

APA - Wisconsin Newsletter



American Planning Association
Wisconsin Chapter

Making Great Communities Happen

A Publication of the Wisconsin Chapter of the American Planning Association

Eau Claire Strives for a Healthier City

BY CIARA O'NEILL, STUDENT EDITOR
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The planning profession grew up alongside the modern notion of public health, so it is only fitting that communities are once again turning an eye to how their built environment and policies can improve the health of their residents. The City of Eau Claire recently joined these ranks in October by adopting a new Health component to their comprehensive plan.

“What is especially exciting for planners is that plans like these place our profession in another worthy role. This time it’s how to help overcome issues most communities are facing such as chronic disease, obesity, lack of exercise, poor diet, over drinking, and crime,” said Ned Noel, an associate planner who helped draft the health chapter. “The largest step forward for the city is the greater collaboration, goal and policy alignment forged by this health chapter.”



Motivation and Collaboration

According to County Health Rankings, Eau Claire has a clear need to address health issues. According to County Health Rankings (2013), on physical environment criteria, Eau Claire County ranked 59th out of the 72 counties in the state, based on factors such as access to recreational facilities, air and water quality, and access to

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Submit articles by email attachment. Graphics are encouraged

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healthy foods (County Health Rankings, 2013). Some of the factors are a little outside a planner’s purview—not much can be directly done regarding the fact that 54% of Eau Claire’s restaurants are fast food establishments, for example—but there are many steps Eau Claire can take to greatly encourage healthy living.

Noel says the chapter, which is divided into six focus areas of Active Living, Food & Nutrition, Land Use, Safety & Crime, Drug Abuse, and Environmental Exposures, is a critical building block for public health improvements in the area. “[It] becomes a de facto health impact assessment guide that the development community can use to shape the city’s built environment. Not only do our citizens and businesses stand

to benefit from more choices to live healthier, but the resultant quality of life will help attract others to Eau Claire.”

The push for the new health component was greatly aided by the community stakeholder group Eau Claire ACHIEVE (Action Communities for Health Innovation and Environmental Change), who performed a community health assessment in 2010-2011 with funding from the Centers for Disease Control (CDC). Along with the funding, the CDC provided a spreadsheet tool, CHANGE (Community Health Assessment and Group Evaluation).

The CHANGE tool was developed by the CDC to take a socio-ecological approach to health so that behavior change is reinforced across multiple levels, from the individual level to the community and public policy level.

The CHANGE tool development began by analyzing relationships among living conditions, culture, economics (e.g., community and/or individual wealth, financial stability), social networks, and lifestyle factors. Community health is affected by more than just individual behavior; multiple conditions and factors determine individual health decisions. Allowing for external issues, such as policy, systems,

