynn Lights

In 2018, Beyond Walls assembled a team of funders and partners to deliver a community-driven need for improved lighting around the MBTA commuter rail station and its adjoining underpasses (Downtown Action

continued on page 9

Beyond Walls *cont'd*

Plan, 2016). The previously dark underpasses of Central Square, Washington Street, and Market Street now have an exciting and visually compelling field of dynamic and color-changing, full-spectrum lighting that not only delights the eye, but attracts more people to the sites, contributing to walkability and pedestrian safety along the undersides of this public infrastructure.

Learn more about this project here:
www.payette.com/project/beyondwall



LYNN LIGHTS

Community Partners: MBTA, Philips Color Kinetics, State Electric, McDonald Electric, Mass Electric Construction, MJ Electric, The Office of Mayor Tom McGee and The Office of Community Development, International Brotherhood of Electrical Workers, Local 103 (IBEW, Local 103), Patronicity, individual contributions

Funders: The Barr Foundation, MassDevelopment (Commonwealth Places Program)

Scale: 600 linear feet of Dynamic LED Lighting

Locations: Market Street, Washington Street and Central Square Underpasses in Lynn, MA

Status: Completed, Summer 2018

Project Lead: Pedro Soto

Architectural Design: Parke Macdowell (Payette)

Lighting Design: Dan Weissman (Lam Partners), Ron Kuszmar and Sean Harding (Port Lighting Systems)

Electrical Engineering: Mark DeVeau (BALA Engineering)

Install Team: Ron Kuszmar and Sean Harding (Port Lighting Systems), International Brotherhood of Electrical Workers, Local 103 (IBEW, Local 103) Foremen: Scott Ellis and Tim Mackey. Electricians: Rob Mackey, Jacques Stiller, Bill Johnson, Rich Stimpson, Jim Cafferkey, Mark Galloway, Steve Illingworth, Marc Ayala, Cole Maribito, Rob Fournier, Mike Favale, Steve Pereira, Andrew Garner, Justin Griffin, Nick Longo, Vic Slepoy, Bill Carey, Bob Azalay, Sean Toomey, Glen Gowey, Nick Nackley, Kevin Desmond, Dave O'loughlin Jr., Joe Curton, Joe Kelley, Wayne Mounce, Jim Alison, Lewis Gomez, Ed Benham, Mike Trachtenberg, Paul Donlan, Pat Haggerty, Steve Kid, Ed Ferzoco, Jim Keough, Steff Jervey and Al Russo

Lynn Vocational Technical Institute (L.V.T.I.) Electrical Interns: Cameron Fentress, Jose Zacarias Lopez and Rartha Kou Thach

Project Summary: Retrolit

Project "Retrolit" was born out of a community-driven desire for making the walk around downtown more interesting and enjoyable. Merging art, history, and technology, Beyond Walls restored and installed the 11 pieces of vintage neon pieces of art from the collection of Dave Waller of Brickyard VFX. These vibrant artifacts of classic commercial Americana have been dusted off, spruced up, and now shine much-needed light onto the streetscape in all their retro glory. Newly mounted to several downtown buildings or displayed in storefronts throughout the downtown cultural district, these nostalgic pieces are evocative of the heyday of Lynn's commercial and industrial past. Illumination from these pieces will bring more light and increase walkability.

