

COUNTY PLANNING

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American Planning Association
County Planning Division
Making Great Communities Happen

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Spring Day in Manzanita, Oregon (photo credit: Jacqui Kamp)

Development ordinance amendment—one for the ages

by **Steven Finn**, Wake County, North Carolina

What makes for a good article or story? Controversy, litigation, TV, pro-development versus environmental stewardship, city versus county. This item had it all. The story here is not intended to capture all the dynamics, rather review the technical elements central to the arguments.

Introduction
On April 5, 2010, the Wake County Commissioners considered changes to the Unified Development Ordinance (UDO) updating the Use Table and creating a new code section. Specifically, the consideration to create a redevelopment option for nonconforming commercial and

industrial uses in the Residential-40 Watershed Activity Centers.
This was an application submitted from a client (with a \$1,500 fee) to essentially enable a shopping center in a water supply watershed, low density residential area.
Accordingly, it was highly charged and debated, particularly amongst staff relative to ideology and stewardship. This is shared to chronicle that effort and share lessons learned.

Background
Prior to 1997, the Wake County Zoning Ordinance allowed unlimited expansion and change of nonconformities subject to Board of Adjustment (BOA) approval. The BOA was charged with determining that the potential adverse impacts of denial on the owner of the nonconformity outweighed the

[Cont'd p.6](#)

Aerial of site that prompted ordinance amendment





Greetings from the County Planning Division Chair

Tim Brown, AICP

Planning Webinar Consortium may be found elsewhere in this newsletter. If you have an idea for a webinar or would like to present a webinar, please let us know.

We had a very successful national conference in Seattle. The Seattle conference attendance exceeded 6,400, which is the second largest conference ever after Las Vegas. The Division by-right session was titled “*County Approaches to Sage Grouse Protection*”, the Division Facilitated Discussion session was titled “*Planning for Agricultural Land Preservation*”, and we presented five project awards at our Annual Meeting and Awards Presentation on Sunday night. More information on the project awards is detailed in this newsletter. We were very pleased with the outcome of our joint reception with the Private Practice Division, Regional and Intergovernmental Planning Division and Small Town and Rural Planning Division. We look forward to bigger and better opportunities next year in Phoenix.

The Division has a [LinkedIn page](#). Check it out and let’s get some good dialogue going. Also, we are always looking for newsletter content. If you have articles, news, job openings or anything you think is appropriate for our newsletter please send it in to our newsletter editor at Jacqueline.Kamp@clark.wa.gov. Our next newsletter deadline will be here

before you know it.

Finally, consider partnering with the Division on sessions for your state and regional conferences in 2015.

Tim Brown, AICP, Outgoing County Planning Division Chair

Happy Spring County Planners! This is my last **From the Chair** report as Megan took over as the new Chair of the Division at the conclusion of our Annual Business Meeting in Seattle. It has been a terrific two years and I would like to take this opportunity to thank all those involved with making our Division such a success, including our Division officers; ESRI, our sponsor for the last three years; the Division Awards Jury; newsletter contributors; webinar contributors; the Divisions Council and APA staff. In addition, I would like to thank Dave Gattis and the Divisions Council for selecting me for this year’s **Divisions Council Chair’s Award**.

We are continuing with our webinar program. The Division presented a webinar on April 17th titled “*Signs and the Downtown Experience*” through the Planning Webinar Consortium. We have three more webinars in the works. Look for a webinar from NOAA, a webinar concerning the County Innovation Network or COIN and a webinar concerning a U.S. Supreme Court sign case later this year. Upcoming webinars from the

NEWSLETTER Schedule

SPRING

Submittal deadline: March 15

SUMMER

Submittal deadline: June 15

FALL

Submittal deadline: September 15

WINTER

Submittal deadline: December 15

NEWSLETTER INFORMATION: This newsletter is published by the County Planning Division of the American Planning Association. Circulation is to the APA members of the County Planning Division (CPD). The CPD Executive Committee welcomes submission of original articles, editorial letters, and any other information of interest to County planners.