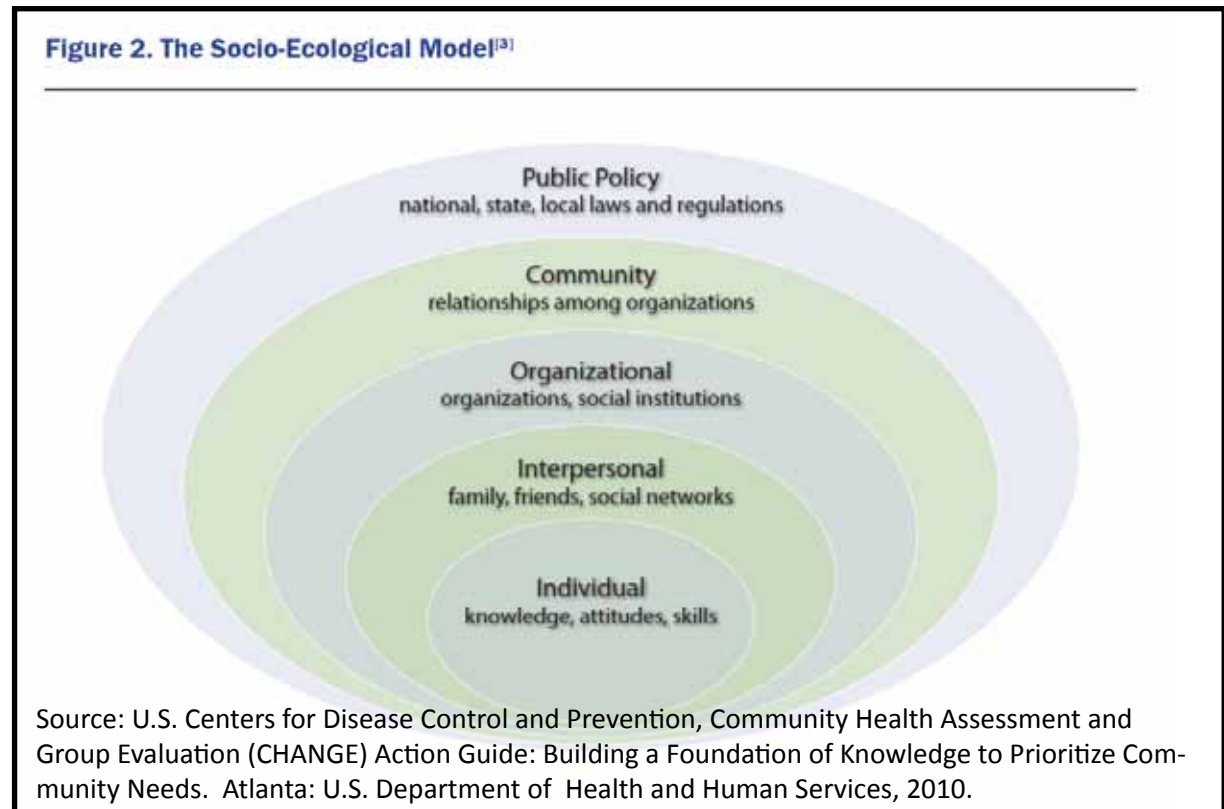


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and environmental changes, provides a more comprehensive view of how to impact change at a community level. (CDC, 2010, p. 3).

Eau Claire ACHIEVE’s coordinator and YMCA Wellness Director Nate Jahn stated, “There has been a disconnect between the role that the built environment plays in impacting our community’s health. By creating this new health chapter in the city’s comprehensive plan, [we’ve taken] the first step in bridging that gap. The importance of this approach is that it focuses on the entire community at large, thus having a greater health impact on the community.”

Revisions and Forward Steps

Something that should never be underestimated in planning is dealing with perception barriers and opposition from the community. In Eau Claire, Noel commented, it was a matter of some believing that the government was trying to manage people’s health choices. “These concerns were assuaged by speaking in public health terms not personal mandates. We framed urban

**Eau Claire Health Chapter Awarded
APA - Wisconsin District Award**

The Eau Claire Comprehensive Plan Health Chapter was recognized by the Northwest District of the APA - Wisconsin Chapter, one of two awards by the district in 2013.

District Representative Dennis Lawrence notes that: “The effort involved city planners teaming up with public health officials to understand each other’s professions, goals and challenges to develop the plan. The chapter yielded strong community buy-in and political support because of the collaboration between the Planning, Health, Parks, Public Works and Police departments along with community stakeholder organizations such as the city’s three hospitals, YMCA, ACHIEVE Eau Claire, etc.

For more information on the Northwest District’s “Health Communities” workshop and the other award granted by the District, see accompanying story in this issue.

planning as one policy strategy to improve negative health factors at population-levels, whether city, county or state.”

The plan also faced pushback from local developers because of fears of increased building costs and restrictions, which Noel says they dealt with by meeting and finding common ground

APA-WI Endowment Gift Card

The APA-WI board established an endowment fund to support scholarships for students attending either of the accredited masters degree programs in planning in Wisconsin: UW - Madison and UW - Milwaukee.

APA-WI invites members to contribute to the endowment fund as a way to support the next generation of planners in Wisconsin. Just return this pledge form to APA-WI Treasurer Connie White with your contribution.

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with the City Council and the local home builders association.

Eau Claire's chapter underwent several revisions before being passed (Dowd, 2013). For example, a recommendation for a landlord licensing program and another for a city effort to reduce the use of herbicides, pesticides and synthetic fertilizers were dropped. A map showing the distribution of Body Mass Index in the city, which planners used to identify neighborhoods that could benefit from more active living amenities such as parks and sidewalks, was removed from an earlier draft back in the summer.

