

# NEBRASKA PLANNING & ZONING ASSOCIATION



## Pre-Conference Newsletter

### From the President...

It's been a busy summer and fall of for the members of the NPZA Board. Unfortunately, President John Johnson resigned from his position on the Executive Board in July. The Board and I would like to thank John for his work as President of NPZA and wish him the best moving forward. As a result, the board, as provided within the bylaws of the association, elected the following persons to new positions:

**President:** *Christopher Solberg*--City Planner, City of La Vista, filling the position vacated by John Johnson

**1st Vice President:** *Judy Clark*--Planning Administrator, City of North Platte, filling the position vacated by Chris Solberg

**2nd Vice President:** *Dan Gittinger*--Public Properties Director, City of Nebraska City, filling the position vacated by Judy Clark

We have been working hard with the Nebraska Chapter of the American Planning Association on planning the 2015 Nebraska Planning Conference. This year's conference will be held in the Younes Conference Center in Kearney and will cover an interesting list of topics for those interested in attending.

The annual NPZA Executive Board Retreat was held on July 24-25, 2014 in North Platte. The retreat was an effective activity resulting in what will be an effective plan for the association moving forward into the future.

Districts have been also putting together successful workshops. So it's been a good summer/fall for planning training in Nebraska.

--*Christopher Solberg, NPZA President*

### Mark Your Calendars

**March 11-13, 2015:** Nebraska Annual Planning Conference, Younes Conference Center, Kearney, NE

**April 18-21, 2015:** APA National Planning Conference, Washington State Convention Center, Seattle, WA

- For anyone interested in attending the APA National Planning Conference, advance registration for the conference ends on **March 19, 2015**.

### Nebraska Planning Conference Spotlight

**Dave Ptak**--Dave Ptak, city attorney for Hastings, NE, has been involved in NPZA for decades. Specifically, Dave has presented a seminar on Wednesday for years regarding legal aspects of planning and zoning, what has transpired over the past year, and provided insight on a smorgasbord of topics. For anyone that has not attended the seminar, it is well worth the time for Dave's keen insight and knowledge. The seminar also provides continuing legal education credits for Nebraska attorneys. Please tell all of your associated attorneys about this session, and please consider attending his seminar, along with other timely topics brought to you on Wednesday and throughout the two and half day conference. Please visit our website at [www.npza.org](http://www.npza.org) for more information on all details.

## In Memory of Marvin Krout

Marvin Krout passed away on November 20, 2014, after a brief and unexpected illness. Marvin served the City of Lincoln and Lancaster County as the Planning Director from September 2002, to November 2014. He was a dedicated, loyal, and respected public servant and his contribution to the Lincoln community will be long lasting.



Marvin lead Lincoln's planning process for more than a dozen years as Planning Director after having served in similar roles in Wichita, Kansas, and Dallas, Texas. Marvin committed his life to putting into action progressive planning principles which bettered the communities

he served and enhanced the quality of life for present and future residents. He steadfastly brought together parties of divergent views in an affirmative and constructive manner with the community's long term interests always at heart.

While serving as the City of Lincoln-Lancaster County Planning Director, Marvin worked tirelessly with twenty-eight Commissioners during more than 325 regular public meetings and countless special sessions. He oversaw the successful updating of the City-County Comprehensive Plan and Long Range Transportation Plan in 2006 and 2011. He led efforts to shorten the City's and County's development permitting processes, including streamlining the PUD ordinance, reducing application review times, simplifying sign standards, reducing bond requirements and decreasing front yard requirements in many commercial/industrial districts.

Marvin backed stronger neighborhoods through adoption of enhanced Neighborhood Design Standards, coordination of the "downzoning" of eight core Lincoln neighborhoods, preparation of various neighborhood and subarea plans, and augmentation of the City's landscaping and screening standards. He promoted the widespread integration of digital automation throughout

the planning and development process, such as introduction of paperless applications, expansion of Geographic Information Systems (GIS) technology, and expanded use of the internet as a tool for public involvement and communication.

Marvin will be missed.

(Much of this article is drawn from the language in a resolution passed on January 7<sup>th</sup> by the Lincoln-Lancaster County Planning Commission in recognition of Marvin's work and legacy of planning.)

--David Cary, Lincoln-Lancaster County Planning Dept

## North Platte Case Decision

The following article originally appeared on the website *The Midwest Planning BLUZ* hosted by Iowa State University Extension and Outreach. Links found in the synopsis below are kept from the original article. The article is credited below:

Taylor, Gary. (2014, August 25). [8<sup>th</sup> Circuit finally addresses "in writing" requirement of Federal Telecommunications Act.](#) Retrieved from [blogs.extension.iastate.edu/planningBLUZ/](http://blogs.extension.iastate.edu/planningBLUZ/)

### NE Colorado Cellular v. City of North Platte

(Federal 8<sup>th</sup> Circuit Court of Appeals, August 22, 2014)

NE Colorado Cellular, dba Viaero Wireless (Viaero) filed an application to construct a cell tower in North Platte, Nebraska (City). The application first went to the City's planning commission. The commission conducted a public hearing and received both live testimony and letters from property owners near the proposed tower site. After the hearing, the commission issued a summary report recommending denial of the application because the tower would not be in harmony with the character of the area as required by the North Platte zoning code provisions concerning cell towers. The commission provided this report to the city council. The city council then conducted its own public hearing, where two people spoke in favor of the tower and twelve spoke in opposition. The council voted 6-2 to deny the application.

