

# APA - Wisconsin Newsletter



American Planning Association  
Wisconsin Chapter

Making Great Communities Happen

A Publication of the Wisconsin Chapter of the American Planning Association

5/30/2013

Preliminary Program



2013 SUMMER PLANNING CONFERENCE

## CREATING HEALTHY COMMUNITIES

Blue Harbor Resort SHEBOYGAN, WISCONSIN

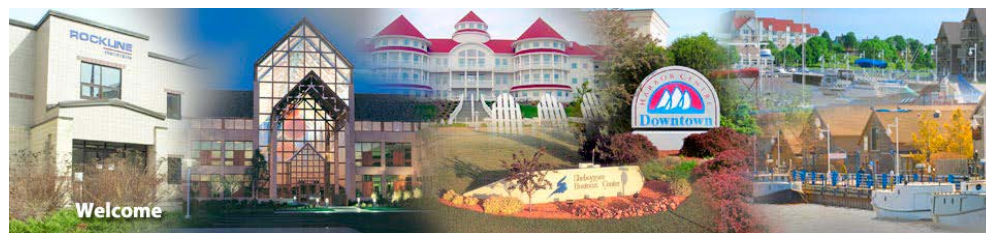
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This conference is directed to planners, plan commission members, landscape architects, public officials, and interested citizens from across the Midwest. Sessions will provide information on connecting planning with public health, transportation including bikes, rail and transit, placemaking and revitalization, natural resources planning, and access to healthy food. June in Sheboygan is an ideal time to bike and walk and just enjoy the city. We encourage everyone to bring their bike, pedal around the city and join our bike tour!

## Meet Me in Sheboygan!



The APA - Wisconsin conference will get underway in just over a week.

Thanks to all of our sponsors, especially to our Silver Sponsor, the City of Sheboygan.

Click on the graphic at left to view the preliminary program.

The theme, Creating Healthy Communities, has attracted a whole new set of presenters on a bunch of new topics that are so relevant to the times.

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The WAPA Newsletter is published electronically four times each year by the Wisconsin Chapter of the American Planning Association to facilitate discussion among its members of planning issues in Wisconsin. Correspondence should be sent to:

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Membership Information: To become a member of the Wisconsin Chapter of the American Planning Association, simply become a member of the APA. An application form is provided on the back of this publication. Or you may opt for Wisconsin Chapter only membership.

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Submission of Articles: WAPA News welcomes articles, letters to the editor, articles from the WAPA districts, calendar listings, etc. Please send anything that may be of interest to other professional planners in Wisconsin. Articles may be submitted by mail, fax, or email. Articles may be edited for readability and space limitations prior to publication. Content of articles does not necessarily represent the position of APA, the WAPA Executive Committee, or the editor.

Submit articles by email attachment. Graphics are encouraged

Deadlines:

Winter issue: submit by January 15.  
Spring issue: submit by March 15  
Summer issue: submit by June 15  
Fall issue: submit by September 15

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**Visit the APA - Wisconsin webpage for up-to-date news and information between issues of the the APA-WI Newsletter.**



Sessions will provide information on connecting planning with public health, transportation including bikes, rail and transit, placemaking and revitalization, natural resources planning, new technology and access to healthy food.

Our Sheboygan location also offers a host of recreational options:

- After a long day of sessions - sit on the terrace overlooking Lake Michigan with a glass of wine and trade stories with your peers.
- June in Sheboygan is an ideal time to bike and walk and just enjoy the city.
- We encourage everyone to bring their bike, pedal around the city and join our bike tours!
- Sign up for a golf outing Thursday at The Bull – rated in the top 100 public golf courses by Golf Digest.
- Purchase a raffle ticket and win a TREK commuter bike.
- Bid on some great items at the silent auction including a 20" Schwinn Loop folding bike.
- Stay the weekend and enjoy all that Sheboygan has to offer – biking, kayaking, great restaurants and museums. Blue Harbor even has a water park!

## Public Participation in the 21st Century

BY CIARA O'NEILL  
ASSISTANT EDITOR  
UNIVERSITY OF WISCONSIN - MILWAUKEE

Lake Winnebago and its adjoining waterways counts for almost a fifth of Wisconsin's total inland lake area, provides drinking water for a quarter-million residents and supports a recreational fishing industry valued at \$234 million per year.<sup>1</sup> The system is a critical natural resource that drives the economy and lifestyle for the entire surrounding region, including Calumet, Fond du Lac, Waushara, Winnebago, and Outagamie counties.

