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American Planning Association Wisconsin Chapter

Making Great Communities Happen



Fall-Winter 2016 Newsletter

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Website Blues: Recover, Mitigate, and Rebuild As Needed

By Nancy Frank

APA – WI Newsletter Editor and Webmaster

As reported in an email to members on December 14, the APA – Wisconsin website has been down for several weeks.

On November 18, Becky Roberts, APA - Wisconsin alerted me that some of the pages from the old version of the website were still available to the public on the internet. I pledged to fix it the following weekend. This turned out to be more difficult and complicated than I realized at the time.

On November 30, I thought I had solved that problem, but had actually created an even worse problem: our current active website became inaccessible. Efforts to resolve the problem by contacting our commercial web-hosting service resulted in delays while I waited for a backup of the site. The backup would replace the website to its status before I moved files and folders on November 30.

Unfortunately, the backup process, which the host firm promised to would take only 24-48, hours, stretched into a week. Then, on December 14, the hosting company informed me that for reasons they could not explain, the backup was not available earlier than December 11—a date well after the files or file structure had been corrupted on November 30.

I immediately provided a detailed description of the situation and a plan of action to the APA – Wisconsin board. Here is the plan that we are in the process of implementing.

First, a temporary APA – Wisconsin mini-site has been created on a UWM server. The mini-site includes a link to the APA – Wisconsin Facebook page where announcements will be posted. Jobs, Requests for Proposals, Law and Legislation, and other frequently accessed information is posted at this temporary location.

Accessing the temporary location is easy. Just point your browser to the web address you have always used for APA – Wisconsin:

www.wisconsinplanners.org

Second, I am working with expert assistants to see if the full site can be recovered, without having to rebuild it from scratch. I am hopeful but not confident that this will be possible.

Third, if recovering the full site is not possible, we will rebuild the site. We will be looking for a new commercial hosting service. And we have learned a few things in this episode which should prevent this from occurring in the future.

In the meantime, you can help by communicating your needs and your knowledge of resources.

- If you would like some content that you normally accessed from the website, but the temporary site does not include it, please email me at info@wisconsinplanner.org
- If you have suggestions about web hosting services or web development consultants

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And in general, suggestions and advice are welcome.

I am deeply sorry for this interruption in our normal service. We are working to make things work correctly again.



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Social Justice and Walking

In September, the Every Body Walk! Collaborative announced its Social Justice Toolkit. The Collaborative identifies multiple ways in which promoting walking and social justice are mutually reinforcing efforts. Assuring the accommodation of walking as a form of transportation creates an equitable transportation system. In addition, being aware of the barriers to walking in all kinds of neighborhoods moves beyond goals to strategies that “take into consideration concerns of physical safety, safety related to community design and the built environment and concerns of safety related to bullying, street violence and other harassment” (Every Body Walk!, http://americawalks.org/wp-content/uploads/2016/09/EBWC_SJ-Toolkit_Safety-Messages.pdf)

The initiative also stresses the opportunity for planning for walking to build community engagement. “Community actors need to be part of the planning process from the beginning. We need to discuss the barriers and challenges to walkability and identify the leaders within communities who can help overcome them” Every Body Walk!, http://americawalks.org/wp-content/uploads/2016/09/AW_EBWC-Social-Justice-Training-Workbook.pdf)

Social Justice Toolkit for Walking: An Announcement from America Walks

At the 2015 National Walking Summit, several of keynote speakers and presenters put forth the call to action that the walking movement use walkability to undo decades of injustice perpetrated across the U.S. from policies, programs and

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attitudes that fuel social and economic divisions along lines of class, race, income and other differences. The Every Body Walk! Collaborative heeded this call and came together to develop the Social Justice Toolkit.

The [Social Justice Toolkit](#) aims to provide organizations and individuals working within the walking movement resources and guides to help them achieve objectives related to fostering equity, fairness and justice within communities. In the toolkit you will find:

- * An [introduction to the toolkit and research](#) that links walking and walkability efforts to the promotion of equity and social justice.
- * Communication tools, considerations and resources broken down by focus areas including [safety](#), [health](#) and [community engagement](#).
- * Guides to [recognizing individual biases and implicit association testing](#).

We are excited to share this with our network and look forward to seeing it put to use. We hope you will share with us thoughts on ways to expand and improve it as you visit the toolkit and take time to reflect on how it might be used in your efforts to promote walking and walkable communities.

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Law Update

By **Brian W. Ohm, JD**
 Dept. of Urban & Regional Planning

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For questions or comments about these cases, please contact:

bwohm@wisc.edu.

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Visit the [Law and Legislation](#) page on our website for cases reported since summer. Here is a quick summary of the issues addressed by the courts over the summer.

November Case Law Update

November 30, 2016

A summary of Wisconsin court opinions decided during the month of November related to planning.