The City's first proposal also included backyard chickens, which has become something of a perennial fight for Eau Claire. They tried and failed to pass a program in 2010 and again 2011. Councilwoman Kathleen Mitchell, though a proponent of the program, was not eager to revisit the argument: "I'm not bringing it up." The council eventually eliminated references to urban agriculture before adopting the chapter, but the final version does include efforts to increase people's access to locally-grown, nutritious food, further study food deserts in the region, and consider developing a year-round public market.

One critical component that forecasts a healthier and more vibrant future for the City of Eau Claire is the stronger emphasis on compact, sustainable land use. This specifically means moving away from the city's highly regimented and separate residential and commercial areas. Newer projects near the river and Phoenix Park are creating a mixed use downtown district. These, along with the plans for walk audits, considerations for subdivision walkability and reviews of bicycle and pedestrian access, make a promise for a healthier, more active Eau Claire.

Community and Individual Health

Noel says that one of the most important aspects of Eau Claire's chapter is the collaboration by the community to create this shared vision for their health. Recognizing that the community can work together to improve health is a positive and invigorating motivator.

Planners should consider health chapters for their communities. In America one of the biggest threats to our health is perhaps the unhealthy nature of the dialogue surrounding the topic itself. Too often we only speak in individualist terms, often with guilt or blame at the ready, when in fact our surrounding environment and culture plays an enormous role in the healthiness of our lifestyles.

Director of the Eau Claire Health Dept. Lieske Giese said of Eau Claire's health chapter, "It's really trying to move from saying that individual has to do something different, which is certainly a part of it, to saying the community can do something different to have a healthier population." (WEAU Staff, 2013).

To read Eau Claire's new health chapter: <http://www.ci.eau-claire.wi.us/home/showdocument?id=6952>.

References

- County Health Rankings (2013), <http://www.countyhealthrankings.org/app/wisconsin/2013/eau-claire/county/factors/5/snapshot/by-rank>
- Dowd, Andrew (2013), "Eau Claire City Council approves health plan for residents," Leader Telegram, October 22, 2013.

Tom Giffey (2012), "Writing a New Chapter on Health": Volume One, January 31, 2013.

WEAU Staff, Jenny You Email (2012), "Eau Claire Plan Commission removes BMI maps from comprehensive plan". weau.com.



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Northwest District News: Workshop and Awards

SUBMITTED BY DENNIS LAWRENCE, AICP, APA-WI
NORTHWEST DISTRICT REPRESENTATIVE

This year the Northwest District held a “Healthy Communities” workshop that was attended by over 20 planners, health officials, and economic development professionals. Aaron Ruff from the Marathon County Health Department provided an overview of efforts to promote healthy communities in Marathon County, including access to health foods and transportation. One of the major projects discussed was a county-wide Bike Signage program which followed a bike route planning effort. Chris Straight

from the West Central Wisconsin Regional Planning Commission overviewed the placemaking process, which is about improving the quality of life for residents. The goal of placemaking is to turn a neighborhood, downtown or a community from a place you can’t wait to leave to one you never want to leave. This effort is a partnership

with Project for Public Spaces (PPS). A variety of examples from various communities were highlighted along with some lessons learned.

In addition to the workshop, each year outstanding individuals and planning efforts throughout the twenty-six county district are recognized. In fact, the NW District is the only



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district in the state to do so. Two awards were presented in 2013:

City of Eau Claire Comprehensive Plan – Health Chapter, Excellence Award for a Planning Document

Eau Claire developed a Health Chapter for its Comprehensive Plan directed at the promotion of public health in the built environment. This effort is part of a national Public Health Institute agenda to include “health in all policies”, specifically to include health considerations in the way we design cities. The Purpose Statement for the chapter is that this “community effort is to create a Health Chapter in the City of Eau Claire’s Comprehensive Plan to help improve human health relative to our built environment.” This goal dovetails well with the City’s overall Vision Statement that “Eau Claire will be a healthy, vibrant and productive community of exceptional beauty”. Eau Claire County ranked 59th out of 72 Wisconsin counties in the 2013 County Health Ranking for a quality built environment. The USDA found three “food deserts” in the city and Walk Score rated Eau Claire as a “car-dependent” city, scoring 33 out of 100. The Health Chapter addresses these issues and establishes policy changes to help improve residents’ health.