The Winnebago watershed has had no unified set of policies or management practices; now, for the first time, the counties in the Winnebago Waterways region are collaborating to address long-term issues facing their lakes and rivers. They've created a partnership consisting of the five counties, the regional planning commission, Wisconsin Department of Natural Resources, Winnebago Lakes Council, and the University of Wisconsin-Extension.<sup>2</sup>

<sup>1</sup>[http://www.villageofsherwood.org/vertical/sites/%7B54AFFA50-C1D3-43C5-8309-999D021DE139%7D/uploads/Winnebago-Ways\\_Talking\\_Pts.pdf](http://www.villageofsherwood.org/vertical/sites/%7B54AFFA50-C1D3-43C5-8309-999D021DE139%7D/uploads/Winnebago-Ways_Talking_Pts.pdf)

<sup>2</sup><http://www.mindmixer.com/blog/waterways-the-talk-of-the-online-town-hall>

## Public Engagement Strategy

The Biodiversity Project, an environmental nonprofit, was brought on to administer an extensive public engagement project to assess the uses and needs of the waterways and seek input on how best to jointly manage them in the future.

Calumet County, who applied for and received the \$50,000 DNR Lake Management Planning Grant, released a Request for Qualifications aiming for a conventional public engagement strategy. They were expecting a minimum of six surveys, four focus group sessions, and eight public input meetings; the final process included eight public meetings, one survey, and an extant thriving discussion on the project's MindMixer site, called "Weigh in on the Winnebago Waterways."

This departure from the initial requirements was all part of a "full communication strategy," according to Meg Kelly, the Project Manager for the "Weigh in on the Winnebago Waterways." "One of the things my company does is communication and outreach strategy. For engagement, there are pathways for reaching people, and we developed a message appealing to the people





we were trying to reach. That was very helpful for getting people to the meetings, to take the survey, and get on the website.”

## Physical and Online

The website is an interactive platform for ideas. The administrators can establish topics and from there users post ideas and review ideas posted by others. The site also includes pinnable maps and photo sharing. This style of public engagement, a sort of online town hall meeting, offers several advantages. It allows time and a relaxed space for people to get their ideas out and prevents any one voice from dominating the discussion. An online discussion also evens the playing field a little because a user is not immediately associated with an age, face, or background, but more readily with their ideas, enthusiasm, and knowledge.

As planners, we sometimes worry that using online engagement techniques will narrow the diversity of people involved in providing their ideas. In this case, the demographic range and scope of participants in the project was greatly increased with this combined strategy. About 250 people attended the eight public meetings altogether (with some overlap), 330 people

responded to the survey, and 370 people registered with the MindMixer website. According to Kelly, the meeting attendees largely did not appear to participate on the website, and while roughly half of the site’s users were under the age of 55, they found that the majority of the survey respondents were above that age. The team was pleased with both the number and variety of their participants.

This variety of users made it very clear to the team that the MindMixer site worked best in addition to some public meetings. So rather than thinking of online participation tools as replacements to more conventional planning meetings,

### Learn more at the conference . . .

Meg Kelly, project manager for the Biodiversity Project in Chicago, will offer a presentation about the Winnebago watershed planning at the APA - WI conference session on Planning Tools (Track E) at the APA-WI Conference on Thursday at 3:00 PM (see Conference program for more details).

we should consider instead how to utilize them alongside while taking advantage of their unique offerings.

## The Public as Research and Researchers

An interesting aspect to this sort of communications strategy is its potential to “close the loop” of public awareness of a project. Instead of isolated news stories and public meetings,

## 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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an interactive website can exist as a continuous catch-all of discussion, news, pictures, and sharing.

Critically, “Weigh in on the Winnebago Waterways” is not just a discussion and data-collecting platform. It has become a place to celebrate the waterways by posting pictures and discussing favorite activities. According to Kelly,

these kind of features make the project easier to share with others and perhaps keeps users on the site longer than it takes to post an idea or reply.

Even information and exchanges that don’t have direct utility for an administrator, Kelly said, can still be useful in a broader sense, “It can keep the momentum for the project going.” These

components can also operate as “lower-barrier” questions that provide useful anecdotal information to the project. For example, an area that many people mentioned as a favorite sailing spot can offer valuable insight on the placement of no-wake zones.

Any successful public meeting, physical or online, involves the capture and filtering of a lot

The screenshot shows the 'Weigh In on the Winnebago Waterways' website. The top navigation bar includes links for 'Topics', 'Ideas', and 'About', a search bar, and a 'Log In' button. Below the navigation is a 'FEATURED PHOTO SHARE' section with three photos and an 'ADD A PHOTO' button. The main content area is divided into sections: 'Reviewed Ideas' with project details, 'Best Day of the Year' with a photo and a poll, and 'Favorite Summertime Events' with a photo and a poll. A sidebar on the left shows social media sharing options and a list of top commentators. The bottom of the page has a 'TOPICS' section with sorting and status filters.