Submissions should be made to the newsletter editor:

Jacqui Kamp
email: jacqui.kamp@clark.wa.gov

OUR MISSION: *The County Planning Division of the APA seeks to strengthen relationships among county planners, county elected officials, and other county personnel by facilitating the sharing of technical information, encouraging continuing professional development of its members, researching county planning issues, and building strong ties with other organizations and disciplines with related interests.*

Planner Profile: Getting to know our members



Zacharia Levine
Grand County, Utah

Job Title: Community Development Director

County/Employer: Grand County, UT

Year(s) in position: <1 yr

Education: B.S. Industrial Engineering, UC Berkeley; M.S. (Ph.D in progress) City and Regional Planning, University of Utah

Describe Grand County.

I am fortunate to live and work in southeastern Utah's "red rock canyon country". The Colorado River meanders generally northeast to southwest through Grand County before reaching its confluence with the Green River. Our borders include the La Sal Mountains, which have the tallest peaks in the Colorado Plateau, and the Book Cliffs, an east-west range that includes one of the country's largest wildland ecosystems.

We are home to two National Parks (Arches and Canyonlands), a State Park (Deadhorse Point), and a National Forest (Manti-La Sal).

Grand County contains 2.36M acres, of

which only 4.3% is privately owned land. The remainder is federally owned (71.8%), state owned (15.5%), and tribal lands (8.4%). According to the 2013 American Community Survey (ACS) 5-yr estimate, the population of Grand County is 9,269.

Grand County is emblematic of trends in rural communities throughout the American West. It experienced cyclical population and economic booms during periods of increased ranching, farming, mining, and more recently recreation and tourism. The first boom-period took place in the '50s when Charlie Steen struck the biggest deposit of high-grade uranium in the United States.

What are your position's responsibilities?

Our community development department oversees all planning and engineering activities within Grand County. As the director of a small, rural planning department, I wear many hats and do more than administer the land use change and development application system. My staff and I work to facilitate economic development, improved transportation, healthy community initiatives, neighborhood development, and water-wise design.

Tell us about an interesting project you've been involved with at the county.

Utah State University has an extension campus in Grand County. We are supporting the construction of a four-year campus, which would provide yet another anchor institution for the community. USU has designed the plans for its initial phase of expansion, and the County is helping to coordinate residential and commercial development around the proposed site.

As a precursor to our next general plan update in 2016, I am working with citizens, elected and appointed officials,

and business owners to identify important quality of life factors in Grand County. Specifically, we are looking at ways planning can maximize the benefits and minimize the burdens of a tourism-based economy. The results of a community-wide survey and series of focus groups will inform the structure of our general plan update.

Our active transportation committee is doing wonderful work in Grand County. Although our area is known as a mountain biking mecca, and the recreational trails we have built on public lands receive worldwide attention, bicycle and pedestrian commuting is also on the rise. We are updating our design guidelines to reflect the complete streets concept and finding new transportation routes for non-motorized travel within developed areas. This will continue to reduce emissions and improve public health.

What would you say are the biggest planning challenges facing the Grand County?

Grand County is on the front end of a housing crisis. We have lost a significant share of our housing stock to overnight accommodations and vacation homeownership, and external real estate pressure (i.e. demand) has not subsided through the recession. Because of our land ownership profile (see above), housing is also constrained by a limited supply of developable land. It is apparent that we need to aggressively address the gap between wages and local housing prices through zoning regulations, development incentives, public-private partnerships, and diversified economic development. Not unlike other places in the Southwest, we are also addressing aging infrastructure, mental and behavioral health, climate change, and water security.

