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EMINENT DOMAIN ON THE BALLOT

"The public outcry has turned

political as local, state and

federal governments have

sought to tame the specter of

eminent domain."

By Sara Clark (MUP '08)

hen the Supreme Court handed down its 5-4 decision in *Kelo vs. City of New London* in June 2005, the American Planning Association (APA) seized upon the outcome as a judicial validation of the use of eminent domain to achieve economic development plans. APA Executive Director Paul Farmer said in a press release, "the court's decision not to second-guess the local government's deter-

minations of 'public use' ensures that carefully thoughtout community plans will not be hindered by a higher stan-

dard of judicial review." However, a look at the tumultuous landscape since the *Kelo* decision suggests that this validation has not made the right to use eminent domain any easier.

The *Kelo* decision and the upheld right of the City of New London to use eminent domain to acquire holdouts as part of their economic redevelopment plan drew national attention to the issue of property rights. Citizens around the country were appalled by the notion that the government could, in essence, take property owned by one private party and transfer it to another, as

long as the action would create some public benefit, however indirect. As Justice O'Connor stated in her scathing dissent, "Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

In the 18 months since the decision, the public outcry has turned political as local, state and federal governments have sought to tame the specter of eminent domain. Part of

> this political upheaval stems from the decision itself. While Justice Stevens upheld the rights of the City of New London, based on

judicial precedent, he specifically pointed to the legislature as the mechanism for curbing abuse. Citizens around the country have responded to this gauntlet, working to curtail the use of eminent domain wherever possible. Though federal legislation on the matter is currently stalled, property rights activists have been extremely successful on the state and local level. In the November 2006 election alone, voters in 9 out of the 12 states with ballot initiatives acted to curb the use of eminent domain. So where does this leave the APA's

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Urban Planning Anytime at: http://www.nyu.edu/wagner/



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A LETTER FROM THE EDITORS

The Fifth Amendment in the United States Bill of Rights guarantees that "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Since the 2005 *Kelo vs. City of New London* case granted local governments broad power in regulating land use, there has been a heightened focus nationwide on concepts such as "public use" and increased debate over the definitions of words like "taken." The debate behind *Kelo* for a City's right to use eminent domain sparked a number of states to pass strict property rights laws in the recent elections.

Eminent domain, which allows governments to condemn private property in the name of public use, is one example of a "top-down" approach to planning. Other such centralized approaches to land use are prevalent in countries such as the Netherlands, where the central government can take private property in areas vulnerable to flooding in order to safeguard the greater population.

On the other hand, communities across the globe are also experimenting with a grass-roots approach to land use decisions. Adjunct Wagner Professor Shlomo Angel spent many years teaching localized planning and researching community housing programs in slums across the globe. This kind of planning from the "bottom-up" stands in stark contrast to the use of the power of eminent domain.

For planners, finding the right balance between community involvement and doing what's right for the city or region as a whole is a difficult task. We spend hours studying planning theories and examining past projects and policies in order to make the right decision, yet we cannot forget to value the input of those affected by a project.

The articles in this latest issue of *The Wagner Planner* address the top-down issue of eminent domain; examine U.S. and international approaches to planning; and focus on recent trends in green design.

Best wishes for a fun and relaxing semester break and Happy New Year!

Carrie Knudson & Michael Kodransky





DUTCH EXCHANGE STUDENTS GET AMERICAN PLANNING PERSPECTIVE

by Carrie Knudson (MUP '07)

ike many students from around the world, Eva Stegmeijer and Ivo Beenakker came to NYU in order to experience life in New York City. These two visiting students from the Netherlands are in their final year of an Urban Planning masters program at the University of Amsterdam.

For Eva, the ability to experience New York's culture, arts and music scenes played a major role in her decision to study at NYU, while Ivo chose New York over European destinations so he could practice his English. Upon arrival, both students were impressed with the orientation programs provided by NYU's Office of International Students, which helped them acclimate to both the city and the school.

In their first semester at Wagner, Ivo and Eva have discovered some major differences between urban planning in the U.S. and in the Netherlands.

"Planning is much more centralized in the Netherlands," Ivo explained.

