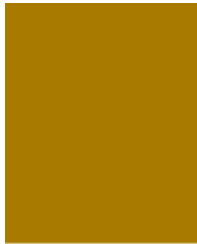


**MICHAEL BEST**

& FRIEDRICH LLP



# Legal Opportunities and Risks with Sustainable Development

Daniel A. O'Callaghan

## Overview

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- Not going to focus on:
  - The science
  - Arguments for/against sustainability
  - Big-picture public policy
  - Sustainable design
  - Particular standards (*e.g.* LEED)

## Overview

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- Opportunities to incorporate sustainability into everyday municipal practices.
- Any risks of doing so?

## The Natural Step

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- An approach to sustainability developed by a group of Swedish scientists in the 1990s, led by Dr. Karl-Henrik Robèrt
- Advocates a consistent consideration of the environment in all decision-making processes
- Based on a core set of “system conditions” for a sustainable society

## The Natural Step

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- In a sustainable society, nature is not subject to systematically increasing:
  1. concentrations of substances extracted from the Earth's crust;
  2. concentrations of substances produced by society;
  3. degradation by physical means and, in that society. . .
  4. human needs will be met

## The Natural Step

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- Approach to sustainable change:
  1. Learn and understand the Earth's game rules
  2. See where we are
  3. Take a bearing and
  4. Find a smart route

## The Natural Step

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“I don't believe that the solutions in society will come from the left or the right or the north or the south. They will come from islands within those organizations; islands of people with integrity who want to do something ...

This is how the change will appear—you won't notice the difference. It won't be anyone winning over anyone. It will just spread ... It will be so natural. It will be something that the intelligent people just do.”

– *Karl-Henrik Robèrt*

## **Eco Municipalities**

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- Aspires to develop an ecologically, economically, and socially healthy community for the long term, using the Natural Step framework for sustainability as a guide
- Involves citizens and other stakeholders in the process of becoming a sustainable community
- Advocates a collaborative approach to learn from others and to assist others

## Eco Municipalities

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- Participating municipalities:
  - Washburn, Ashland, Madison, Baraboo, Douglas County, Johnson Creek, Bayfield (Town and City), Marshfield, LaCrosse, Manitowoc, LaCrosse County, Neenah, Menasha, Stevens Point, Sheboygan, Dunn County, Town of Cottage Grove, Spring Green, Beloit, Manitowoc
  
- For more information:
  - UWSP Center for Land Use Education
    - <http://www.uwsp.edu/cnr/landcenter/sustainability.html>
  - WAPA
    - <http://www.wisconsinplanners.org/Ecomunicipalities/index.htm>

## **Sustainable Community Development Code**

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- National movement being led by Rocky Mountain Land Use Institute at the University of Denver
- Seeks to bring sustainability to the forefront as a land use issue
- Better understanding how local governments can support sustainable communities through innovative land use codes

## Sustainable Community Development Code

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- Objectives
  - Identify key sustainability issues
  - Analyze current approaches to zoning
  - Explore relationship between *planning* and *regulation*
  - Implement sustainable codes
  - Serve as catalyst for change

## **Sustainable Community Development Code**

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- Model advanced by RMLUI promotes three paths to sustainability:
  1. Removing obstacles
  2. Creating incentives
  3. Enacting standards

## Opportunities in your Community

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- A municipality can incorporate principles of sustainability into:
  1. Every day municipal practices
  2. Policy making
  3. The law

## Opportunities – Policy Making

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- Smart Growth
  - “Agricultural, Natural & Cultural Resources” Element
- Long range planning
- Day-to-day administration of policy

## Opportunities – Codes

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- Zoning Ordinances
  - Model TND Ordinance
  - Transit-oriented Development
- Subdivision Ordinances
  - Model Conservation Subdivision Ordinance
  - Farmland Preservation Ordinances
  - Transfer of Development Rights (TDR)

## **Opportunities – Codes; the mundane**

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- Accessory uses
- Solar/Wind access and siting
- Storm water infiltration
  - Rain gardens
  - Alternate pavement types
- Urban Agriculture
- Transportation Choices

## **Opportunities – Codes; the mundane**

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- Predictability and certainty
- Flexibility
- Carrots vs. sticks
- Use standards in discretionary decision-making processes

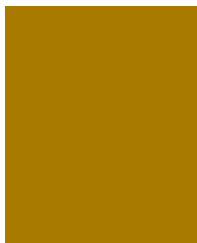
## Risks

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- Public perception?
- Do sustainable codes exceed the police power?
- Regulatory takings?
- “Green” litigation
  - *AHRI et al. v. City of Albuquerque*
  - *Shaw Development v. Southern Builders*

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