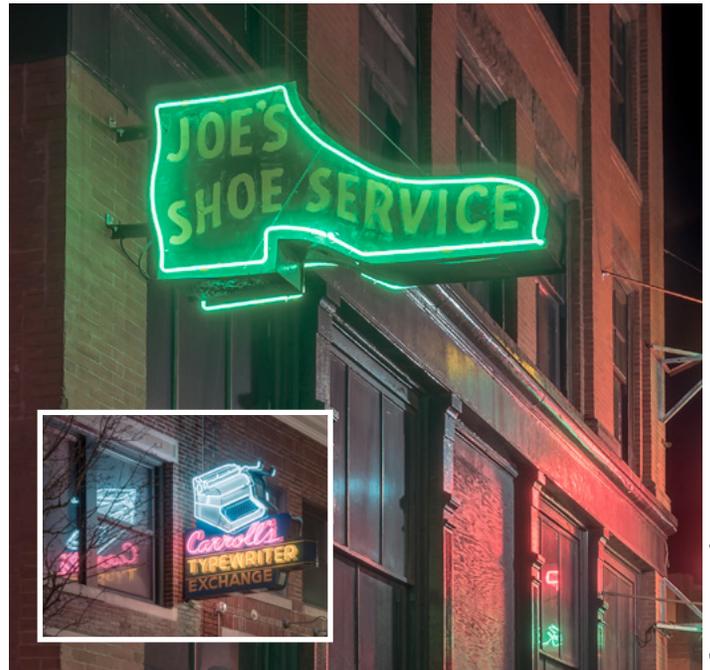


Photo by Isaac Subillaga

RETROLIT

Community Partners: Dave Waller of Brickyard VFX, Joe Mulligan, TDI Fellow at MassDevelopment, The Office of Mayor Tom McGee and The Office of Community Development, International Brotherhood of Electrical Workers, Local 103 (IBEW, Local 103)

Scale: 11 Vintage Neon Pieces of Art installed throughout the Downtown Lynn Cultural District

Install Locations: (1) Elm Restaurant & (2) The Donut @ 49 Munroe Street, (3) Toy Store, Stationery & Sporting Goods @ 95 Munroe Street, (4) Carroll's Typewriter Exchange & (5) Beauty Salon @ 110 Munroe Street, (6) O'Day's Cleaner @ 191 Oxford Street, (7) Ann's Restaurant @ 516 Washington Street, (8) New on Sang Fish and Poultry, (9) Lad & Lassie Shoes (10) Joe's Shoes @ 545 Washington Street, (11) International Order of Odd Fellows @ 33 Spring Street, (12) Egg-O-Matt @ 465 Washington Street

Status: Completed, Spring 2018

Project Lead: Pedro Soto

Installers: A & B Installers of Newton, NH, Scott Ellis (International Brotherhood of Electrical Workers, Local 103 - IBEW, Local 103)

Project Summary: 2017-2018 Mural Festival

Lynn's rich history, architecture, and burgeoning arts and cultural district has provided the perfect landscape for impactful art installations. Our first Mural Festival saw the installation of 15 large-scale murals that represent the ethnic and cultural make-up of residents of Lynn. Our second annual Mural Festival expanded upon 2017 with increased offerings, mural mediums, and programming. The 2018 Festival saw 31 murals, and the restoration of two ghost signs bringing our grand total of large-scale murals to 46. Check out the mural map for all the mural locations.

Learn more about this project here:

https://gatewaysmag.org/wp-content/uploads/2017/11/Gateways_Magazine_2017_from_MassINC.pdf

2017-2018 MURAL FESTIVAL

Community Partners: Painters and Allied Trades, DC 35, The Office of Mayor Tom McGee, The Office of Community Development, Lynn Engineering Department and Department of Public Works

Funders: The Barr Foundation, The Boston Foundation and MassDevelopment (Commonwealth Places Program), Corporate Sponsors, Individual Contributions

Scale: 46 pieces of large scale street art

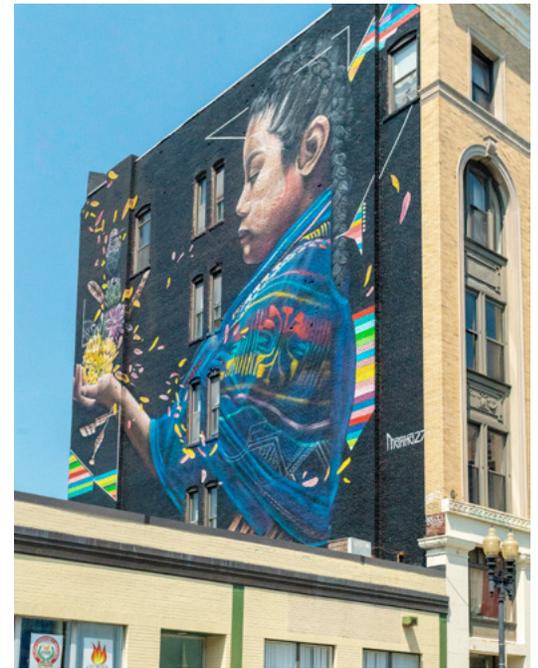
Mural Locations: See map here: www.beyond-walls.org/festival-map