For example, national infrastructure projects such as dykes and canals require a top-down approach. These elaborate systems attempt to prevent flooding throughout the country, much of which is below sea level. Additionally, a national office of planning has implemented country-wide land use policies such as the national "containment" policy that requires all cities to develop urban growth boundaries.

At the time of its enactment in the 1960s, this containment policy had unexpected support nationwide. Liberals in the Netherlands saw it as a method to conserve the nation's green space, while conservatives saw it as a way to increase property values.



The history of New York holds special attraction to Ivo Beenakker, an international student studying urban planning at Wagner.

In the U.S., Eva believes a decentralized approach to government and planning causes "American cities to be more in competition with each other."

National planning makes sense in the Netherlands, due to its relatively small physical size (almost twice the size of New Jersey) and population (16.4 million, slightly smaller than New York State). A highly centralized government and a general culture of planning allows the country to address land use issues in a comprehensive way.

According to Ivo, in the Netherlands planning is just part of the country's history. "Its an idea the really comes from the Middle Ages."

The students also see a difference in teaching styles in the U.S. At the University of Amsterdam, much of the focus is on planning theory, while here, Wagner takes a very practical, experiential approach.

"I was surprised by the number of working students in my classes," Eva noted. Both Ivo and Eva have come to love life in New York City. As urban planners, these students appreciate the city's comprehensible grid plan and extensive subway system. Additionally, Ivo and Eva enjoy living in New York for its specialty shops, restaurants, and diverse mix of people, not to mention the ease of obtaining a 2 AM six pack.

Originally planning to study here only for the fall, both students extended their stay for a second semester. What remains of their coursework is one required academic class and a comparative thesis, which they plan to complete in the coming months.

"Five months just wasn't enough," lvo said.

Current Wagner planning students can also participate in an exchange with the University of Amsterdam.

For more information on Wagner exchange programs, visit: www.wagner.nyu.edu/international



AN INTERVIEW WITH ADJUNCT PLANNING PROFESSOR SHLOMO ANGEL

by Molly Brantz (MUP '08)

Professor Shlomo Angel currently teaches both at Wagner and Princeton University. He has worked in planning all over the world, focusing primarily on housing and housing policy. Today he works closely with the International Development Bank assessing the housing situation throughout Latin America.

MB: Can you talk a little bit about your background, where you are from and how you ended up studying architecture and planning at Berkeley?

SA: I grew up in Jerusalem, Israel, and I was studying architecture at the Technion — Israel Institute of Technology in Haifa. After a few years, I felt like I didn't have any practical skills in the field. So I started looking at programs abroad—London, Paris, Harvard, Yale. Then I met a guest lecturer from the University of California—Berkeley and he told me that people in Berkeley were walking barefoot on the grass. I decided this is where I wanted to go.

Berkeley was an interesting place at this time—anti-war movements, hippies. I enjoyed my studies, so I stayed for my PhD in City and Regional Planning.

MB: So, in the end what brought you to New York City?

SA: I was working on an invention.

After I finished my PhD, I was invited to teach at the Asian Institute of Technology in Bangkok, Thailand, so I went. When I got there I looked around and saw all these slums, a total mess and a total lack of planning. I realized that in a city of 4 million people no one knew the number of slum dwellers. So, I cre-



ated the Human Settlements Department, teaching rural and urban planning that was geared toward the present needs in Southeast Asia. We created a number of slum improvement projects. It was a nice hands-on experience. I started consulting for the Thai government and the UN Habitat (the UN organization that deals with cities, housing and land issues). Eventually I got tired of Bangkok. It was too comfortable. I got tired of the housing problem, tired of visiting slums. I wanted to get into something more high-tech and I was working on an invention. I wanted to reinvent the bathroom scale, and I ended up in New York.

MB: What happened with the invention?

SA: It never came to fruition. I ended up selling my patents to the Japanese and wrote a book about the process. It was recently published, "The Tale of the Scale," it details the adventures of reinventing the bathroom scale.

MB: You have done a lot of work with the International Development Bank. Can you describe this work and talk about what you are currently working on?

SA: In New York I started working for the World Bank and became interested in global comparison research. I couldn't do anymore Asian consulting. It was too far. So I turned to Latin America. I started working for the International Development Bank doing housing sector assessments. I collect data from the government, the private sector, the informal sector, and look at finances. I have created a nice methodology for collecting this data and presenting a nice overview of what is going on.