2015 NATIONAL CONFERENCE



SEATTLE

CPD Activities at National Conference

Introducing the 2015 County Planning Division Award Winners

By: Tim Brown, AICP, Chair, County Planning Division Awards Committee

On April 19, 2015, at the County Planning Division's Annual Business Meeting, conducted at the APA National Conference in Seattle, the County Planning Division in conjunction with the National Association of County Planners presented their 2015 Project Awards. This year, five awards were presented: three Awards of Excellence and two Awards of Merit.

Award of Excellence in Best Practices to Kane County, Illinois, for the Kane County Planning Cooperative. The Kane County Board has utilized a "health in all

policies" approach to planning since the adoption of the Kane County 2040 Plan and the launch of the Kane County Planning Cooperative (KCPC) in 2012.

The KCPC's implementation strategy, which is based on integrating Kane County's Health, Transportation and Development Department planning efforts, has been ongoing and has had recent success in implementing the Kane County 2040 Plan. The overarching theme of the 2040 Plan—Healthy People, Healthy Living and Healthy Communities—provides a unified vision for the County as they strive to achieve their primary goal of having the healthiest residents in Illinois by the year 2030.



Megan Nelms, CPD Chair with recipients Anna Gagne and Abel Montoya, Adams County, CO

occurred as urbanization has rapidly spread to rural areas. The Master Plan update provided the opportunity to be forward thinking about the parks, trails and recreation needs of residents for the next ten years, and propose a new role of open space to serve as a garden for a metropolis.

The strategies provided within the Master Plan chart a course to preserve natural resources, address issues of food production and preservation of local agriculture, and include opportunities for residents to experience the outdoors in natural settings. This plan strikes a balance between the multitude of urban and

[Cont'd p.5](#)

Award of Excellence in Comprehensive Plan—Large Jurisdiction to Adams County, Colorado, for the Open Space, Parks and Trails Master Plan. The plan for Adams County provides a vision that was lacking for the County to address tremendous changes that have

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Megan Nelms, CPD Chair with recipients Karen Ann Miller and Heidi Files, Kane County, IL

Award Winners, [cont.d from p. 4](#)



Megan Nelms, CPD Chair with recipients Crystal Meyers and Paul Mortensen, Montgomery Co., MD

Pike & Rose is a place designed to attract a convergence of lifestyles in order to make suburban living more interesting and exciting. The planned 3.5 million square feet of offices, housing, restaurants, retail and amenities are designed to serve diverse constituencies within the metropolitan Washington, DC area.

rural community values and adapts the open space and parks program to the present and future needs of the changing population.

Award of Excellence in the Planning Project category to Montgomery County, Maryland, for the Pike & Rose project. Pike & Rose is a 24-acre community located a quarter mile from the White Flint Metro station in North Bethesda, Maryland. This mixed-use development replaces the outdated, 1960s Mid-Pike Plaza and, in doing so, is significant to the planning field in being one of the nation’s first projects to transform a functioning strip retail center and acres of surface parking into a vibrant, walkable neighborhood.

Megan Nelms, CPD Chair with recipient Tracy Corbitt, Westchester County, NY



Award of Merit in Best Practices to Westchester County, New York, for the Westchester 2025

Comprehensive Plan Base Studies Program. As part of Westchester 2025: Plan Together, the County’s long-range land use planning initiative, the Westchester County Department of Planning created a new program to facilitate the preparation of municipal comprehensive plans in the County.

This tool assembles maps, charts, figures and analysis, in the form of web-based data sets representing the “base studies” that planners have always used to draft comprehensive plans. The project is a shared services program that saves municipalities money and facilitates community planning.

Award of Merit in Comprehensive Plan—Large Jurisdiction to Montgomery County, Pennsylvania, for the Montgomery County Comprehensive Plan, Montco 2040. The Montgomery County Comprehensive Plan, Montco 2040, shaped around three major themes: connected communities, sustainable places, and vibrant economy, was developed through a dynamic and innovative two-year community planning process.

Plan implementation guidance for the initial year was developed as part of the plan adoption. Montco 2040 will be implemented in a variety of ways.