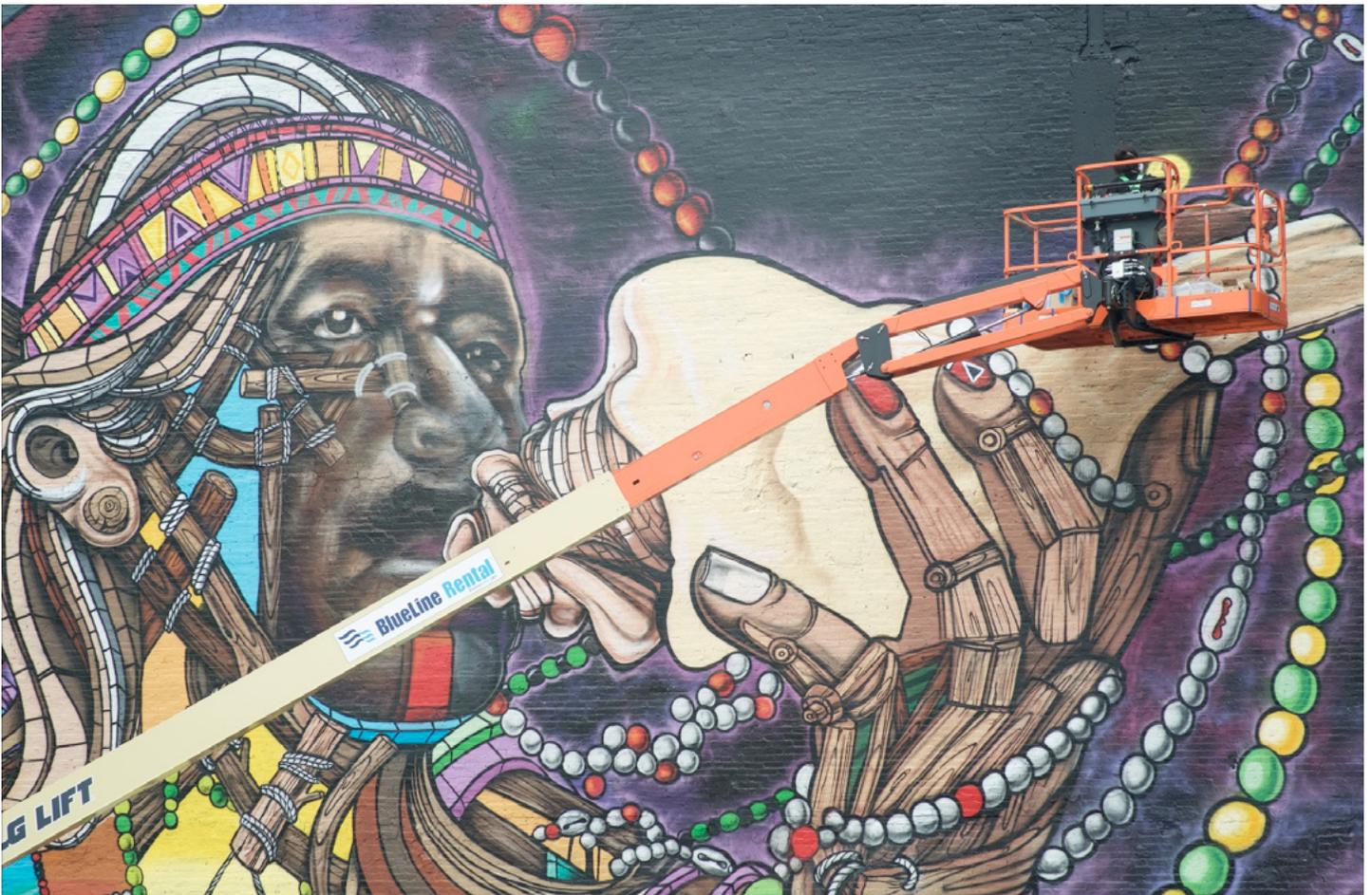
Status: Completed via festivals in July 2017 and August 2018

Awards: Gateway Cities Innovation Award (2017 Mural Festival): <https://massinc.org/our-work/policy-center/gateway-cities/innovation-awards/>

Project Leads: Pedro Soto

Artists: See Map for Artist Names and Locations 2017 and 2018 <https://dandelion-endive.squarespace.com/2017-artists-beyond-walls-lynn-ma> and <https://dandelion-endive.squarespace.com/2018-artists-1/>





—Lynn, MA native Pedro Soto earned his Master of Regional Planning at the University of Massachusetts, Amherst, and a B.S. in Liberal Arts, with a focus on Political Science, from Salem State University. He is passionate about engaging a diverse citizenry through participatory planning, building grassroots networks of creative professionals, and spearheading placemaking projects that strengthen the fabric of urban communities. Pedro can be reached at pedro@beyond-walls.org.



