

## Cities and Counties Cooperate on Brownfields

A group of mayors and county officials met with Vice President Gore on December 17, 1997, to enlist his support for pressing regional problems such as transportation and brownfields. The latter provides opportunities for landscape architects in terms of planning, design, and sustainability.

The officials belong to a city-county

organization known as the Joint Center for Sustainable Communities established by the U.S. Council of Mayors and the National Association of Counties.

Some of the cities and counties that have formed partnerships to redevelop brownfields are the City of Detroit and Wayne County, Michigan; the City of Louisville and Jefferson County, Kentucky; and the City of

Chattanooga and Hamilton County, Tennessee. The groups focus on how to improve the market conditions of brownfield areas.

“Almost every large city that I am aware of has some sort of group dedicated to brownfields whether in planning or redevelopment,” says Judy Sheehan, brownfields expert and coordinator, U.S. Conference of Mayors.

### ETHICS



## Watcha Gonna Do?

### Landscape Architecture Ethics

#### The Situation

N. Dignant, an established landscape architect, was aghast when he saw a brochure lying on a table that featured on its cover a photograph of his work. “Why that’s not only a photograph of one of my projects, it happens to be my swimming pool in my backyard!” he said to himself. In fact, he had hired a professional photographer to take the picture that was reproduced on the brochure. He subsequently confronted N. Fringement, the owner of the firm advertised on the brochure, with these facts.

When confronted, Fringement stood his ground and said, “I bought the photograph so I have every right to use it.” Fringement believed he was justified in using it because it reflected the kind of work he believed his new firm could produce if given the chance. Fringement brushed off the affair and told Dignant to speak to the photographer, Vi Olation.

Olation said that she owned the rights to the photograph even though Dignant had paid her to take it. She told Dignant, “I’ve sold dozens of these kinds of prints at photography shows. I can make and sell all of the reprints of my photographs that I want to.”

#### Watcha Gonna Do?

There are at least several separate issues worth considering here. The central issue is whether Fringement violated ASLA’s Code and Guidelines for Professional Conduct by failing to give an accurate photo credit and thereby implying that the design

shown in the photograph was his own work. Another important issue is who has the rights to the photograph? Did Olation have the right to sell copies of a photograph that had been bought and paid for by Dignant? Could Dignant have protected his work from being reproduced against his wishes by negotiating contract terms that would have enabled him to retain rights to the photograph? Did purchase of the photo by Fringement ethically and legally allow him to reproduce the work of Dignant without Dignant’s approval?

#### Recommendation of Ethics Committee

The committee found Fringement in violation of Rule 1.109 of the ASLA Code and Guidelines for Professional Conduct. The rule states: “Members shall neither copy nor reproduce the copyrighted works of other landscape architects or design professionals, without prior approval of the author.”

The Ethics Committee also notes that Olation, the photographer, should have taken into consideration the wishes of Dignant, who commissioned the photograph. Without doing so, Olation disregarded her own professional code. The American Society of Media Photographers Code of Ethics Rule 21 states, “Consider an original assignment client’s interests with regard to allowing subsequent stock use of that work by the client’s direct competition, absent an agreement allowing such use.”

The Ethics Committee believes that if Dignant was unable to get sufficient redress from Fringement, then Dignant should consider the feasibility of filing a

civil suit on the grounds that such a reproduction of Dignant’s original design without his permission violated copyright laws and provisions. Whether Dignant had signed a property release when the photograph was taken might have a bearing on the outcome of the suit.

The Ethics Committee suggests Dignant should have copyrighted his design with the Library of Congress under “Works of the Visual Arts.” The filing fee is \$20 and the copyright office can be reached at either (202) 707-3000 or through its hotline at (202) 707-9100.

Although Dignant’s work automatically became copyrighted once it was created, unless he registered it with the copyright office he would not be entitled to the benefits that come with having a public record of the design. A copyright registration basically ensures that when an infringement occurs the person holding the copyright receives statutory damages and compensation for attorneys’ fees.

In this instance, although the copyright would provide protection against any reproduction of the plans, blueprint, or drawing of the design, it would not necessarily transfer to a photograph of the work once it is executed and becomes part of the landscape.

---

*Editor’s Note: One of the objectives of the ASLA Ethics Committee is to educate members about the ASLA Code and Guidelines for Professional Conduct. The code contains important principles relating to duties to clients and to members of the Society.*