Many goals will be implemented directly by the County, but many will also be implemented by the County’s partners, such as local municipalities, PennDOT, the Turnpike Commission, SEPTA and other government agencies.



Recipient Brian O’Leary, Montgomery County, PA with Megan Nelms, CPD Chair

CONGRATULATIONS TO ALL THE RECIPIENTS!

THANK YOU TO [Esri](#) for sponsoring the meeting!



American Planning Association
County Planning Division

Making Great Communities Happen

CPD Activities at National Conference

County Planning Division Chair Tim Brown receives Division Council Award

Each year, the APA Divisions Council recognizes outstanding division efforts — those that go beyond the minimum performance criteria.

These 2015 Divisions Council Achievement Award Winners truly exemplify the best in content-driven excellence that divisions have to offer each other and APA.

Thanks to all the divisions and individuals who contributed to this impressive work, and to everyone who submitted to the awards program this year.

Best Practice

Private Practice Division
[Private Practice Handbook](#)

Communications Effort

Sustainable Communities Division

[SCD e-Bulletin](#)

Contribution to the Planning Profession
Transportation Planning Division
[I-70 East Reconstruction — Peer Review](#)

Education Excellence
Latinos and Planning Division
[Dialogo on the Border](#)

Congratulations also to **Tim Brown, AICP**, winner of the 2015 Divisions Council Chair's Award, and **Marj Press**, winner of the 2015 Terry F. Holzheimer, FAICP, Leadership Award.

Winners were recognized at the APA/AICP Annual Meeting and Leadership Honors in Seattle during the National Planning Conference.



Tim Brown, Recipient of APA Division Council Award

County Planning Division Reception

Following the County Planning Division annual meeting and awards presentation on Sunday, April 19, was the CPD reception. CPD joined with three other APA Divisions: Private Practice, Intergovernmental and Regional, and Small Town and Rural Planning for an evening of food, drinks and networking!

County Planning, Private Practice, Intergovernmental & Regional, and Small Town & Rural Planning joint reception—April 19, 2015—APA National Conference—Seattle



Ordinance, cont'd. from [pg. 1](#)



Wake County Planning, Development and Inspections

potential adverse impacts of the proposal.

This allowed the owner of a nonconforming site to expand and/or change a nonconforming use on their property without having to comply with any non-compliant regulation. This process was utilized approximately 15 times over a two year prior that resulted in a repeal by the Wake County Board of Commissioners on June 16, 1997.

The amended ordinance proposed that the County's treatment of nonconformities mirror those employed by most local governments to allow nonconformities to exist ("grandfather"), but to prohibit their expansion or enlargement other than routine maintenance or repair. It further allowed the routine maintenance and repair of

nonconformities as well as the reconstruction of such structures if only partially destroyed.

Analysis

The proposed amendment created an option to redevelop sites with nonconforming commercial and industrial uses in R-40W Activity Centers. In general terms, a new use category, *Elimination and Redevelopment of Nonconforming Use*, was created in the UDO. In this section, an 'S' (Special Use Permit required) would be designated under R-40W. The redevelopment option is not allowed in any other zoning district. A new Section was created, implementing use standards for eligible redevelopment.

The approved amendment allows existing nonconforming commercial and

industrial uses in R-40W Activity Centers to be redeveloped to a wider range of uses if the Board of Adjustment approves a Special Use Permit and site plan. The uses permitted differ from those currently permitted by the UDO in R-40W.

For example, commercial uses such as eating and drinking establishments and banks are now options; however any commercial use would have to be located in an Activity Center as designated on the Wake County Land Use Plan.

For sake of context, countywide, there are nine Activity Centers in R-40W Districts that contain a total of 14 properties that appear eligible to use this proposed text amendment.

The approved text change also differs from current [Cont'd p.8](#)

Ordinance, cont'd. from [pg. 7](#)

standards in that setbacks for all sites redeveloped subject to the text change would be thirty (30) feet for front, corner, and rear and fifteen (15) feet on the sides.