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Reaching Underrepresented Groups: Four Tactics for Community Engagement

by Hunter Gardner

When it comes to collecting public input, it can be difficult to get a truly representative sample. Maybe you are hearing from the same voices over and over again, feedback is too polarized to be meaningful, or perhaps the challenge is reaching underrepresented voices in the first place.

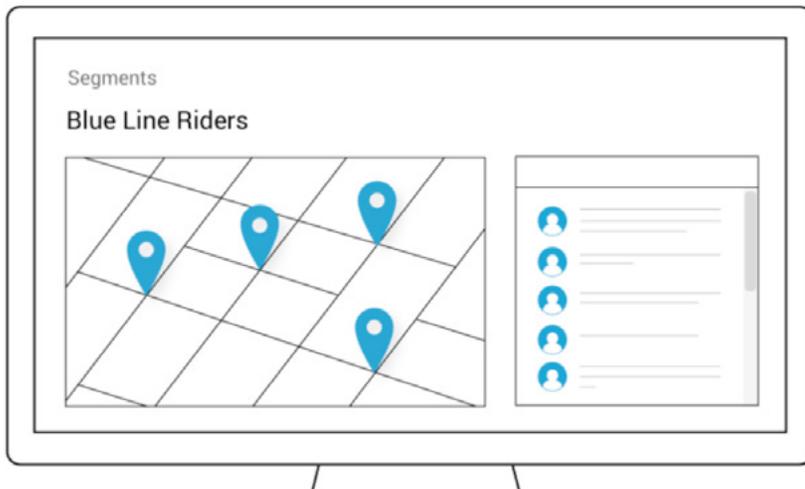
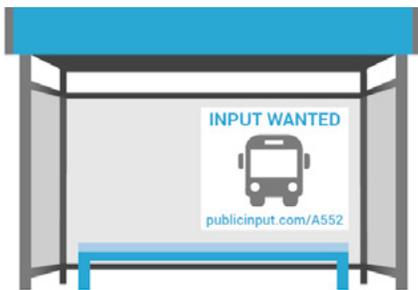
After working with planners and public involvement coordinators at 70+ agencies across the country, here are four tactics for reaching underrepresented groups that I have seen lead to better community engagement outcomes.

1. Going Mobile-Friendly

Mobility is one of the most important factors when it comes to lowering the barrier of participation for underrepresented groups. In fact, it may be vital.

According to [Pew Research](#), reliance on smartphones for online access “is especially common among younger adults, non-whites and lower-income Americans.” For example, 31% of adults who make \$30K or less and 39% of adults with less than a high school graduation are entirely dependent on smartphones for Internet access.

Customized links are one way to better understand and organize public input.



At first glance, this is somewhat counterintuitive: We might not think that these populations would take on the expense of a smartphone when there are cheaper options available, but the fact is 85% of low-income Americans do own a smartphone.

Why? If you can't afford a MacBook or a monthly Internet bill, you probably can afford a phone purchase. In other words, a smartphone becomes the main investment that these populations are willing to make for communication and Internet access.

Mobility also lowers the barrier to participation for groups who are on-the-go. Imagine a single mother who is working two jobs and takes public transportation. At her bus stop she notices a sign with a text-in number for a mobile-friendly survey. She may not be able to attend a public meeting or sit down at a home computer, but now she has just as much access as someone who does.

The City of Virginia Beach has been using mobile-friendly survey design along with visual voting and more casual scale options like “love it,” “like it,” “eh,” and “please, no” to make their engagement more approachable. Individual projects have garnered as many as 7.3K participants, 60K+ responses, and 2.4K new email subscribers. Across all projects in the past year, Virginia Beach has received over 275K responses from 20K participants.

2. Multilingual Translation On Websites and Social Media

Non-native and ESL residents deserve to have their voices heard, too. The ability to translate into multiple languages on engagement websites and social media posts lowers the barrier to participation—either by letting a resident choose or by matching a native language with certain targeting criteria on social media.

Manual translation is a daunting task for staff if you have to pour over an entire survey or website, meanwhile using translation services lacks the nuance of a native speaker. I have found that combining these efforts by first using tools like Google Translate or Facebook's translation services and then having a staff member fine-tune the language saves a lot of time and effort. This works hand-in-hand with the next tactic:

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3. Strategizing and Tracking Your Efforts

A little strategy can go a long way. By seeing where participation is coming from in real time – at your meetings and online activities – you can take advantage of new tools to help target participation. This can start with social media targeting. All of the advertising criteria available on Facebook and Instagram allow you to reach specific populations, and then fill in the gaps. I have seen this work both geographically and demographically. If the missing groups are more difficult to reach, having this information quickly lets you target your offline outreach as well.