The minutes of the council meeting included the finding that the proposed tower “does not meet the minimum standards stated in the [zoning ordinance]...based on the [finding] that the use is not in harmony with the character of the area and it is not the most appropriate use of the land as it is a historic neighborhood and the tower could decrease property values in the area.”

Viaero filed suit against the City, alleging that the decision was neither “in writing,” nor “supported by substantial evidence” as required by the Federal Telecommunications Act of 1996 (TCA). The district court upheld the City’s decision, and Viaero appealed to the Federal 8<sup>th</sup> Circuit Court of Appeals.

*In writing.* The interpretation of the TCA’s “in writing” requirement up until this time has been an open question in the 8<sup>th</sup> Circuit. The 1<sup>st</sup>, 2<sup>nd</sup> and 9<sup>th</sup> Circuits require that a decision (1) be separate from the written record; (2) describe the reasons for the denial; and (3) contain a sufficient explanation of the reasons for denial to allow a reviewing court to evaluate the evidence in the record that supports those reasons. The 6<sup>th</sup> Circuit does not require that the decision and record be separate writings as long as the record permits the reviewing court to “focus with precision on the action that was taken and the reasons supporting such action.” The 4<sup>th</sup> and 11<sup>th</sup> Circuits consider the burden on local governments to be even lighter than that imposed by the other interpretations. The 4<sup>th</sup> Circuit has noted that “Congress knows how to demand findings and explanations” and has not done so in the TCA. Similarly, the 11<sup>th</sup> Circuit has stated that the decision and the bases thereof can be found in the transcript of the hearing and the minutes of the meeting in which the hearing was held; neither a separate written document, nor specific findings of fact are required.\*\*

The 8<sup>th</sup> Circuit was persuaded that the 4<sup>th</sup> and 11<sup>th</sup> Circuits articulated the better rule. The Court did not find anywhere in the text of the TCA where the denial and the written record be separate documents. Likewise, the language of the TCA does not require that the written denial state findings of fact or the reasons for the denial. “Congress may require an agency or board to state its findings. Congress did not do so here.”

*Supported by substantial evidence.* The Court began by noting that “the TCA’s ‘substantial evidence’ requirement does not impose substantive standards on local governments. Rather, it requires a reviewing court to determine whether the local authority’s decision comports with applicable local law....It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The city’s ordinance requires that a tower “shall be in harmony with the character of the area and the most appropriate use of the land” in order to be approved. The Court found that the city council had before it the testimony of a dozen residents that the proposed tower would be an “eyesore,” would be inappropriate for the neighborhood, and would not be harmonious with the neighborhood. This, the Court concluded, was enough for a reasonable mind to accept as adequate to support a conclusion that the proposed tower would would [sic] not be in harmony with the neighborhood.

\*\*Note: The US Supreme Court has accepted the case of *T-Mobile South, LLC v. City of Roswell*, 731 F.3d 1213 (11th Cir. 2013), cert. granted, 134 S.Ct. 2136 (2014) to resolve these differing interpretations.

--Gary Taylor, Iowa State University

## My Town, Lancaster County

The Citizens’ Institute on Rural Design™ (CIRD) announced in July that the small towns of Lancaster County were one of 4 communities selected to host a rural design technical workshop, to be held March 19-21, 2015, dubbed *My Town, Lancaster County*.

CIRD workshops bring together local leaders, non-profits, community organizations, and citizens and a team of specialists in design, planning, community and economic development, and creative place-making to address design challenges identified by the host communities.

CIRD offers annual competitive funding to as many as four small towns or rural communities with populations under 50,000 to host a two-and-a-half day community design workshop. CIRD awardees receive \$7,000 to support the workshop, in-kind design expertise and

technical assistance valued at \$35,000, and additional training through webinars, conference calls, and web-based resources.



The proposal submitted by the Lincoln-Lancaster County Planning Department, Lancaster County Commissioners, and UNL Extension in Lancaster County, was one of four selected by an advisory panel from a pool of 48 applicants this year. Each of the selected organizations applied with multiple local partners. "We were extremely impressed by the volume and high quality of the applications we received. The selected communities demonstrate rich potential for leveraging partnerships to take action on a wide range of rural design issues," said Cynthia Nikitin, CIRDP Program Director and Senior Vice President of Project for Public Spaces, Inc. "Rural design is a valuable tool for citizens to use to build on existing assets and improve their community's quality of life and long-term viability."