The effort involved city planners teaming up with public health officials to understand each other’s professions, goals and challenges to develop the plan. The chapter yielded strong community buy-in and political support because of the collaboration between the Planning, Health, Parks, Public Works and Police departments along with community stakeholder organi-

zations such as the city’s three hospitals, YMCA, ACHIEVE Eau Claire, etc. By working together the City has now forged a new shared vision for how to design a more healthy Eau Claire community. The Health Chapter is the first stand-alone chapter solely dedicated to health in the NW District and perhaps the state.

Marathon County Farmland Preservation Plan, Excellence Award for a Planning Document

The Marathon County Farmland Preservation Plan (FPP) is the culmination of a two year planning process that included extensive education and community engagement, as well as policy establishment. The FPP identifies specific policies, implementation activities, costs, and tools to monitor the effectiveness of the farmland preservation programming. A unique component of the plan was the recognition that the county is not homogenous, but rather made up of several regions based on hydrological features, geography, land use, social characteristics and agricultural vision. In all, six regions were identified with individual policies and recommendations.

The FPP builds upon the strengths of past programming efforts and identifies strategies to improve upon the weaknesses. It can be translated into work programs, program prioritization, and outcome measurement. Both long-term outcomes and short-term outcomes are identified along with key

performance indicators, which serve as tools to monitor the progress of implementation of the plan in Marathon County. Marathon County is the largest agricultural county in the NW District and one of the largest in the state. This planning effort will provide a model for other counties throughout the state.

Please feel free to contact me if you have any questions, ideas, or concerns about the Northwest District or APA-WI. I can be reached at 715.849.5510, Extension 304, or at dlawrence@ncwrpc.org.

Williamson-Marquette Neighborhood in Madison Wins Recognition

BY CIARA O’NEILL, UNIVERSITY OF WISCONSIN-MILWAUKEE, STUDENT EDITOR

Every year during National Community Planning Month, the American Planning Association highlights 30 outstanding streets, public places, and neighborhoods that show how planning can add value to communities. This year in October they designated Madison’s Williamson-Marquette Neighborhood as a Top 10 Great Neighborhood for its superior walkability, revitalization efforts, and the local community engagement that made it all possible.

The Marquette neighborhood is located on the isthmus between lakes Mendota and

Monona, minutes from the State Capitol, UW-Madison campus, and Downtown. The accomplishment of the neighborhood and its organized and committed residents is all the more impressive given a neighborhood history that includes decades of decline, middle class flight, commuter traffic, and a near miss with a proposed freeway that would have taken the place now occupied by the rail corridor and key parts of bicycle infrastructure.

“Everyone in Madison knows of the Marquette Neighborhood,” said Mayor Paul Soglin. “It is our Soho. It has the beauty of the lakes; the vibe of the new, emerging business risk-takers; and, a home for persons from all walks of life. Marquette has a vibrancy that is a *benchmark* for other neighborhoods.”



Marquette is a hub of community and economic activity; restaurants, locally-owned shops, live music venues, and start-up businesses all contribute to a lively atmosphere that attracts people from all walks of life.

Madison’s new planning director Katherine Cornwell, LEED-AP, said, “Marquette’s location, continuous sidewalks, bike paths, and lively commercial district makes car-free living possible and attractive.” This, in addition to a mix of housing

options at a range of prices, helps foster true social and economic diversity in the neighborhood.

“Marquette showcases some of the last, fully intact buildings from Madison’s early history,” said APA Chief Executive Office Paul Farmer, FAICP. “Residents and citizen organizations have worked with planners and the city to ensure that the neighborhood’s historic architecture and character are not compromised or lost.”

The Marquette Neighborhood Association was formed in 1968 and in 1971 they drafted and carried out the city’s first citizen-prepared neighborhood plan. This set up a precedent of engagement and dialogue that is still going strong today. The APA designation celebrates not only the vitality of the Marquette neighborhood, but also the level of care and deliberate planning that made it all possible.

The nine other APA Great Neighborhoods for 2013 are: Chinatown, San Francisco; Downtown Norwich, CT; Downtown Decatur, GA; Central Street Neighborhood, Evanston, IL; Downtown Mason City, IA; Historic Licking Riverside Neighborhood, Covington, KY; Kenwood, Minneapolis, MN; Beaufort Historic District, Beaufort, SC; and West Freemason, Norfolk, VA.

Visit www.planning.org/greatplaces for more information about these neighborhoods and previous years’ winners.

Law Update

BY BRIAN W. OHM, JD, VP OF CHAPTER AFFAIRS
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A summary of court opinions decided during the month of June related to planning in Wisconsin Fall 2013.

