



## NYPF Honors Municipal and Individual Achievements

By Lael M. Locke

One of the highlights of the annual conference is the presentation of the NYPF Annual Awards, recognizing superior accomplishment in various planning and zoning related categories. The 2012 awards were presented by NYPF Board President Fred Wilcox during lunch on Monday April 16th. This year, for the first time, the Board added a new category, the “NYPF Comprehensive Plan Award.” Below are descriptions of each of the 2012 award-winning nominations, listed alphabetically.



Jose Simoes, Town of Clarkstown Planner (L), Rudy Yacyshyn, Chair of the Comprehensive Plan Special Board (C), and Tom Trevor, Clarkstown Planning Board member (R) accept the 2012 NYPF Comprehensive Plan Award.

**The John O. Cross Award** is given each year to an outstanding planning board chair and is named in honor of the former chair of the Town of Chili Planning Board. This year’s recipient was **Edward S. Plotkin, Chair of the Village of Dobbs Ferry Planning Board**. Ed has been a member of the Dobbs Ferry Planning Board for 47 years and has chaired it for 45 of those years. During his tenure, he helped prepare the 1972 Dobbs Ferry master plan and, more recently, spent two years helping prepare the Village’s new code.

A licensed Civil Engineer and former Commissioner of Public Works for Westchester County, his knowledge of both engineering and construction issues has often proved helpful in his work as Planning Board Chair.

Ed also lectures at several schools and colleges on the environment and efficient infrastructure planning and teaches an environmental science course at Sing Sing prison.

**The Heissenbuttel Award** for Planning Excellence is presented annually to an individual, municipality or agency for outstanding accomplishment in the field of planning. The award recognizes the contributions of Henry Heissenbuttel, the innovative director of the Dutchess County Planning Department from 1961 to his death in 1978. Because the 2012 NYPF Awards Committee felt that two nominees were deserving of recognition, they presented awards to both an individual and a municipality.

The individual Heissenbuttel Award went to **Thomas J. Dearing, Deputy Commissioner of the Erie County Department of Environment and Planning**. The list of accomplishments during Dearing’s 40-year career with Erie County is too long to mention in

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## NEW YORK PLANNING FEDERATION

is a non-profit membership organization established in 1937. Our mission is to promote sound planning and zoning practice throughout New York State. Membership, which currently includes nearly 10,000 individuals, is open and welcome to anyone supporting this mission. Membership categories include municipalities, counties, public organizations, private businesses, individuals and libraries.

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## PLANNING NEWS

welcomes comments from its readers.

Manuscripts may be submitted for possible publication. Call the newsletter editor, Lael Locke, to discuss your ideas. If published, such articles may be edited to conform with format requirements and become the property of Planning News. The opinions and views expressed in Planning News are those of the authors and do not necessarily represent the views of the NYPF.

# From the Executive Director



Can you believe that the New York Planning Federation is looking at its 75th year as an organization dedicated to “promote sound planning, land use and zoning in New York State?” This past week, both I and the staff have been reading some of the articles written for Planning News dating back to the early 1940’s. I found it amazing how some planning issues and concerns are as important today as they were then.

Our membership has also expanded: when we were formed in 1937 our members were the newly appointed planning and zoning boards of appeal; today, our membership includes professional planners, attorneys, consulting firms, engineers, architects, libraries and students. We have also formed partnerships with our county planners, the American Planning Association, state leaders and other non-profit organizations. Our collaborative statewide efforts have prompted us to continually grow and improve.

In April, we held our 74th annual conference in Saratoga Springs and over 335 attendees had an opportunity to join their colleagues for training, hospitality and great dining. The New York Planning Federation would like to thank John Behan and his entire staff for hosting a reception at their office for the conference attendees. John and his associates rolled out the red carpet for all of us and gave everyone a chance to unwind after a full day of training. Again, thank you John.