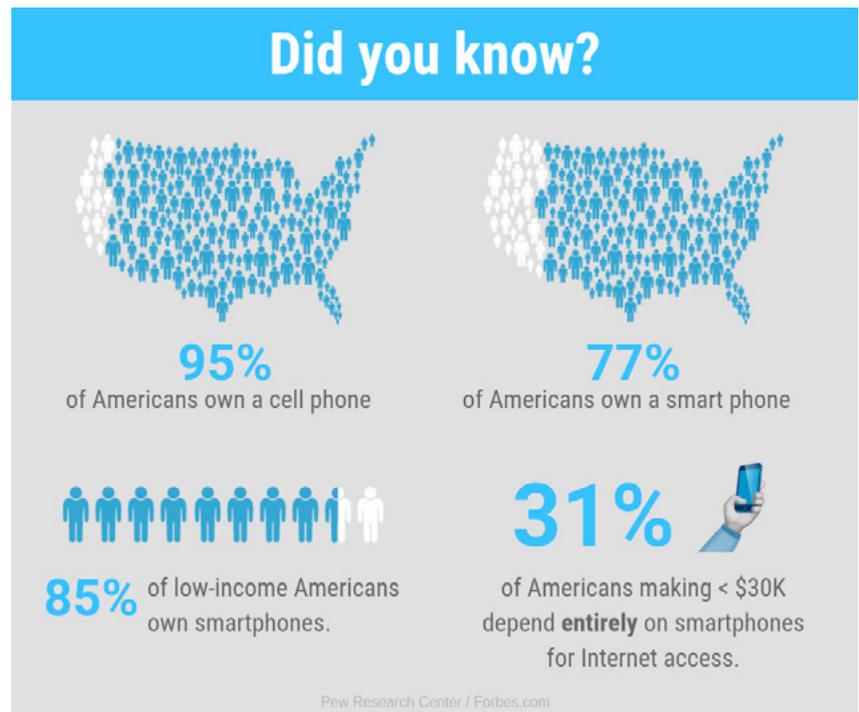
For example, with targeting efforts, The City of Austin was able to get public input from all ten of its city districts. Likewise, The City of San Diego was able to identify gap areas on the southside of the city and hold public meetings in those areas – meeting the community where they were offline instead of online. A very savvy tactic is to compare social media outreach demography with census data. Once you can understand the discrepancies from an initial outreach, you can then do a second social media campaign aimed at those underrepresented groups.

Another strategic option is to partner up with online media outlets. For example, GoTriangle in Raleigh was hoping to reach a Hispanic audience for input on a transit plan. Their team partnered with the local NBC affiliate, which was already tracking demography for certain news stories online. From there, they were able to plug in what was essentially an online ad for their survey in articles that were popular among Hispanics.

While asking a demographic question on a survey is typically best practice, there are also other ways to track certain populations' input, namely with unique links. By creating a custom link to your survey, sharing that link with only certain populations – whether in print or online – you can track how successful your outreach has been to that group. With the right community engagement software, you can easily track where input is coming from and instantly create segments to filter reports or reengage when needed.

4. Maintaining a Public Participation Database

Public engagement activities are almost always unique events, which creates the pitfall of having to “start over” with engagement efforts on every project. Even if you were able to reach underrepresented populations before,



track it, and report it, what happens when you want to reach those populations again?

Having a public participation database allows planners and public involvement staff to leverage their hard work, project over project. Ideally this database maintains a participant's contact information as well as their previous engagements – be it email, text, comments, or survey responses. With this information you can segment and see profiles on your residents, while also ensuring that you are closing the feedback loop.

Organized data paired with communication ensures that you can continue to engage your residents. In other words, you won't have to start all over again in your efforts to reach those underrepresented voices. As you build your database, you will likely find that public trust is being built given your ability to re-engage via project updates and reporting.

Bringing It All Together

Community engagement goes beyond just checking a box, it involves a process. The good news is that with these tactics you can create a holistic community engagement process that is both effective in reaching underrepresented voices while actually reducing the workload for staff through utilizing technologies that streamline and automate your efforts.

– Hunter Gardner is a community stakeholder advocate who works at PublicInput.com. He can be reached at hunter@publicinput.com.

Mobile-friendly engagement opportunities lower the barrier to participation.