Wisconsin Supreme Court

Standard of Judicial Review of Municipal Nonrenewal of Alcohol Licenses

In *Nowell v. City of Wausau*, 2013 WI 88, the Wisconsin Supreme Court held that challenges to municipal decisions not to renew an alcohol license are subject to certiorari review by the courts. The case involved a challenge to the City of Wausau’s decision not to renew a Class B alcohol license for the “IC Willy’s” tavern due to a number of problems including excessive noise,

nudity, and failing compliance checks involving underage persons. The City followed all the appropriate notice and hearing procedures for the decision.

The issue for the Supreme Court was to determine the appropriate standard of review for a court to apply when reviewing the substance of local government decisions not to renew alcohol licenses.

There are generally two standards of judicial review of local government decisions—certiorari review and de novo review. De novo review affords more limited deference to local decisions. It involves a new hearing of the matter, conducted as if the original hearing by the city never occurred. Certiorari review affords greater deference to local decisions. Under certiorari review, the reviewing court presumes the local government's decision is correct and valid.

The court limits its review to: 1) whether the municipality kept within its jurisdiction; (2) whether it acted according to law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.

In this case, the circuit court applied the certiorari standard of review and upheld the decision of the City. Upon appeal, the Wisconsin Court of Appeals held that the de novo standard of review was appropriate and reversed the decision of the circuit court. (The Court of Appeals decision was reported in the August 2012 Case Law Update.) The Wisconsin Supreme Court accepted review of the case and held that certiorari is indeed the correct standard of review and reversed the decision of the Court of Appeals.

The Court based its decision on the legislative history of the alcohol licensing enabling statute, prior cases, and the Court's historic deference to legislative police power functions like regulating alcohol. According to the Court, the granting of a liquor license is a legislative function and "[p]ermitting a circuit court to determine de novo whether a liquor license should be granted would, in essence, improperly transfer that legislative function from the municipality to the court."

Wisconsin Court of Appeals Opinions

Town Zoning Of Shorelands Limited

In [Hegwood v. Town of Eagle Zoning Board of Appeals](#), the Wisconsin Court of Appeals addressed the relationship of town general zoning to county shoreland zoning. The Court of Appeals held that, except for towns that adopted general zoning prior to the adoption of the county shoreland zoning ordinance, towns do not have authority to regulate shorelands. The Court of Appeals decision raises some significant issues and leave many questions unanswered regarding the distinction between general zoning used to establish the use of property and special overlay zoning used to establish standards to protect water resources.

The dispute involved land located near the shoreline in the Town of Eagle in Waukesha County. Hegwood built an outdoor fireplace and pergola on the shoreline and applied for an after-the-fact variance from the 20 foot setback

requirement in the County's Shoreland and Floodland Ordinance. The County approved the pergola on the condition that Hegwood remove the roof and allowed the fireplace to remain. Hegwood then applied to the Town for a variance from the Town's general zoning ordinance that also included a 20 foot setback. The Town Board of Appeals denied the application.

Hegwood then sued the Town by filing a certiorari action seeking reversal of the BOA decision on the basis that only the County has the authority to regulate shoreland under Wisconsin law. The Town made two basic arguments in defense of the lawsuit. First, the Town argued that the lawsuit should not have been brought as a certiorari action (appropriate for challenging variance decisions). Rather, the Town argued that the suit should have been brought as a declaratory judgment action since the dispute was about town authority to regulate shorelands. The Court of Appeals disagreed.

Second, the Town argued that it has concurrent zoning with the county over shoreland areas. Hegwood, however, argued that Wis. Stat. § 59.692 (the mandatory shoreland zoning provisions for counties) vests counties with exclusive authority to zone shorelands in all incorporated areas and thus the Town lacked the authority to enforce its general zoning ordinance on Hegwood's property along the shoreland.

Wis. Stat. § 59.692 requires that counties adopt shoreland zoning ordinances consistent with the standards developed by the Wisconsin Department of Natural Resources (DNR). The county ordinance applies unilaterally to all shoreland property located in the unincorporated (towns) areas of the county. County shoreland zoning follows different procedures than county

general zoning. County general zoning does not apply unilaterally to all unincorporated areas of the county. Towns have the ability to approve the application of county zoning within the town. Those towns that decide not to have county zoning apply in the town can either be unzoned, or adopt their own zoning ordinance.