For previous Case Law Updates and the full Update on the current cases, please go to:

www.wisconsinplanners.org

Wisconsin Court of Appeals Opinions

6-Year Statute of Limitation Applies to BID Special Assessment Challenge

DJK 59 LLC v. City of Milwaukee involved a challenge to special assessments levied against two residential parcels within the boundaries of Milwaukee Downtown Business Improvement District (BID). DJK, the owner of Juneau Village Towers (used exclusively for residential purposes), sued the City of Milwaukee for a refund of over \$470,000 DJK paid in special assessments for the BID since 2005. The trial court agreed that DJK was entitled to a full refund. The City appealed. The two arguments raised by the City were that (1) the common law voluntary payment doctrine applied because DJK voluntarily paid the special assessments without dispute and (2) the 6-year statute of limitation in Wis. Stat. §893.93(1)(a) applied to partially preclude DJK's recovery.

The Wisconsin Court of Appeals held that the voluntary payment doctrine did not apply because it would conflict with the purpose of the BID law. The Court, however, agreed with the City that the 6-year statute of limitation should apply and remanded the case to the trial court to determine which claims were barred by that statute's application.

The case is recommended for publication in the official reports.

Challenge to Annexation Dismissed as Untimely

The case Town of Burnside v. City of Independence involved the annexation of land for a frac sand mining operation in Trempealeau County. The City of Independence entered into an agreement with Superior Silica Sands whereby Superior would operate a sand mine upon completion of the annexation. The vast majority of the land (1,600 acres) was located in the Town of Arcadia but the city needed to 20 acres in the Town of Burnside and another 80 acres in the Town of Lincoln to connect the Arcadia parcels to the City of Independence (referred to as a "balloon on a string" annexation).

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annexation. The Towns of Burnside and Lincoln initiated a timely challenge to the annexations in circuit court. The Towns of Burnside and Lincoln reached a settlement agreement with the City that would result in a dismissal of their claims. The Town of Arcadia then filed a motion to intervene in the lawsuit. Arcadia's motion was filed about 8 months after the City adopted the annexation ordinances – well beyond the expiration of the 90-day statute of limitations period.

The action brought by Burnside and Lincoln only challenged the annexation ordinances that applied to them. As a result, the Court of Appeals determined that Arcadia's claims challenging the validity of the annexation were not a constituent part of Burnside's or Lincoln's claims.

The case is recommended for publication in the official reports.

Appeal Regarding Nonconforming Use Status Was Untimely

Oak Park Quarry, LLC v. Dane County Board of Adjustment continues this month's theme regarding the timeliness of challenging local government decisions. In 1968, Dane County adopted an ordinance providing that mineral extraction operations that existed prior to 1969 and were registered with and approved by the Dane County Zoning Administrator would be deemed legal non-conforming uses. Dane County required that, to qualify for non-conforming use status, the mineral extraction operation had to have been in operation before the ordinance and had to be registered within one year of the 1968 ordinance.

In 1969, a quarry operator attempted to register a mineral extraction operation on the property now owned by Oak Park ("the property"). The zoning administrator did not approve the registration, and neither the quarry operator nor the property owner appealed the zoning administrator's decision. Accordingly, there was no legal non-conforming use recorded for the property in Dane County's book of mineral extractions.

Subsequently, when Oak Park acquired the property in 2010, it sought a decision by the zoning administrator that the quarry on the property is a legal non-conforming use. Appeals to the Board of Adjustment, circuit court, and the court of appeals. Each of these bodies found that the property was no a legal non-conforming use and that Dane County Ordinances allow an appeal of an error by the zoning administrator "within a reasonable time." The Court agreed with the Board's determination that an appeal forty-five years after a decision is not "within a reasonable time."

Sibling Rivalry and Water Law

Movrich v. Lobermeier involves a lawsuit between a brother (Lobermeier) and a sister (Movrich) over the rights of owners of waterfront and waterbed property on the Sailor Creek Flowage in Price County. In 1941 a landowner granted the Town of Fifield the perpetual right to flood their land so the Town could construct a dam across Sailor Creek. The landowner retained ownership of the submerged land. The land was subsequently sold. Lobermeier (the brother) owned submerged property that was part of the flowage waterbed and Movrich (the sister) owned the abutting upland waterfront property. For a number of years, the sister made use of the flowage in various ways (wading, fishing, etc.). She allowed her brother to use their dock for fishing and to moor his boat. Then the brother and sister had a falling out and the brother asserted that he had exclusive rights to the waterbed. The sister then sued the brother seeking a declaration of their riparian rights as owners of waterfront property.

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from her property and could erect a dock anchored on her brother's property. On appeal, the Wisconsin Court of Appeals agreed with the trial court. Riparian owners have the right to use the shoreline and have reasonable use and access to the water. These rights are not dependent on ownership of land under the water. Riparian rights, however, are subject to the public's right to use navigable waters under the public trust doctrine. Based on the interplay between the public trust doctrine and riparian rights, the Court of Appeals concluded that the sister could access the water from her property and erect a dock anchored on the waterbed owned by her brother.

The case is recommended for publication in the official reports.

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Legislative News

APA - Wisconsin Legislation Tracking

Prepared by Drew Pennington, APA - Wisconsin Vice President for Chapter Affairs

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