The NYPF has added a new part-time staff person, Leila Jabour. Leila arrived at the New York Planning Federation approximately three weeks before our conference and had no problem rolling up her sleeves to help out; she is a professional planner and has extensive experience in managing fiscal affairs. The NYPF is truly thankful to have her as an addition to our office. I want to personally thank Anne Rounds, Lael Locke and Tobin Sheps for all of the hard work they did in pulling the conference together within a six-month period. Comments from attendees said the conference was well thought out and informative; we could not have accomplished this without the teamwork of everyone pulling in the same direction. As Anne said, “The conference was all-consuming and was on our minds 24/7 during the planning process.”

Please watch our website for a list of the summer school sessions. The schedule includes one full day of training in the following locations: Wed. July 25th, Albany Law School; Friday July 27th, Marriott Buffalo Niagara in Amherst; Tuesday July 31st Hyatt House Fishkill, NY; Friday August 3rd at Woodcliff Hotel in Fairport, NY. The training sessions will be listed on our website [www.nypf.org](http://www.nypf.org).

Have a great summer!

# Multi-Generational Design in Community Planning

By Esther Greenhouse, M.S., CAPS, CGP

The needs of a growing senior population place specific demands on our communities. Due to the significant size -- there are now 40 million people age 65+ in our country, and another 81 million between the ages of 50-64 -- and projected growth of an additional 36% by 2020, society is working to find solutions to obstacles that prevent aging in place. These obstacles include housing, transportation, access to health and access to nutritional food. While some communities are embracing the needs of seniors with specific programs, others have been slow to respond. However, both can energize their much-needed efforts by understanding that if the focus is widened beyond seniors, solutions can be provided for multiple generations.

The starting point for multi-generational design is the concept of Universal Design, sometimes referred to as Inclusive Design. Ronald Mace, a design pioneer, identified Universal Design as “The design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.”

Universal Design concepts benefit not only seniors, but also parents struggling to work full-time while caring for children and, possibly, their own aging parents. And Universal Design benefits the disabled population of 73.7 million individuals who – thanks to the ADA and Olmstead Act – have become increasingly involved in society.

Universal Design products such as the OXO “Good Grips” kitchen utensils were designed initially for persons with arthritis, but their larger handles and gripping surface work for everyone. In terms of housing, zero-step entries are now required for persons using a wheelchair, so that they may enter and exit their homes independently and with dignity, but zero-step entries also make it easier for parents to bring in a sleeping child in a stroller, or to unload bags of groceries.

These same thoughtful approaches to good design can be applied on the community level by providing curb cuts for wheelchairs, strollers and bicycles; by traffic lights that allow longer street-crossing times and island medians that let everyone cross safely; by adding more benches, more opportunities for walking or bike-riding, and by encouraging the development of housing and neighborhoods that enable people of all ages and abilities to live independently.

How do we make all this a reality? Start with the foundational rationale for enabling design, which is the theory of environmental fit. When there is a good fit between a human being and his/her environment, there is independence. When there is a poor fit, either from an environment that demands too little (such as the typical skilled nursing facility), or too much (a house with steps, narrow doorways, laundry room in the basement, etc.), people struggle to adapt, resulting either in atrophy (in the case of too few demands) or further decline of remaining abilities (in the latter examples).

In both of the above scenarios, the design of the environment caused the individual to function at a lower level, requiring more assistance and services, perhaps resulting in falls. All of this is preventable by thoughtful, informed design. Consider that the more people who can live independently at home and within their community, the fewer demands that are placed on the community resources such as ambulance services.

## **So how can your community help? Here are just a few examples:**

### **1. Encourage Universal Design:**

Some municipalities around the country have adopted building codes that require minimum Universal Design features such as no-step entries, a half-bath on the first floor and wider doors and hallways (see Bollingbrook, IL). Others have offered incentives to builders and developers whose homes incorporate such features (see Suffolk County, NY). This movement is called “visitability” and has been supported by the US Conference of Mayors.

### **2. Examine Your Zoning:**

Zoning should allow for a multitude of housing options, not only on the community level, but on the individual. Accessory Dwelling Units offer a win-win scenario for grandparents, adult children or adult grandchildren. They enable a senior to remain in his/her home of choice and also provide housing to a younger generation at an affordable rate. Check to see if your zoning encourages mixed-use development that allows non-drivers access to needed goods and services. And make sure your community is walkable, bikeable and rollable.