The UDO currently places more restrictive setbacks for some uses. For example, neighborhood retail uses must meet a fifty-foot (50') front and twenty-five-foot (25') side setback.

There was some argument here as to whether or not this constituted a "use variance" but subsequently determined through staff and in-house legal review to be acceptable. There was no related challenged to this end from other sources.

The Water Supply Watershed Protection section of the Land Use Plan states that nonresidential uses should be "special uses" and notes low impact uses. The UDO defines low impact as uses having a floor area ratio of .15 and impervious

surface coverage of <30%. Noting the latter, the proposed text was in line with this. Additionally, it was seen that there may be potential benefit for water quality in water supply watersheds with redevelopments being required to meet current standards versus the prior site exceeding impervious surface standards (@ 80%) and complaints of leeching.

All other existing stormwater and watershed regulations were required to be met. For example, all nonresidential uses would have an impervious surface limit of 24% or less, depending on the water supply watershed in which the site is located.

In anticipation of the then pending regulations from the North Carolina Environmental Management Commission, the proposed text was revised to mirror the draft rules for the Falls Lake Nutrient Management Strategy. The latter subsequently

adopted (by the state).

The approved revision was thought to have a significant impact on the Board of Adjustment. They would be given an increased amount of discretion and flexibility, including the authority to approve uses and development standards that differ from the base R-40W district regulations.

The UDO currently has standards in place for limits on floor area of commercial buildings. However, no limit was set, and the Board of Adjustment is given authority to determine whether a proposed structure is of an appropriate size.

Another example of increased discretion given to the Board of Adjustment by the text change is that they may approve off-site parking and outside storage, both of which are currently limited or prohibited for most uses by current

[Cont'd p.9](#)



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Ordinance, cont'd. from [pg. 8](#)

standards in the UDO. The number of parking spots required appears to be determined through the site plan.

Finally, the Board of Adjustment would have discretion to approve the number, type, height, and size of signs on a site developed subject to the proposed text change.

Staff Perspectives

In summary, the text changes created a new process allowing for the redevelopment of nonconforming sites in R-40W Activity Centers to a wider range of uses, subject to approval by the Board of Adjustment. This also changed the role that the Board of Adjustment has historically played in reviewing proposals, namely for eligible redevelopment sites.

The amendment established a tool to upgrade existing nonconforming sites in watersheds requiring redevelopment to meet current impervious and stormwater standards. These protection measures are consistent with the Land Use Plan and advance the public health, safety and general welfare in terms of ideology.

The Board of Adjustment can establish conditions more stringent than UDO requirements in order to address site specific concerns. Staff recommended approval of the ordinance amendment and additionally further recommended updating the Land Use Plan regarding redevelopment and non-residential uses in watersheds.

As mentioned in the Introduction, there was spirited discussion amongst Planning, Development and Inspections staff as well as peer departments, namely Environmental Services and the city of Raleigh's Utility Department (the region's supplier of water). The central debate was the appropriateness or lack thereof to allow a nonconforming use with over 80% impervious surface coverage and onsite environmental

concerns to be replaced with a shopping center which would encourage development pressure in the watershed.

The site that prompted the ordinance amendment made considerable improvements with rain gardens, engineered Best Management Practices and adding additional land for septic purposes to make the redevelopment more viable. Arguably, it was a win-win to date.

To look at some of the general technical and policy arguments raised, I'd summarize as follows:

PROS

- Introduces new redevelopment concept that may improve existing conditions
- Provides flexibility with site design
- Promotes Activity Center concepts (development nodes) promoting mixed uses
- Removing blight and upgrading problem site
- Public comments recognizing the need for a retail in this area

CONS

- Preferential treatment of nonconforming uses in R40W (vs. vacant or conforming properties)
- Policy change to allow wider range of uses and intensities in non-urban service areas
- Paradigm shift in terms of treating nonconformities
- Adverse impact on water quality depending on site design.