The shoreland zoning standards developed by the DNR primarily focus on standards for setbacks, vegetative buffers, etc. The standards do not fully address the various uses that may occur along the shoreline (e.g., different types of residential uses, commercial uses, etc.) As a result, many counties treat their shoreland zoning ordinance as an overlay ordinance. The county then relies on general zoning (either the county general zoning ordinance or the town general zoning ordinance) to regulate the uses along the shoreline. This was the situation presented in this case -- the county shoreland zoning ordinance overlaying the town general zoning ordinance.

Since the town's ordinance was adopted after the county shoreland zoning ordinance, the court of appeals held that the town did not have concurrent jurisdiction with the county over the shoreland area. To support its decision, the Court of Appeals cited Wis. Stat. § 59.692(2) (b) that provides: "If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise." The Court of Appeals interpreted this provision to mean that the legislature gave the authority for adopting shoreland zoning exclusively to the county and only preexisting town ordinances

that were more restrictive than the county's shoreland zoning ordinance could remain in effect.

In footnote number 8, the Court of Appeals notes that nothing in its opinion affects the authority of towns to zone areas "in or along natural watercourses, channels, streams or creeks . . . related to non-navigable waters." This statement is confusing given that virtually all natural watercourses, channels, streams or creeks will be navigable waters. It is also not clear how the Court's analysis applies to situations where counties have recently adopted new shoreland zoning ordinances in response to DNR's revised shoreland zoning rules in NR 115.

The decision is recommended for publication. It is expected that the Town of Eagle will petition the Wisconsin Supreme Court to review the Court of Appeals decision.

Court Upholds State Requirement to Restore Wetland

In [*State of Wisconsin v. CGIP Lake Partners, LLP*](#), the Wisconsin Court of Appeals reversed the Circuit Court decision denying the State's request for an injunction requiring the property owner remove a road and restore a wetland.

The case involved the illegal fill for a driveway to a home. The driveway bisected a wetland. The State determined that the driveway was not necessary because there was an alternative route to the home thereby providing a practicable alternative to filling the wetland for the driveway. The State brought this enforcement action requesting both penalties and injunctive relief to remove the fill. The Circuit Court ordered \$30,135.85 in penalties but denied the

injunctive relief based on equitable reasons due to the Department of Natural Resources not following the proper procedure in the permit process.

The Court of Appeals reversed the Circuit Court's denial of injunctive relief. In its decision, the Court of Appeals follows the standard set forth in *Forest County v. Goode*, 219 Wis. 2d 654, 579 N.W.2d 175 (1998). *Forest County v. Goode* sets forth a rebuttable presumption that the court should grant an injunction. The burden is on the defendant to convince the court that there are compelling equitable reasons to deny injunctive relief. In this case the Court of Appeals found that the Circuit Court had improperly shifted the burden to the State to show specific instances of environmental harm caused by the road.

The decision is recommended for publication.

Encroaching Properties Do Not Rebut Street Width for Entire Street

In *Village of Brown Deer v. Balisterri*, the Wisconsin Court of Appeals addressed the issue of whether the

Village of Brown Deer needed to take property for its street improvement plan. The dispute surrounded the interpretation of Wis. Stat. § 82.31(2)(a) providing that an unrecorded highway that has been worked as a public highway is presumed to have a width of 66 feet. Some residents of the Village challenged the presumption that the streets were 66 feet wide because three properties on one street encroached upon the 66 foot street width. The residents contended

that the rebuttal of the 66 foot street width for the three properties extended to the entire street. The circuit court disagreed. The Court of Appeals affirmed the lower court’s decision that the rebuttal of the 66 foot street width for three properties did not extend to the entire street.

The decision is recommended for publication.

Presumption of Just Property Tax Assessment difficult to Overcom

Bonstores Realty One, LLC, v. City of Wauwatosa involved a challenge to the City of Wauwatosa’s property tax assessment for the Boston Store department store located at Mayfair Mall. Bonstores contended the assessment was excessive and presented an appraisal in support of this contention.