SNEAPA 2019 Call for Session Proposals

The call for session proposals for the 2019 Southern New England American Planning Association (SNEAPA) Conference is now open. This year's conference will be held at the MassMutual Center in Springfield, Massachusetts on October 17-18, 2019. The theme for this year's conference is RETHINK • REINVEST • RENEW.

The conference committee is seeking session proposals consistent with the conference theme, that are interdisciplinary in nature, provide participants with an opportunity to build their professional skill set, or are new and exciting with a focus on current trends in planning. The conference committee would also like to offer sessions that focus on: reinventing in post-industrial cities/communities, adaptive reuse and neighborhood revitalization (mill buildings, malls, big box stores, etc.), integrating story telling into your planning projects, implementing pop-ups, public art, place-making, or similar projects, creating "third spaces," and technical or skill-building sessions such as mediation, project management, running a good meeting, plan reading, site plan review, etc. New this year, we are accepting proposals for Fast and Funny Sessions, similar to the APA National Planning Conference. These sessions will be five to ten minutes in length and assembled together in a full-session block.

For more information, see the SNEAPA website at www.sneapa.org/program/2019-call-for-session-proposals. We will be accepting session proposals online until **June 14**. We look forward to receiving your proposals!!



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In Remembrance: Carol Thomas, FAICP

Bob Mitchell, FAICP

Carol Thomas, FAICP was a pioneer in the planning profession, not only in Massachusetts, and not only in this country, but internationally as well. She was 95 years of age.

Carol has been involved in the planning profession for 70+ years. She was inducted into the first class of AICP Fellows in 1999.

Carol was the first woman President of AICP, a Commissioner of AICP, one of the first woman planners in the American Institute of Planners, was twice the President of the former New England Chapter of the American Institute of Planners, was one of the founders of the APA Private Practice Division, and was its President.

She was an adjunct professor in the former CPAD program at the University of Rhode Island. Carol was one of the first American planners invited by China to provide assistance in that country. She worked for many years in a number of cities but was most involved with the City of Guangzhou, where she introduced the concept of zoning. She made many trips to China and was made an honorary citizen of Guangzhou. In 2002, she led a trip with a number of planners from Massachusetts and Rhode island to visit seven Chinese cities, meet with the local planners, and visit sites that were developed based on Carol's previously prepared plans.

She had her own consulting firm and provided planning services to numerous communities, while also providing mentoring and employment opportunities to planners over many decades.

She has not only received a variety of planning awards over the years but has had two separate awards named after her.

Carol's work has inspired many, including members of her own family, as both her son and one of her grandsons went into the planning profession.

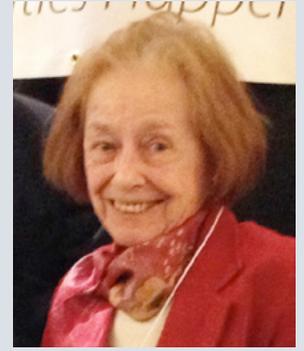
Her accomplishments in planning are endless.

On a personal note, I had the great fortune to know Carol as a colleague, mentor, and friend for more than 25 years. Her vast knowledge of planning and planning organizations over so many decades provided a wealth of information to me and so many other planners around the country. Her friendship will be remembered by countless planners and others.

She was also an avid Red Sox fan.

A memorial service will be held for Carol this summer.

Please take a moment to remember one of the true pioneers of our great profession.



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\$640,000 Jury Verdict for Regulatory Taking Against Conservation Commission Reversed by Massachusetts Appeals Court

by Michael O'Neill, Esq.



In the case of *Smyth v. Conservation Commission of Falmouth*, Case No. 17-P-1189, the Massachusetts Appeals Court on February 19, 2019 reversed a Superior Court jury verdict of \$640,000.00

on a claim that the Falmouth Wetland Bylaw, as applied, created a “regulatory taking” of plaintiff’s property. This decision was eagerly awaited by land use planners, municipal boards, and real estate practitioners.

The decision illustrates the formidable showing that any regulatory taking plaintiff must make to show that his or her property has been “taken” by a bylaw, ordinance, regulation or permit denial, so that he or she should be compensated by money damages. Incidentally, the Appeals Court ruled for the first time in Massachusetts that there is no right to a jury trial on a regulatory taking claim.

The property owner, now supported by the Pacific Legal Foundation, has filed a petition for further appellate review (FAR) by the Supreme

The factors that have particular significance include the economic impact on the plaintiff...and the character of the governmental action.

Judicial Court, which has not yet acted on it.