In doing this I also became interested in the growth of cities. I recently published a report that looks at urban growth in 120 different cities throughout the world. I have devised strategies for developing countries to accommodate future growth and have been funded by the World Bank to implement a pilot program with these strategies in Ecuador.

MB: You teach *History and Theory of Planning* at Wagner, what do you hope that students take away from this course?

SA: I see this course as a broad introduction to the field. It is organized around readings to emphasize the intellectual background of planning and is meant to expose people to debates in the field. I also want students to connect to the historical roots of urban planning. I hope this course will open up people's minds and help them embrace the entire field, help them see the multi-disciplinary element of planning and help them recognize that different countries have similar problems.

MB: Based on your intense experience with housing abroad, what do you think is the most important

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PLANNING SOLUTIONS FOR COPING WITH COLD CLIMATES

by Michael Kodransky (MUP '08)

he world's first fully enclosed climate-controlled shopping center opened in 1954 in the sleepy Minneapolis suburb of Edina. Minnesota. Southdale Center, still functioning as a mall today, would provide the kind of town square gathering place that Austrian-born creator Victor Gruen believed was missing in Edina. The concept of an indoor shopping mall with air conditioning and heating would rival downtown city districts and main streets across the USA. Minneapolis retailers could no longer draw shoppers during harsh winter days when the suburbs offered a warmer alternative.

By 1962, private developers in downtown Minneapolis would erect the state's first covered and temperature-regulated footbridge, connecting at the second floor of two commercial buildings. The bridge would become part of the nation's largest elevated footbridge network. Today it is possible to traverse most of downtown Minneapolis in a T-shirt when temperatures outside reach minus 20 degrees Fahrenheit. The Minneapolis skyways, as they are known, link nearly 70 blocks and more than five miles of

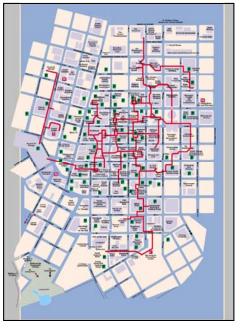
New York is one of the cities that has experimented with skywalks like this one in Lower Manhattan.

restaurants, hotels, performance venues (such as the Symphony and Opera), office jobs and shops.

Restrictions set by the City Planning Department require that the bridges be at least 12 feet wide, but no wider than 30 feet. Rush hours can get congested at certain skyway crossings as office workers traipse the indoor labyrinth to connecting parking structures. Street musicians move up to the bridges from their usual spots on ground level, keeping the skyways lively. Closed-circuit television (CCTV) is used to monitor safety, and call-for-assistance buttons are available in case of an emergency.

The multicolored glass and steel Minneapolis skyways are all privately owned and maintained, while in neighboring St. Paul they are publicly financed and operated. Together, the Twin Cities make up what is arguably the largest skyway network in the world. Calgary, Alberta, also experiences frigid winters and makes the same claim to fame with its +15 skyway system (pronounced "Plus 15" for the number of feet the footbridges are set above the ground), which spans 10 miles and more than 60 blocks.

Developers in Calgary get bonus floor space as an incentive to connect to the +15 system. Those who cannot feasibly connect to a nearby building contribute to the +15 Fund, which is managed by the city as a way to finance links elsewhere. The 2000 Canadian comedy film "Wavdowntown" Gary Burns follows a group of Calgary office workers who bet a month's salary on who



Map of the extensive skywalk system in downtown Minneapolis, MN. Courtesy of: www.skywaynews.net

can last the longest without leaving the nourishing confines of the skyway system—recycled air, fluorescent lights and a bevy of food courts.

Skyways, also known as skywalks, are an urban renewal idea that gained foothold in the 1960s. Tunnels in the sky were a boon for downtown Minneapolis. Though some legs of the system open and close at inconvenient times because they are privately owned, overall the network is considered a triumph. Other cities, such as Des Moines and Cincinnati, are trying to curtail skywalk developments after modeling them with limited success on Minneapolis as a way to lure climate-sensitive shoppers back downtown from suburban malls. Des Moines has a designated downtown Skywalk District, where the largest concentration of elevated pedestrian bridges could be found, to prevent any more from going up in



Cold Climates

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outlaying areas. Cincinnati has started dismantling some of its skywalks.