Under Wis. Stat. §70.49(2), local property tax assessments are presumed to be just and equitable. The circuit court concluded that Bonstores failed to overcome by “significant contrary evidence” the statutory presumption that the property was justly assessed. The Wisconsin

Court of Appeals affirmed the decision of the circuit court. The Court of Appeals concluded the statutory “presumption is not ‘overcome’ just because contrary evidence (even ‘substantial’ contrary evidence) is presented.”

The decision is recommended for publication.

Diminution in Value of Property Due to Loss of Direct Access is Admissible Evidence

118th Street Kenosha, LLC v. Wisconsin Dept. of Transp. involved an appeal of a circuit court decision to prohibit the property owner from introducing evidence of the diminution in value of its property due to a loss of direct access to a public road. As part of a highway reconstruction project, the Wisconsin Department of Transportation (WisDOT) eliminated access to a shopping center from 118th Avenue in the City of Kenosha. WisDOT created a new entrance by taking a temporary easement along a private road that lead to 118th Avenue.

The property owner contested the damage award for the taking. WisDOT requested that the

circuit court exclude evidence related to the loss in value to the property due to the loss of direct access. WisDOT argued that the loss of access and the taking of property for a new access were two distinct acts. According to WisDOT, since the taking of property for the new access did not result in the loss of direct access, the evidence should be limited to the cost of taking the temporary easement. The circuit court agreed.

On appeal, the Wisconsin Court of Appeals determined that WisDOT’s argument “ignores reality.” Since the taking of the easement was for an access to replace the access eliminated by WisDOT, the Court of Appeals held that the taking of the easement was integrally connected with the property’s loss of direct access so the circuit court should have allowed the evidence in determining the fair market value of the property taken. The Court of Appeals reversed the circuit court’s decision and remanded the case to the circuit court for proceedings consistent with the Court’s opinion.

The decision is recommended for publication.

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November 21, 2013 Legislative Report

BY GARY L. PETERSON, AICP

Chapter Legislative Committee Action

The Chapter Legislative Committee changed our position on two pending Bills: SB 183 on County Shoreland Zoning within Incorporated Communities from Neutral to Support. SB 112 and AB 122 Concerns the County Comprehensive Planning law for Extraterritorial areas. The Committee changed the Chapter's position from Neutral to Opposed. The conflict is concerning the planning within Extraterritorial Areas. We agree there can be a problem, but this proposed law is not the solution. The State needs better annexation laws or another method that involves little cost and quick resolution.

Bills Circulating

Although there is not yet bills to evaluate the Committee attentively Supports 1, 2 and 3. We will probably Oppose 4. We would Oppose 5 as written, but we want to work with the land surveyors to obtain changes that would not affect planners. As proposed we see this as a big "Got ya" provision. If you do not have the magic phrase on your map the map could potentially determined to be null and void.

1. **LRB-3034/1** TIF Expanding the definition of project costs to include certain cash payments

2. **LRB-2309/1** TIF Short-term tax increment districts and expenditures for relocation of commercial or industrial enterprises
3. **LBR-2083/1** TIF Disseminating information about a TID's annual budget and value increment, requiring an evaluation a TID's performance, Increasing the that may add to its levy limit when dissolving and extending the life and expenditure period for certain TID's
4. **LRB-3146** Limiting use of local police power ordinances to regulate nonmetallic mining.
5. **LRB 2048** The land surveyors bill. On p. 40, beginning on line 16, the "practice of professional land surveying" includes "coordinating designs for the purpose of platting or subdividing land into smaller tracts." Arguably, planners working with developers on different design options (say like encouraging conservations subdivisions) could fall in the realm of the practice of licensed surveyors. On page 47, beginning on line 16, I see there is an exception for a non-licensed surveyor who prepares a map that depicts

"uses" of land that includes the statement "This map is not a survey of the actual boundary of any property this map depicts." Arguably many plan maps, zoning maps, etc. will need to include this statement. WAPA should figure out if that is a good thing or a bad thing.


Bills Introduced

AB 410, relating to: a licensed manufactured home community that is a legal nonconforming use notwithstanding any replacement of homes or infrastructure repairs or alterations to infrastructure within the community. The Legislative Committee would appreciate your comments on what position to take.

AB 411, relating to: limitation of a property owner's liability when lands are used for noncommercial aviation. The Chapter will take no position on the bill.

AB 415, relating to: changing the method by which a municipality may collect the costs of razing a building from a property owner.