### **3. Assess Transportation Options:**

How are non-driving members of your community

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# NYPF Honors Municipal and Individual Achievements

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Thomas J. Dearing, Deputy Commissioner of the Erie County Department of Environment and Planning, was the recipient of a 2012 Heissenbittel Award for Planning Excellence.

full. It includes guiding the preparation of the Horizons Waterfront Plan, the first effort to undertake long-range regional planning in the mid-1970s; participating on the steering committee that aided in developing the Erie-Niagara Framework for Regional Growth, completed in 2006; leading local and regional multi-use trail planning efforts that help capitalize on the Great Lakes Seaway Trail, and bringing about

development of the Niagara Riverwalk; helping to oversee (in a previous role as Community Planning Coordinator for Erie County) the allocation of funds from a Community Development Block Grant and HOME Investment Partnership Consortia.

The second **Heissenbittel Award** recognized municipal accomplishment in the planning field. It was presented to the **City of New Rochelle for its GreeNR Sustainability Plan**. GreeNR was developed as a blueprint to guide the future growth of New Rochelle over the next 20 years in an environmentally sound, economically vibrant and socially equitable manner. During this time, the City anticipates that its population will increase by 5,000 residents.

GreeNR is divided into six sections, each with specific goals and recommendations. They are: Energy and Climate; Resource Conservation and Waste Reduction; Ecology, Biodiversity and Public Health; Smart Growth and Economic Prosperity; Transportation and Mobility; and Public Participation and Awareness. It is the first sustainability plan developed in Westchester County and is being used nationally as a model for other cities beginning to develop their own plans.

The **Levine Community Service Award** is given each year to a volunteer member of a municipal board who has done an outstanding job for his or her community. It

is named in honor of Edward Levine, a lifelong resident of Saratoga Springs with a profound and impressive record of community service, including a term as President of the New York Planning Federation. The 2012 recipient of the Levine Award was **Paul Antonik**, former Chair of the Town of Russia Planning Board. Paul was appointed to the Town's Planning Board in 1997 and served as its Chair for 10 years until his recent retirement. During this lengthy tenure he led both the board and the community through the development of a new comprehensive plan and an update to the Town's land use regulations.

In a letter supporting the nomination, Carolyn Hayes, Co-Chair of the Town of Russia Planning Board, wrote: "We all volunteer our time. Paul has given countless valuable hours and expertise. As a true leader he has, over his years of service, brought out the best in each of us, keeping disagreement and debate respectful and focused, fostering a team sense of purpose and helping guide us toward achieving our goal of...maintaining the Town of Russia as a rural residential community."

The **Pomeroy Award for Zoning Achievement** is presented to an individual, municipality or agency for an outstanding contribution to zoning in New York State through the development of a specific zoning law or legal agreement. It is named in honor of Hugh R. Pomeroy, a pioneering urban planner and former Director of Planning for Westchester County, whose career spanned nearly four decades. This year's award was presented to the **Town of Pittsford's Residential Neighborhood (RN) Zoning District**.

In 2009, the Town adopted a comprehensive plan update, ending a nearly year-long process that included

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# Annual Conference Wrap-Up

The 2012 NYPF conference is now in the books as one of our most successful events in recent years. Attendance was at 335 (nearly 100 more than at our 2011 conference), and a packed room on Monday morning heard keynote speaker Robert Freeman of the NYS Committee on Open Government offer humorous and insightful “Reflections on Transparency,” complete with much audience participation.

This was the first conference at which we offered a track of introductory sessions specifically designed for new planning board/ZBA members. Over the two days, attendees learned about “The Rights and Responsibilities of the Planning Board and ZBA;” “Site Plan Review;” “Introduction to SEQRA;” “Sign Regulations;” “Area and Use Variances;” and “Non-Conforming Uses.” With an average session attendance of 87, the introductory track was definitely an idea worth repeating in 2013!

The NYPF annual conference is noted for the wide variety of topics and presenters, and this year was no exception. Issues discussed in the well-attended programs included the hot button topic of natural gas drilling; a session recent case law decisions affecting New York municipalities; updating the comprehensive plan, designing urban bikeways, considering multi-generational design and promoting health in community design, as well as how to zone for a vibrant downtown, ethics, and several other important community concerns.