The paradigm of the tunnel in the sky for the weather weary has also been propagated underground. Montreal has the largest and most famous underground complex of tunnels in the world. Réso, a homonym for the French word réseau, which means network, has more than 20 miles of tunnels with over 120 access points in its downtown core, connecting to residential buildings, university halls and other amenities. The subterranean passageways are linked to metro stops, although not all. Efforts are underway to further expand the Réso. One drawback is that, like the Minneapolis skyways, sections close outside of business hours.

The PATH in Toronto is the largest underground shopping complex in the world, according to the Guinness Book of World Records, with more than 17 miles of pedestrian tunnels connecting metro stations to nearly 4 million feet of retail space that provide a warm haven under the downtown business district.

"Anchorage has a bonus system for developers who install heated sidewalks in the downtown district."

Some cities have taken an altogether different approach to keep pedestrians moving during snowand ice-filled winters by installing heated sidewalks. Holland, Michi-

gan, has them, as does Klamath Falls, Oregon, and Anchorage, Alaska. They can be more effective than plowing or applying salt when thick ice sheets cover the ground. In Klamath Falls, geothermal water that lies below the city is pumped below the sidewalks. In Holland, special heated tubing installed underground helps to melt the snow.

Anchorage has a bonus system for developers who install heated sidewalks in the downtown district, much like the incentive program Calgary has for +15. As part of major downtown revitalization efforts, by 2009 the Anchorage Convention Center will connect with covered heated sidewalks to the Alaska Center for the Performing Arts. Perhaps covered heated sidewalks are the next development trend that will seize the imagination of cities with numbingly cold climates.

BANK OF AMERICA BUILDS GREEN IN MIDTOWN

by Harry Ostrander (MUP '07)

ne of the largest green projects in New York City today is One Bryant Park, located at 42nd Street and 6th Avenue. The project is a 50/50 partnership between The Durst Corporation, one of the U.S. leaders in developing technologically and environmentally advanced buildings, and Bank of America, a global leader in finance. It will be home to the headquarters of Bank of America.

According to John G. Saclarides at Bank of America Public Relations, the company decided to go green to improve its image. By taking the lead in sustainable building and using environmentally friendly materials, the company hopes this green image will resonate among its shareholders, workers, clients and potential customers.

Bank of America will occupy half of the building. Started in 2004, the building, will be built largely of glass, steel and aluminum. It will contain 2.2 million square feet and be 54 stories tall. The completion date is set for sometime in 2008.

The building's designers took inspiration from New York's Crystal Palace, which was built in 1853 on the site of today's Bryant Park. The Crystal Palace building was one of the first in the country to use only steel and glass construction. The Bank of America tower was also inspired by the design of classic New York skyscrapers.

Several elements of One Bryant Park are groundbreaking in the field of sustainable architecture. The building will have an advanced air filtration system so that temperature can be regulated on a floor by floor basis for more efficient and healthier heating and cooling.

Additionally, carbon dioxide monitors will check and automatically

adjust fresh air flow into the building. A grey-water system will collect and re-use all rain and wastewater, saving an estimated 10.3 million gallons annually. Higher ceilings with transparent and insulated floor to ceiling windows will facilitate energy efficiency, and provide light to the inner areas of the building (not



Rendering of the Bank of America building currently under construction in Midtown Courtesy of: www.durst.org

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Bank of America

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to mention providing better views).

To reduce electrical usage, the building will have daylight dimming lights along with LED lights. During the daylight hours, ice will be used to cool the building instead of a traditional air conditioning system. A dedicated co-generation plant at will produce ice during the night-time hours when there is less strain on the electrical grid and rates are cheaper.

The building will use 50% recyclable material, much of which will come from within 500 miles of the site. When complete, the roof tops will have planted green roofs to reduce the urban heat island effect.

The building's architects hope that this green building design will reduce energy and potable water usage by 50 percent. They also hope the building will be the first high rise ever to receive the U.S. Building Council's LEED Platinum Designation. In addition, the plans call for reconstruction of the Henry Miller Theater that formerly stood on the site. The landmarked theater façade was saved as part of the project and the new theater will seat 1,000.