AB 416, relating to the sharing of tax increments. Under this bill, upon approval by the joint

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review board, a Tax Incremental District (TID) may become a donor TID and provide increments to a recipient Environmental Remediation Tax Incremental District (ERTID) created by the same city or village. Also, the governing body of a political subdivision may adopt a resolution requesting that DOR allocate environmental remediation tax increments from an ERTID that has recovered all eligible costs to certain TIDs that are not ERTIDs. Generally, an ERTID may become a donor ERTID to a TID in the same situations when a TID may become a donor TID. Increments from the donor ERTID may be generated until the earlier of 1) 23 years after the creation of the donor ERTID; or 2) the recovery of all project costs for the recipient TID. The chapter will support AB 416.

AB 494, waiving tipping fees. Current law imposes several fees, often called tipping fees, that are based on the weight of solid or hazardous waste disposed of at a landfill or other waste disposal facility. This bill authorizes the Department of Natural Resources (DNR) to waive these tipping fees to provide an incentive for participation in waste removal activities at DNR's request. The chapter will support AB 494.

SB 302 proposes to change the permitting process for high capacity wells. According to information from Trout Unlimited, Ducks Unlimited, The Realtors Association, Wisconsin Lakes, The River Alliance, the Wild-Life Federation, and Clean Wisconsin, this bill removes replacement or reconstruction of wells from the high cap well permit process; Requires the DNR to act on high capacity well requests in 65 days or the well is automatically approved; Limits conditions that may be placed on high capacity wells to location, depth, pumping capacity and rate of flow; Prohibits the DNR from including conditions for a replacement high

capacity well that are different than the conditions approved for the high capacity well being replaced; Allows well permits to follow a property transfer without DNR review and without paying a fee; Requires the DNR to remove any restrictions placed on high cap well approvals that have occurred since July 6, 2011 (this is the date of the Lake Beulah vs. Village of East Troy Supreme Court Decision); Expressly limits DNR's review authority of well applications; Limits DNR's authority to make Rules regarding high capacity well approval. This bill takes away citizens' rights to request an environmental impact review for a high cap well proposed next to your property; It overturns the Lake Beulah vs. Village of East Troy unanimous Supreme Court Decision that charges the DNR with the "authority and general duty to consider whether a proposed high capacity well may harm water of the state". This proposed law puts every lake, stream, wetland, and private well in Wisconsin, at risk of losing its water and threatens property values. Property values around Long Lake, dropped 60% when it went from a lake to a field. Rural homes without water are in trouble. There will be an increased cost to drill new wells – deeper and deeper. The Committee agreed to Oppose SB 302.

SB 112 and AB 122 concern changing the County Comprehensive Planning law as it applies to Extraterritorial Areas. The Committee is changing its position from Neutral to Opposed. The conflict is concerning the planning within Extraterritorial Areas. We recognize there is a conflict between Towns and Incorporated areas, but this proposed law is not the solution. The State needs better annexation laws or another method that involves little cost and quick resolution of these conflicts.

SB 183 Concerns County Shoreland Zoning within Incorporated Communities. Currently a

Municipality must enforce the County Shoreland Zoning that was in effect at the time the land was annexed. The law would change this enforce the annexed land with the Incorporated communities Flood Plain Zoning regulations. The Committee changed its position from Neutral to Support.

SB 314 Concerns when a property owner has Vested Property Rights concerning when municipal permits (like driveway permits) may be required. The Chapter does not consider this legislation pertinent to what we do.

SB 338 Expands the use of TIF in Towns. This bill authorizes certain towns to exercise all of the powers of a city or village to create a TID within the town. To create a TID under the bill, a town must have a population of at least 5,000 and the equalized value of all taxable property within the town must be at least \$500 million in the year before the year in which the town proposes to create the TID. As this law is a possible conflict between Towns and incorporated communities the Chapter will remain Neutral.

SB 390 Deals with trying to let the towns in Waukesha County out of County zoning. The way the bill is written, only counties that meet the criteria in the bill (Waukesha County) would have the authority to approve town zoning. Current law requires counties that have county zoning ordinances to approve town zoning for any towns that have their own zoning. Waukesha County currently has the authority to approve town zoning so it is not a new requirement. The way the bill is drafted it says that only Waukesha County will now have that authority. The language in Line 3 "subject to par. B" should be deleted. The Committee recommends Opposing SB 390 unless the language in line 3 is changed as mentioned above.