The property owner had inherited an unimproved lot from her parents. She engaged various professionals and prepared a Notice of Intent (NOI) under the state Wetland Protection Act and the local Wetlands Bylaw. She requested from the Conservation Commission several variances from the provisions of the Bylaw, which the Commission denied, with respect to requirements for the Resource Areas known as coastal bank, salt marsh, and land subject to coastal storm flowage. (The Appeals Court opinion does not discuss whether the application complied with the Wetland Protection Act).

The Appeals Court ruled that claims of

continued on page 17



Aerial view of 250 Alder Lane, Falmouth, MA.

Under The Gavel *cont'd*

regulatory taking, where there is no permanent physical invasion and no complete deprivation of all economically beneficial use, require a “highly nuanced balancing of multiple factors.” The factors that have particular significance include the economic impact on the plaintiff, the extent to which the regulation has interfered with the property owner’s distinct investment-backed expectations, and the character of the governmental action.

The Appeals Court commented that the property could be used, among other things, as a park or a playground, and it would be attractive to the abutting owners on either side for privacy or expansion.

Applying the above factors, the Appeals Court ruled that, even though the value of the property if unbuildable (\$60,000) was substantially less than if buildable (\$700,000), the unbuildable amount was still more than the amount plaintiff’s parents paid for it (\$49,000), so that the compensation would be a “windfall.”

The Court also noted a lack of any financial investment toward developing the property by the plaintiff’s parents or the plaintiff for many years.

Finally, the Court observed that there was no physical invasion of plaintiff’s property and the regulation at issue did not single out the plaintiff’s property but was uniformly applicable throughout the Town.

In summary, a regulatory taking claim requires proof that the law, regulation or action challenged causes complete deprivation of all economically beneficial use of the property (known as a per se taking) or, in the alternative, fails the highly nuanced balancing of multiple factors (known as the Penn Central test).

The Appeals Court ruled that there is no right to a jury trial on the merits of whether a regulatory taking occurred, meaning the judge not jury decides that issue, as regulatory taking was not recognized as a cause of action when the Constitution of the Commonwealth was adopted in 1780.

– Michael J. O’Neill, Esq., is a Senior Associate at McGregor & Legere, PC. He has 40 years’ experience in litigation in state and federal courts on all aspects of real estate and commercial law, concentrating in environmental and land use law and litigation.



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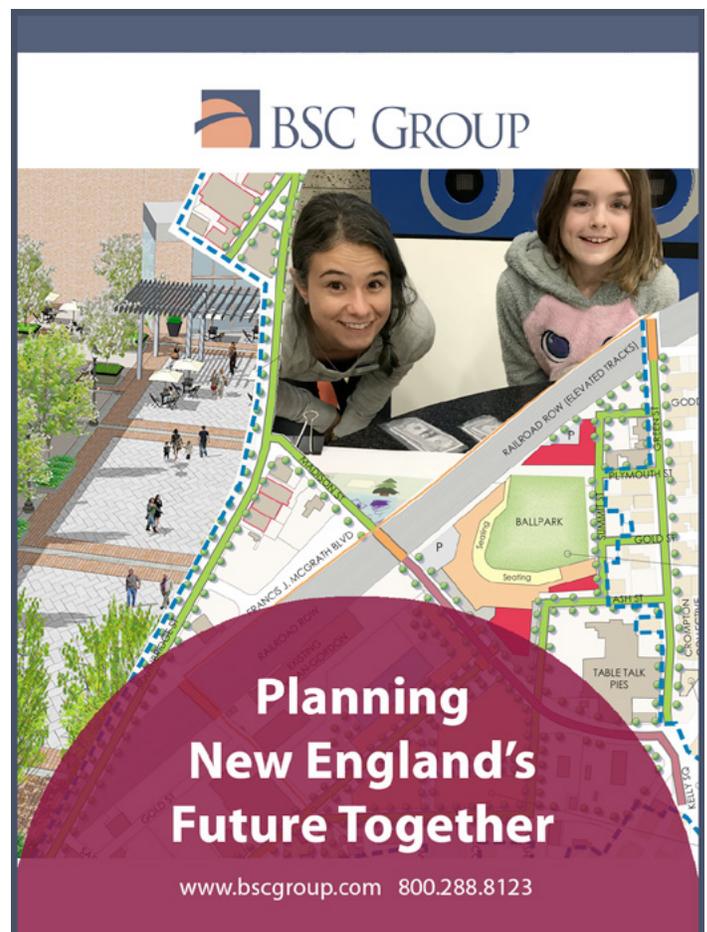
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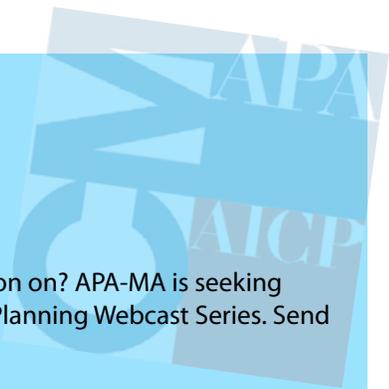
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The PDO Corner