Estimated at \$25 million, the sustainable components of the building cost less than two percent of the overall development costs. Bank of America estimates that it will take between two and ten years to recoup the increased costs from the green components.

The Durst Corporation and Bank of America partnership received support of the tax-exempt, low interest rate Liberty Bonds that were set up after 9/11 to help revitalize Lower Manhattan and other sections of the city. These funds helped the developers build this unique tower

The Scent of Green

by Becca Nagorsky (MUP '07)

What's that smell? Is it hot in here?

If a light stays on around the clock and no one is there to see it, Is it incandescent or fluorescent?

That scent?

Could be the volatile organic compounds wafting through your air, On wings of chlorofluorocarbons and formaldehydes.

Or maybe it's just the incense you burn So your neighbors will think you recycle.

Hot you say? Probably your non-reflective roof, Your over-sized boiler, Your urban heat island paradise.

Or maybe it's your white-hot righteous indignation. Dollars and cents draining into the coffers of the Man As electricity surges through your Energy blackhole washer-dryer combo.

Rise Up!

Cast off the shackles of Industrialization, Manifest Destiny, the Federal Highway Administration. Your building is your oppressor!

True freedom is a bike rack in the lobby, Mocking you each morning As you pull into the parking garage in your Hummer, No slave to the bourgeois mainstream.

Embrace liberation theology: Prostrate yourself to the Idolatrous array of photovoltaic panels, Impotently idling on a cloudy day.

Total revolution:
Emancipate yourself with
A blackwater system,
Irrigating your green roof with recycled Proletariat pee.

Incandescent or Fluorescent?
No thank you Comrade, I'll take motion activated!

in the heart of Mid-Town Manhattan.

try that is such a vital part of the New York economy. •

Not only will the structure be a model of green building, but this iconic project will serve as an anchor to the financial services indus-



Eminent Domain

Continued from p. 1

hopeful proclamation that the planner's right to use eminent domain in the name of economic development had been validated? In some states, this right is still unaltered. But while *Kelo* issued a stamp of judicial approval, its aftermath has lead to an overall decrease in the power that planners can wield.

First and foremost, increased public scrutiny of the issue across the nation has made it harder for planners to use eminent domain. In some states or municipalities, the legislature has all but eliminated its use, except in cases where there is a clear *public use* for the property, not just an outcome of public benefit. In places where the law regarding eminent domain is unchanged (i.e. New York City), the public as a whole is more aware of the implications of its use. In the past, outcry

was usually limited to those who experienced the direct impacts from having their homes or business condemned. But now, in projects such as Atlantic Yards in Brooklyn, the planned use of eminent domain in the name of economic development is one of the primary public criticisms of the project, even from those who have no personal stake in the development.

Planner Poll: Is eminent domain for economic development an appropriate use of public funds?

Compiled by Susanne Huerta (MUP '07)



"Definitely not, the government often has a hidden political agenda when determining whether a developer's proposed project qualifies for public funding. The "economic development" of poor and powerless communities is never on the agenda."

-Vera Moore (MUP '08)



"I feel very ambivalent about eminent domain. In some cases I do think public funding for economic development is appropriate, but I think governments should exercise eminent domain, however funded, only with extraordinary care and plenty of community involvement."

-Sarah Wu (MUP '08)



"Only if you lived 20 to 30 years from the present would you be able to have an informed opinion on today's takings."

-David Slotnick (MUP '08)

Secondly, the backlash against the Kelo decision has opened the door for advocates of more stringent property rights in general. Libertarian groups that favor very limited governmental regulation over private property have capitalized on the anger and fear created by Kelo. In states like Arizona and Nevada, these well-funded groups pushed to pass ballot initiatives in recent elections limiting not only the use of eminent domain but also the ability of the government to pass regulations to protect the environment, infrastructure or community character. These changes in regulatory takings law have proved debilitating in Oregon, where similar legislation was passed in 2004.

As planners, how should we respond to this situation? First, it is one of our many duties to ensure the responsible use of eminent domain. It is an important, although severe, tool in the redevelopment process, and should be used only as a last resort. Further abuse will only create additional pushback from the community, leaving planners without the tools they often depend on eminent domain and government regulation. In addition, the planning community should be well schooled to clearly illustrate and defend the legitimate public benefits that can be realized through the power of eminent domain. If we can show how well the public can be served by its use, we can justify its often harsh reality. •



Professor Angel

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thing for New York City to do in the face of its housing crisis?