- Public concern increasing non-residential development pressure in the watershed

CONCERNS

- Impact on water quality given development options
- Relation to Falls Lake Rules implementation
- Impact on infrastructure (e.g well, septic)

Conclusion

As of this writing, the site which drove this text change has developed and appears to have offered a benefit to residents who now have some basic services nearby and an upgrade to a former blighted site at the headwaters of Falls Lake given modernized engineering and stormwater management.

This is the only site to have pursued and benefitted from the text change of the 14 eligible sites, though two other sites have reached out to staff for inquiries and consultation. Above all, the lessons I learned as a practitioner: 1) know what is in your Plan(s), 2) do your homework, and 3) be willing to take a risk and think "outside of the box." To close on the latter, I humbly repeat with emphasis as a technical advisor, know your rules and put the time in to understand the subject matter!

Update

On 9/15/2014, our Commissioners revised the UDO to allow the expansion of nonconformities through BOA approval. Thus, reverting back to the practices pre-1997.

Upcoming Free Planning Webcast Series

Here's an updated list of the webcasts provided by the Planning Webcast Series Consortium: These webcasts are free and are accessed by going to www.utah-apa.org/webcasts.

June 12 - Michigan Chapter - An Urgent Call for Healthy Communities - Mark Fenton - CM Pending - #e.30205
Americans are less active than ever, and we're all paying the price. But there is an opportunity: the health community can be valuable partners in advocating for, planning, development, and policy changes to support active transportation plans and designs. This session will share practical examples of interdisciplinary collaboration and attainable first steps in creating healthier communities.

June 5 - Idaho Chapter - Big Data and Small Communities: Opportunities and Challenges - Jaap Vos - CM Pending
Nowadays a wide variety of data from the US Census Bureau is easily accessible for anybody to use and it is relatively easy to create impressive looking maps and flowcharts. But how reliable is this data and can we really use it to inform planning decisions? This program will highlight some of the issues with the data especially with regard to liability, comparability and data aggregation. In addition, the program will briefly discuss why these issues are even more relevant when you use third party software.

May 29 – Transportation Planning Division – [Technology Applications for Transportation Planning](#) – Speakers: Brandon Cox, Brett Fusco, Greg Griffin
Presenters will describe innovative uses of technology in the transportation sector, including integrated mobile wayfinding for the visually impaired, scenario planning, and ride-sharing platforms. This session explores a pilot project in Texas involving electronic verification of vehicle occupancy for toll road discounts.

May 20 (Wednesday) – Sustainable Communities Division – [Smart Growth and Resilience in Coastal Communities](#) – Speakers: Susan Fox and Gavin Smith
Representatives from NOAA, as well as local partners, will discuss projects, tools, and resources related to the task of planning for both resilience and smart growth in coastal and waterfront communities.

May 8 - Private Practice Division - New Contexts for Aging and Livable Communities - Ramona Mullahey, Jana Lynott, Lindsey Goldman and Mildred Warner - CM Pending
America is aging. The webcast will explore this demographic change that is both unprecedented and global. This session will explore new contexts to aging and livability and their influence:.

May 15 – Economic Development Division – [Economic Development 101: Is Your Community Prospect Ready?](#) – Joe Hines
In this webinar you will learn what your community can do to prepare for, and land your next economic development prospect.

DISTANCE EDUCATION

Distance Education – Webcast recordings are available for viewing and approved for CM credit for viewing during the 2015 calendar year. The links for the programs can be found on the [Planning Webcast Series Consortium webpage](#). Note that the **DE CM credits have a different event number** than the original live webcast, so the event number in the recording will not work for DE credit. Use the event numbers listed on the consortium page next to the webcast to Log your DE CM credits.

[Planners and Planters: What Planners Need to Know about Creating a Sustainable Landscape for Today and Tomorrow](#)
#e.28841

[Defensible Historic Preservation Regulation](#) - #e.29371 - Law Credits