As they become available, we have been posting this year’s presentations on the “Conference” page of our website, [www.nypf.org](http://www.nypf.org), so please look through them when you have a minute. Admittedly, it’s not the same as hearing the programs live at the actual conference, but they still provide useful information for our members who were unable to attend the event.

We thank all our presenters and exhibitors for helping to make the 2012 conference such a rousing success and send a special “thank you” to the hundreds of municipal board members who attended from all across New York State.

This was also the first year in NYPF history that the annual conference was held in the spring, rather than in early fall, and the change was obviously popular with our attendees, as was the location of Saratoga Springs. We are, therefore, happy to announce that we will be returning to Saratoga in spring 2013. Though we’re still finalizing plans, the conference will be on April 21, 22

and 23 at the historic Gideon Putnam Hotel. Stay tuned for much more information and be sure to mark those dates on your calendar for next year. ■

## NYPF Welcomes New Members

Thanks to the following new members who have joined the New York Planning Federation in the past few months. Please visit our website ([www.nypf.org](http://www.nypf.org)) or contact our office if you would like to speak with someone about membership.

### Towns

Town of Campbell

### Villages

Village of East Syracuse

Village of Head of the Harbor

Village of Lowville

### Firms

Hart Engineers, Architects & Land Surveyors, P.C.  
Peter J. Smith & Company, Inc.

### Non-Profits

Greater Glens Falls Development Corporation

### Individuals

Esther Greenhouse

Mark Tayrien, AICP

Paul Yonge, AICP

# Hydraulic Fracturing Faces Legal Challenges

By Robert Stout and David Everett

While many municipalities have embraced natural gas drilling by hydraulic fracturing, many others have adopted zoning bans or moratoria on natural gas drilling within their borders. Recent trial court decisions have affirmed the right of municipalities to do so, thus opening the door for others to follow suit.

The Towns of Dryden and Middlefield determined that the extraction of natural gas poses a significant threat to the health, safety and welfare of their residents and thus should not be a permitted land use, absent further studies and data concluding that these uses will not detrimentally affect their groundwater supply, community character, roads, agriculture or local tourism, among other issues. The natural gas industry and property owners unsuccessfully challenged the bans in two lawsuits – *Anschutz Exploration Corp. v. Town of Dryden and Cooperstown Holstein Corp. v. Town of Middlefield*.

Each court found that a municipality has the legal authority to use its zoning laws to prohibit natural gas drilling within its borders, and that such authority is not preempted by the New York State Environmental Conservation Law (ECL) 23-0303(2) which provides, in relevant part, “*The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.*” The courts rejected the drilling companies’ argument that this provision was intended to preempt all municipal laws related to natural gas drilling, including zoning laws, and affirmed the Towns’ position that it was not intended to preempt generally applicable zoning laws regulating land uses.

In examining the extent of the preemption, the courts construed the phrase “*relating to the regulation of the oil, gas and solution mining industries.*” The Towns argued that the definition of regulation is “an authoritative rule dealing with details or procedure;” thus a local law is not preempted unless it relates to the details or procedures of natural gas drilling. Generally applicable zoning laws identify land uses that are permissible and impermissible within a municipality – they do not relate to the details or procedures of natural gas drilling.

The plaintiffs, on the other hand, argued that the plain language of the statute limits the local regulation of

natural gas drilling to only two areas -- local roads and property taxes. They noted that only one New York court has interpreted this statute: in *Matter of Envirogas, Inc. v. Town of Kiantone*, 112 Misc 2d 432, Sup Ct. Erie County 1982, the Erie County Supreme Court invalidated a town’s zoning ordinance which imposed, among other things, a \$25.00 permit fee and a requirement to post a \$2,500.00 compliance bond prior to construction of any gas well within the town, on the grounds that it was superseded under Section 23-0303(2). In ruling that the law does not expressly preempt local regulation of land use, but only regulation dealing with operations, the courts rejected this comparison.