by Darlene Wynne, AICP, APA-MA Professional Development Officer

Welcome to the "PDO Corner" where I'll share information related to earning your AICP and meeting your Certification Maintenance requirements.

Stay in the Know about Upcoming Events

APA-MA sends out a twice monthly email for upcoming events. Be sure to open it to see how you can stay on top of your CM credits. Upcoming events include:



• **MAPD 2019 Annual Conference** — May 30-31, 2019 at MASS MoCA **CM | 18.0**

• **MHP Housing Institute** — June 5-6, 2019 at Devens Common Center **CM | 12.0**

Seeking Great Webinar Ideas!

Have you seen (or made) a great planning presentation recently? Are you preparing a submission for MAPD or SNEAPA that could also be a webinar? Or, is there a topic

you'd like to see a presentation on? APA-MA is seeking ideas to submit to the 2019 Planning Webcast Series. Send me your ideas!

The webcasts take place on Fridays at 1:00 p.m. and are typically 90 minutes. Funds may be available if you have a speaker in mind that requires a fee.

Please see www.ohioplanning.org/aws/APAOH/pt/sp/planning-webcast-series for the schedule of webcasts to earn your free AICP CM Credits!

Close-Out Your CM Reporting Period

The grace period for the 2017-18 AICP CM reporting period closed on April 30, 2019. Be sure you took the steps to close out and certify your credits earned for the two-year reporting period.

— Darlene Wynne, AICP can be reached at pdo@apa-ma.org.

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NEWS FROM MAPD

The MAPD is hitching their wagons once again and heading west to North Adams for the 2019 annual conference at MASS MoCA on May 30th and May 31st. In addition to a keynote address from North Adams Mayor Thomas W. Bernard, conference sessions will focus on micro-mobility, planning for the new economy, economic development strategies and planning for the arts, tools and techniques for documenting and maintaining local affordable housing units — and don't forget our favorite Massachusetts land use case law update to close out the conference. Thursday evening will feature a reception at Bright Ideas — a local brewery adjacent to the museum. Some other exciting components at the conference include an informal planners' get-together on Wednesday, May 29th and a bicycle tour of North Adams to showcase the planning and economic development efforts underway, and very important plenary session regarding the state of equity of diversity in our profession and in our communities. See everyone in North Adams.

MAPD has just closed out another successful year of sold out Lunch N Learn workshops. We held workshops across eastern Massachusetts including Shrewsbury, North Andover, Fall River, Concord, Gillette Stadium in Foxborough, and in Downtown Boston, and we covered a multi-faceted array of topics of interest to planning professionals. We are always looking for ideas and new venues for the monthly Lunch N Learn workshop series, so give us a shout if

you have any topic and/or venue ideas.

And finally, MAPD and APA-MA (aka the Planning Organizations) have also been busy on the legislative advocacy front. At the beginning of this legislative session, we have filed three separate pieces of legislation related to zoning reform: codifying site plan review, lowering the threshold for all zoning amendments, and mandatory land use board training. With the help of our legislative strategist, Tremont Strategies Group (TSG), the Planning Organizations are also reviewing other pieces of legislation related to zoning reform, transportation, and housing production; and over the next month, the Planning Organizations will be testifying at various legislative hearings to support our filed bills and others deemed of importance to the planning community. Furthermore, through TSG, the Planning Organizations will continue to engage members of the legislature and other interested constituencies during the legislative process.

If you are not a member of MAPD, you should be! Feel free to reach out to me at kjohnson99@gmail.com for more information about MAPD and how to join.

Best,

*Kristina Johnson, AICP
MAPD President*

SAVE THE DATE!



**Tuesday, June 4, 10:00-11:30 a.m.
Massachusetts State House, Room 428**

We will be releasing an important research paper on the state of multifamily zoning in Greater Boston.

Invitation and details to follow — free, ticketed registration on Eventbrite.