SA: What strikes me as odd here is that people have gotten rid of all of the bad housing, or in other words cheap housing. Why have they gotten rid of one room occupancy? Think about it-if you had to live in Manhattan and wanted to save money, living in something the size of a dorm room with bunk beds would be fine-some people would be happy as a clam-why not build really small units?



APA's 2007

National Planning Conference

April 14-18, 2007

PHILADELPHIA

PLANNING INTERNSHIPS PROVIDE PRACTICAL EXPERIENCE

Compiled by Michael Kodransky (MUP '08) and Carrie Knudson (MUP '07)

Daria Siegel (MUP '08) works as a Communications intern at the Department of Housing Preservation and Development (HPD). She helps organize groundbreakings and ribbon cuttings throughout the city while learning about Mayor Bloomberg's New Housing Marketplace Plan. This plan is aimed at developing and preserving 165,000 units of affordable housing in the next 10 years.

Elizabeth Ferber (MUP '07) is currently interning as a Housing Development Associate at the Fifth Avenue Committee. Her main responsibilities are assisting in the project management of an affordable home ownership initiative, navigating the implementation of a Coop conversion and assisting in the predevelopment stage of various projects. She enjoys working one-onone with residents of the community and is dedicated to preserving affordable housing in South Brooklyn.

Elizabeth Hewitt (MUP '07) is working as an intern in the economic development/planning department of the Alliance for Downtown New York, the BID for Lower Manhattan. The Downtown Alliance serves as a resource for businesses in the district, implements streetscape improvements, hosts marketing events like "River to River," and partners with other city organizations like EDC and LMDC to give input on projects like the Fulton Corridor Revitalization and the rebuilding of the World Trade Center. Elizabeth assists in collecting data and researching land use, growth of the residential market, and real estate developments in the area.

Melanie Ochser (MUP '08) held internships this semester at the Local Initiatives Support Corporation (LISC) and the Union Square Partnership BID. At LISC, Melanie analyzed untapped potential in low income areas for retail establishments such as grocery stores. Her work at the Union Square BID ranged from performing business outreach to compiling stories for the monthly newsletter and creating a neighborhood profile.

Mike Davis (MUP '07) is participating in the Manhattan Borough President's Community Planning Fellowship Program. The program's goal is to enhance the capacity of community boards to undertake planning activities and to provide planners with an acute appreciation of local government and community perspective. Mike is working in Community Board 3 and is calculating conformance and compliance to justify the inclusion of additional blocks in a pending rezoning proposal. Russell Lang, Samelys Lopez and Eric Goldwyn are also participating in the two-semester fellowship program.

Peter James Kralovec (MUP '08) recently completed a land-use/policy internship in the office of Councilmember Gale Brewer of the Upper West Side. In his position, he tracked real estate developments in the district, advocated on behalf of affordable housing and prepared speaking remarks for a land-use engagement. Peter's principle project was the maintenance of a comprehensive blog about development projects in the district, which will soon go public.



FALL 2006 PLANNERS AT WORK & PLAY



Students from the Land Use, Housing and Community Development Seminar pause for a group photo during their tour of affordable housing developments in Harlem and the Bronx.



David Rozan, Becca Nagorsky and Kate Bender relax at Happy Hour.



Planners enjoy a sunny walk across the Brooklyn Bridge followed by pizza at Grimaldi's.



Wagner students celebrate the weekend.



Planners Brian Scott Ross and Michael Lear.





Planners Melanie Ochser & Dan Guilbeault.



Wagner students enjoy a Fall picnic in Central Park.



Wagner Transportation Association (WTA) visits Ground Zero with Municipal Arts Society tour leader Matt Postal.



Adjunct Professor John Fontillas shows his Introductory Urban Design class the Radburn development in New Jersey.



Adjunct Professor Jerry Salama leads students on a tour of community development initiatives in Harlem and the South Bronx.



WTA members pose in front of the new observation window at the World Financial Center overlooking Ground Zero.