The plaintiffs also contended that the New York State Department of Environmental Conservation (DEC) has created a comprehensive scheme of regulations governing the natural gas industry and, therefore, municipalities are foreclosed from using their zoning authority to otherwise interfere with the State’s regulatory program.

The Towns also relied on judicial interpretation of the Mined Land Reclamation Law (MLRL), which originally provided that it “*shall supersede all other state and local laws relating to the extractive mining industry.*” Notably, this preemption language is nearly identical to the preemption language contained in ECL 23-0303(2). Construing this supersession clause according to the plain meaning of the phrase “*relating to the extractive mining industry,*” the Court of Appeals concluded that a local zoning ordinance – a law of general applicability – was not expressly preempted because the “zoning ordinance relate(d) not to the extractive mining industry, but to an entirely different subject matter and purpose; i.e., regulating the location, construction and use of buildings, structures and the use of land in the Town.” (See *Matter of Frew Run Gravel Prods. V. Town of Carroll*, 71 NY2d 126 at 131.)

Thus, the Court of Appeals concluded that, in limiting the MLRL’s supersession to those local laws “relating to the extractive mining industry,” the Legislature intended to preempt only “(l)ocal regulations dealing with the actual operation and process of mining.” The Towns of Dryden and Middlefield argued, and the courts agreed, that the Court of Appeals’ interpretation of the MLRL demonstrates that their zoning bans on natural gas drilling are not preempted.

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# NYPF Turns 75!!

The New York Planning Federation is celebrating its 75th anniversary in 2012. As part of the celebration, we thought it would be fun to look through some early issues of "Planning News" to see what's changed over the years (and, in several cases, what hasn't!)

The following piece first appeared in the September-October 1943 issue, back when our organization was called "The New York State Federation of Official Planning Boards." It's an editorial by then-President Fred W. Fisch, titled: "You Cannot Pull it Out of a Hat!"

"Out of post-war thinking has come a new interest in planning. As a result the field has greatly broadened and now includes many recruits from the professions and otherwise. It is a healthy sign. The future of planning should benefit by this new interest.

"This expanded field of post-war planning, however, should not proceed too far without proper guidance and coordination and unification of thought. In this respect some danger lies ahead.

"Industrial, labor, civic, commercial, and many other groups in various communities are today active in post-war planning, in some few instances guided by professional planners. Each group has its particular ideas on community planning. Each is prone to lay stress on projects within their particular sphere of interest.

"From this array of ideas and thoughts, ranging from simple projects to spectacular undertakings, an essential public works program suitable for this community could be developed. But any such program must be related to the overall or master physical and financial plan, the projects assigned their proper sequence, drawings made and specifications drafted, and costs, both current and capital, estimated. Otherwise the result may be utter confusion on the one hand and prohibitive costs on the other.

"It would seem that in the final analysis that experienced public administrators and professional planners should be the natural coordinators. It should be their job to review the diverse recommendations and fit them into a balanced program.

"A community without an active planning board or experienced planning guidance is a community without vision these days. Such communities should beget early planning action.

"It takes time to draw plans, to draft specifications and estimate costs. With limited finances and personnel, progress is slow. Delay is dangerous. The war is not won until the post-war period is successfully passed!

"Each New York State community should take an inventory, consider the desires and needs of its people, and determine the method of approach. Then to bring vision into reality, implement those who are to be responsible with sufficient budget appropriation to do the job that is required.

"This general procedure would seem to be the business-like way to bring about the type of post-war community in which we would all like to live.

"You cannot pull it out of a hat!" ■

## Planning & Zoning Summer Schools

While the final content is still being determined, the NYPF, in conjunction with the Association of Towns and NYCOM, has announced that four summer schools will be held at various locations around New York State.

**The dates and locations are as follows:**  
**Tuesday, July 25 in Albany**  
**Tuesday, July 31 in Fishkill AND Amherst**  
**Friday, August 3 in Fairport**

Each summer school will be a day-long program beginning with 8:30 am registration and ending at 3:45 pm. The program will include two morning sessions, lunch and two afternoon sessions. These summer school programs are designed for planning board and ZBA members and may include sessions on case law, procedural pitfalls, multi-generational design, updating the comprehensive plan, and context-sensitive design.