*My Town, Lancaster County*, will look at the specific opportunities and challenges faced by small communities in proximity to a larger city. While a few of these towns still provide groceries, banking, and some services in their businesses districts, the proximity of Lincoln's shopping has made it a challenge for those businesses to remain profitable. At the same time, having a larger city nearby means those in small towns can enjoy the lifestyle provided and still have a wide variety of goods and services within a few minutes' drive. The workshop will discuss how these towns can build on their assets and maintain their unique identities while still taking advantage of the opportunities Lincoln provides.

Each participating town worked together with planners to develop preliminary goals that the team will address during the course of the workshop.

The 3 day workshop will help the teams from each town walk through a planning process to further develop the preliminary goals. Topics of community identity, unique attributes and opportunities, the challenges of keeping a small town vibrant in the shadow of a major city, and resources and tools for bringing vision to reality, as well as others, will be discussed in the three day workshop. On the final day of the workshop (March 21, 2015), the public is invited to join us at 1:00 pm at the Spring Creek Prairie Audubon Center, 11700 S 100<sup>th</sup> St near Denton, NE for an open house to see what the next steps in the journey will be.

More information can be found on the *My Town, Lancaster County* website ([www.lincoln.ne.gov](http://www.lincoln.ne.gov), keyword "My Town") or through the *My Town, Lancaster County* Facebook page ([www.facebook.com/mytownlancaster](http://www.facebook.com/mytownlancaster)).

## U of U's Ed McMahon to Speak in Lincoln



The public is invited to join *My Town, Lancaster County* workshop participants for a community lecture by Ed McMahon at 5:30 pm on March 19, 2015. McMahon, Senior Resident Fellow at the Urban Land Institute, is nationally known as an inspiring and thought-provoking speaker and a leading authority on topics such as the links between health and the built environment, sustainable development, land conservation, smart

growth, and historic preservation. The lecture will be held in the Unity Room of the Jackie Gaughan Multicultural Center on UNL City Campus (attached to the Student Union). A social hour with light refreshments, sponsored by the Nebraska Chapter of the American Planning Association, will follow the lecture to give attendees an opportunity to speak with McMahon.

1.0 CM credit will be available for AICP.

--Sara Hartzell, Lincoln-Lancaster County Planning Dept

## Knox County is "Livestock-Friendly"

On October 21, 2014, Knox County was designated by the State of Nebraska as a "livestock-friendly" county. Below are pictures from the ceremony. Knox County Zoning Administrator Liz Doerr and former Governor Dave Heinemann are pictured. Congratulations to Knox County on this accomplishment!



## NIFA Housing Study Grant Program

NIFA awards \$145,635 in housing study grant funds in eight communities: Atkinson, Blair, Kimball, Loup City, Lincoln (Clinton & Hartley neighborhoods), Superior, Wilber, and Wood River. Six of the communities are completing new Comprehensive Plans which incorporate

a housing study. The NIFA grant funds are matched with \$169,465 of local funds.

### Housing Study Grant Program Application Dates

NIFA anticipates having up to \$120,000 in funds available each fiscal year (July-June). Applications for the Housing Study Grant Program must be delivered to NIFA by 5:00 pm on the following dates to be considered:

**Fiscal Year 2015 Allocation:** Round 1--July 11th, 2014, there will be NO Round 2 application/funding

**Fiscal Year 2016 Allocation:** Round 1--March 31, 2015 (projected date)

To learn more about the Housing Study Grant Program, visit [nifa.org/programs/](http://nifa.org/programs/) or contact Elizabeth Fimbres at [elizabeth.fimbres@nifa.org](mailto:elizabeth.fimbres@nifa.org).

--Steve Charleston, Nebraska Dept of Economic Development

## From the Editor...

The last year has been a good one for our family personally. Unfortunately, that also means that my life has become much busier as well, including touring the state for my new job with the Nebraska Department of Roads. Accordingly, even though I have only served in this capacity for a year, I have made the decision to step down as Newsletter Editor. I know that Chris Solberg will find a great replacement, and have the utmost confidence in his capabilities as NPZA President going forward! Thanks to everyone who provided insight and help in this capacity! Special thanks go to Stacey Hageman for her efforts and attempts to keep me on track in this endeavor! Please keep the information flowing to the new newsletter editor, whoever that may be! Thanks again to everyone!

--Charles Hamilton, NPZA Newsletter Editor

Please submit any questions, comments, concerns, or ideas regarding the newsletter to Stacey Hageman ([slhageman@lincoln.ne.gov](mailto:slhageman@lincoln.ne.gov)) or Chris Solberg ([csolberg@cityoflavista.org](mailto:csolberg@cityoflavista.org)).