Please contact our office for updated information or visit [www.nypf.org](http://www.nypf.org). ■

# Femtocell Technology and Your Municipality

By John Cartmell

**W**hat is a femtocell? AT&T, Verizon, Sprint and T-Mobile either offer, or are planning to offer, a device that is essentially a small personal base station. In industry parlance, these base stations are known as femtocells or femto-access points. They are also referred to as picocells, small cells and/or metrocells.

In the commercial market, AT&T's product is called a "3G Micro Cell," while Sprint offers the "AIRAVE Pro Connect." Verizon's femtocell is called a "Network Extender," and T-Mobile is still rolling out their femtocell offering. Homeowners or businesses purchase them, install them at their home or place of business, and get instant cell coverage. Additionally, cellular network operators are also deploying femtocells in public sites such as metro stations, stadiums and malls. (These are usually referred to as metro-cells.)

A femtocell is about 6" x 4" x 2" – about the size of a WiFi Access Point that many people have in their homes. Femtocells operate in much the same way as traditional cell towers, though with a few notable exceptions. First, the coverage area of a femtocell is often limited to a specific building or a few blocks of a neighborhood. Also, a femtocell antenna is a few inches tall, as opposed to the 200-plus feet of a free-standing cell tower. Finally, there is a difference in the way each connects to the operator's core network. A cell tower has dedicated T1 lines or equivalent connections, while a femtocell uses a broadband connection over the Internet.

Femtocells are designed to fill in small areas of coverage gaps without an operator having to resort to establishing a new cell tower. The process of getting approvals for cell towers is long, expensive and frequently contentious, and the recurring operating costs are prohibitive. From the operator's perspective, deploying a Metro-cell or femtocell is a simple problem-solving solution.

However, the current femtocell solution has its own limitations that make it unsuitable at this point as a replacement for traditional cell towers. As stated above, the range of a femtocell is limited and, in order to cover a large area, many femtocells must be deployed. Also, given their limited coverage area, a mobile user device has to handover (i.e. switch from one coverage area to another) more frequently. Compounding this is that femtocells do not support handovers of a user device from one cell to another with the same efficiency as the handovers between traditional cell towers.

Another concern with femtocell technology is that, since their locations are not controlled by a central entity (specifically, the mobile network operator), there is potential for femtocells to be deployed very close to one another, thereby possibly causing interference. However, when a femtocell is connected to a network operator's core network, the femtocell is provisioned in such a way as to mitigate interference between other femtocells and cell towers. When a femtocell is first powered up, it listens for other cells within the same area and reports them to a central entity within the core network of the mobile operator. The core network entity then responds with the proper configuration for the femtocell's use in order to mitigate interference with other cellular entities. Despite these measures, the possibility of interference still remains an issue. The industry is working to overcome these challenges.

Two aspects of zoning need to be considered with femtocells. First, since femtocells are small and often deployed within a home or business, they are not subject to any zoning review process. The device is purchased, installed and deployed without anyone in the zoning process being informed. On the other hand, proposed construction of a traditional cell tower triggers a review process often requiring at least one variance. Second, some municipalities have attempted to push mobile operators towards the use of femtocells as replacements for traditional towers. The courts have taken a dim view of this, not as a result of the technical limitations previously cited, but because of the Telecommunications Act of 1996, a portion of which (§704 (a) (7) (B) (iv)) preserves the authority of state and local governments over local zoning matters, but limits the authority of a local entity as to what can be controlled. The FCC has also set forth rules in the Title 47 Regulations, specifically §24, which describes the types of equipment that can be used.

A case in point of a municipality trying to push a mobile network operator toward femtocell technologies is the Town of Clarkson, NY. In 2007, the Town enacted a local law defining the permit process for cell towers. The application process consisted of several factors, including where the cell tower was to be located and the type of tower to be deployed. For example, the review process would be easier if an applicant used femtocells and placed them in areas designated as acceptable to locate cell towers. Conversely, if an applicant desired a traditional cell tower and wanted to erect it in an area



deemed unacceptable by the Town, the review process was more stringent.

Upon judicial review, the US Court of Appeals 2d ruled that “provisions setting forth a preference...are also preempted because they interfere with the federal government’s regulation of technical and operational aspects of wireless telecommunications technology, a field that is occupied by federal law.” The Clarkson law, which attempted to push mobile operators towards alternate technologies such as femtocells, was overturned by a lower court, and the US Court of Appeals concurred in overturning the Town’s law.

Femtocells do solve a problem for mobile operators and cell phone users who have a coverage problem within their premises, or for a localized outdoor area. As the technology evolves, the limitations of femtocells will be overcome and they will be more closely aligned with the capabilities of a traditional cell tower. At that point, they may become suitable replacements for traditional cell towers -- when this happens, everyone will win. ■

*The author is a member of the Lynbrook ZBA and the engineering manager of InterDigital Communications LLC. Those wishing to reach him can do so at [john.cartmell@interdigital.com](mailto:john.cartmell@interdigital.com).*

## Hydraulic Fracturing Faces Legal Challenges

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The ramifications of these decisions are only beginning to play out. Municipalities throughout the state are now free to enact zoning bans and moratoria on natural gas drilling, with close to one hundred having already done so. Since this will deny natural gas companies the ability to extract gas, and restrict the rights of individual landowners to profit from these activities, the industry and private property owners seeking to profit from natural gas leases will continue to fight these restrictions.

Both plaintiffs have filed notices of appeal and appellate briefs are expected shortly. The Towns, while successful at the trial court level in preventing what they viewed as a deprivation of their constitutionally guaranteed and legislatively delegated authority to control land uses within their borders, will have to await review of the Appellate Division for further vindication. ■

*The authors are attorneys with Whiteman Osterman & Hanna, LLP, the Capital Region’s largest law firm.*

If you missed our 2012 conference or want to review the conference handouts, all materials are posted at the conference section of [www.nypf.org](http://www.nypf.org)



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gathering input and feedback from residents, property owners and town staff, as well as a series of public meetings held at various stages of the plan's development. Three of the major land use goals emphasized preserving neighborhood and town character and quality of life while (1) balancing the needs of homeowners to enlarge and improve existing homes; (2) balancing the re-subdivision of lots; and (3) ensuring appropriate infill development. With these concerns in mind, the context-based Residential Neighborhood (RN) Zoning District was born. The RN District, complete with residential design standards and guidelines, replaces virtually all of the Town's existing residential neighborhood zoning and ensures that proposed additions and alterations to existing homes (including tear-downs and rebuilds), re-subdivision of residential lots, and infill will all be accomplished in a manner consistent with the existing neighborhood character.

New in 2012, the **New York Planning Federation Comprehensive Plan Award** is given to a municipality or agency for an outstanding and/or innovative comprehensive plan or plan update adopted by a municipality's legislative body within the past three years. Again, the Awards Committee felt that two nominees deserved special recognition, so they presented awards to both a municipal and a regional plan.

The municipal plan winner was the **Town of Clarkstown's 2009 Comprehensive Plan**. In 2007, when Clarkstown decided to update two previous plans, the Town Board established a special board to gather information from a range of sources which included three public workshops, written surveys from high school juniors and seniors, more than 600 phone surveys, as well as updated data on transportation, economic development and biodiversity studies. Subcommittees comprised of Town staff and local citizens collaboratively developed goals and objectives of the new plan around the themes of economic development; environmental resources; health, safety and welfare; historic and cultural resources; housing; recreation; parks and open space; and transportation.

Clarkstown's new comprehensive plan contains 64 goals and objectives divided among the above seven themes. Following the plan's 2009 adoption, the special board was reconstituted as the Special Board for the

Implementation of the Comprehensive Plan – the original subcommittees were restructured and the goals and objectives divided among them to ensure implementation. In December 2011, the Town received the Pace University Land Use Law Center's Founders Award given to individuals and municipalities that have worked collaboratively with their community “and have reinvented democracy to make change happen in their communities.”

The second **New York Planning Federation Comprehensive Plan Award** went to the Rockland County Comprehensive Plan known as “**Rockland Tomorrow**,” the first such plan adopted by the county in nearly 40 years. In 2009, the Rockland County Legislature, in conjunction with County Executive C. Scott Vanderhoef, undertook the development of a comprehensive plan that would serve as a basis for County government planning and development issues for the next 10-20 years. The ensuing 18-month process included four public workshops, two public hearings, meetings with municipal representatives and regular meetings with a technical advisory committee, the County Planning Department, the County Executive's Office and the County Legislature. A website designed for the project provided the public with access to draft documents, as well as a “click to comment” feature.

The final plan creates a framework for future capital expenditure decisions by County government and also provides recommendations on future County land use issues, along with policies to implement these recommendations. Additionally, it addresses key matters under direct County jurisdiction and identifies specific land use and zoning conflicts among municipalities that need to be resolved in order to allow better functioning of zoning regulations.

No nominations were received for the sixth NYPF award category, the **David Allee Award for ZBA Chair**, named in honor of the former leader of the Cornell Local Government Program and late chair of the Cayuga Heights ZBA.

The NYPF awards are a wonderful way to recognize achievement in your community. The nomination process is simple and the committee carefully reviews each application prior to announcing its decision. Information and the nomination form are available on our website ([www.nypf.org](http://www.nypf.org)) under the “Conference” heading, or you may contact Lael Locke ([llocke@nypf.org](mailto:llocke@nypf.org)) with any specific questions. Though the 2013 deadline of March 1st is nearly a year away, it's not too early to start thinking about who or what in your municipality deserves statewide recognition in the form of a New York Planning Federation award. ■

# Multi-Generational Design in Community Planning

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getting to the supermarket, the doctor, to shopping and/or worship? How many seniors who should no longer be driving continue to because there are no suitable alternatives? If we reframe these concerns from strictly seniors to consider all non-drivers, we then include persons who cannot afford private transportation, as well as children and teens who do not have driver's licenses.

New York City was the first city in the US to adopt the World Health Organization's "Age-Friendly Cities" program. Mayor Bloomberg's 2009 "Age-Friendly NYC" report documented 59 detailed initiatives, including the Department for the Aging's "Market Ride Initiative" which uses Department of Education school buses to transport seniors to supermarkets and other locations providing them with access to nutritious food. The program is free and open to all members of senior centers. Children are bussed to school, seniors are provided with transportation and access to food, and all of society benefits from this more efficient use of community resources.

Another innovative program was developed in Scottsdale, Arizona, where the city realized that code enforcement violations are often the first sign of a need for help. Known as STOMP, the Scottsdale Teens on a Mission for Progress initiative uses paid, trained teenagers to assist residents who are elderly and/or may have disabilities which limit their ability to care for their property. A variety of home improvement projects were provided, including painting, weeding, debris removal and the repair or replacement of fencing. Before work begins, a STOMP coordinator and a social worker visit the homeowner to assess possible other needs such as home-delivered meals or transportation.

These examples, along with national endeavors such as "Complete Streets" and "Safe Routes to School" all provide ways that municipalities can develop and encourage universal design. There are numerous resources to assist with education and outreach, including having someone in your community take the Universal Design/Build course or become a Certified Aging in Place Specialist (CAPS). For more information on CAPS or other education and outreach programs, please visit [www.esthergreenhouse.com](http://www.esthergreenhouse.com).

Remember that you have the ability to disable or enable – choose wisely! ■

*The author is an environmental gerontologist – a professional specializing in how the built environment effects the functioning and well-being of older adults – and a Certified Aging in Place Specialist and advocate for enabling design. A former interior designer, she has worked as a researcher and lecturer at Cornell University teaching accessibility, Universal Design, design for seniors and design for Alzheimer's Disease. Ms. Greenhouse has written portions of the NYS Livable Communities Resource Manual, contributed to a four-part, award-winning PBS Series "Design for a Lifetime," and written a chapter in the recently-published book, "Independent for Life" under the leadership of former HUD Secretary Henry Cisneros. She is developing a web-based training for building, zoning code and planning officials focusing on Universal Design in the home and community. This article is based on a presentation Ms. Greenhouse gave at the 2012 NYPF Annual Planning & Zoning Conference.*

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