At right, a screenshot of the “Weigh In on the Winnebago Waterways” Mindmixer website. Features to note:

- Administrator defined topics, center right
- Photos, top
- Reviewed ideas, left below “add photo” link
- List of top commentators, bottom left

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of data, opinions, and ideas. Even a quick perusal of the Winnebago site turns up thorough, well-informed discussions involving diverse and sometimes complicated issues.

For example, take shoreline management. How do they—can they, should they—regulate or encourage property owners to maintain buffer areas to slow erosion, sediment and chemical runoff? Can they require that the buffer be naturalized sufficiently to provide habitat for native plants and animals (the latter may be especially critical for controlling the growth of invasive species like the Eurasian Milfoil).

Each issue has a depth of detail to consider. The structure and pace of the website allows the users the time to deliver their insights. In addition, consider how many times you have read through written comments on a plan and could not interpret what the commenter intended to communicate. The online discussion allows other users and the administrators to reply and ask for clarification or further detail. Through this process, public engagement goes beyond the collection of opinions and ideas and becomes a citizen research team whose time is freely given.

## Keeping Focus

Kelly said another benefit of the website was that it “can really direct the conversation, if people get off-topic.” And indeed, going through the various idea threads, there is a distinct sense of commonality, a recurring theme of both the need for and difficulty of multi-jurisdictional cooperation.

Phase I of the planning is now completed, and a report should be released to the partners and public some time at the end of June or beginning of July. With the success of the public engagement project and seeming widespread agreement on the importance of collaboration, the Winnebago Waterways plan is definitely worth watching develop, both for its importance on the stage of Wisconsin environmental health and, as the website user PeterS19 put it, as “a model experiment in the complex regional democratic process.”

*To find out more about the Winnebago Waterways project, you can visit the MindMixer website, [www.winnebagowaterways.com](http://www.winnebagowaterways.com), or attend the session on Planning Tools (Track E) at the APA-WI Conference on Thursday at 3:00 PM (see Conference program for more details).*

# Law Update

## March-April 2013 Case Law Update

BY BRIAN OHM, PROFESSOR  
DEPARTMENT OF URBAN AND REGIONAL PLANNING  
UNIVERSITY OF WISCONSIN - MILWAUKEE

### Failure to File Notice of Claim Bars TIF Challenge

Urban Planning and Development, LLC, and its partners, entered into development agreements with the Village's Community Development Authority (CDA) to build: 1) condominiums, 2) an office building with a brew pub, and 3) a professional building, along the Milwaukee River in downtown Grafton.



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The development was part of an improvement plan for the TIF district. As an incentive to develop this area, the CDA paid the developers \$1,316,000. The developers agreed that if the improved properties were not assessed at a certain minimum value, they would pay the Village the difference between the assessed tax and the projected tax. To secure this guarantee to make up the shortfall, if any, the developers, in two of the agreements, agreed to provide a letter of credit to the CDA. In two of the agreements the CDA agreed to make certain improvements to the area, or agreed that the Village would make the improvements, including the construction of a Riverwalk.

The developer subsequently filed suit against the Village claiming that various acts and omission by the Village related to the improvements caused the properties' assessed value to fall short of what the parties anticipated, triggering the contractual obligation to pay the tax difference. The Village moved to dismiss the case because the developer did not give the required statutory notice under Wisconsin's notice of claim statute (Wis. Stat. §893.80) requiring formal notice of a claim before a party can bring a lawsuit. This notice requirement provides governmental bodies with an opportunity to negotiate a settlement of the claim, avoiding the expense of litigation. Prior to initiating the lawsuit, the developers had filed a notice of circumstances of the claim. The notice, however, was defective in that it did not include all the statutorily required information, such as the date of the even giving rise to the claim. The Wisconsin Court of Appeals agreed with the Village that the notice was defective and dismissed the case.

The case is entitled *Urban Planning and Development, LLC v. Village of Grafton* and is not recommended for publication.

## Is Junk Vehicle Ordinance a Traffic Regulation or a Zoning Regulation?

In *Village of North Hudson v. Krongard*, the Wisconsin Court of Appeals remanded the case to the circuit court to determine if the Village's junk vehicle ordinance was adopted under the village's authority to enact transportation regulation or under the Village's authority to enact zoning regulations.

The dispute involved the application of the Village's junk vehicle ordinance to two junk vehicles on Krongard's property. The Village issued citations for the removal of the vehicles. The vehicles were deemed junk vehicles because they had expired registrations. Krongard challenged the ordinance on the basis that it was preempted by state law. Wisconsin Stat. § 349.03 provides that no local authority may enact any traffic regulation unless such regulation is not contrary to or inconsistent with chapters 341 to 348 and 350 or such regulation is expressly authorized by §§ 349.06 to 349.25 or some other provision of the statutes. Krongard argued that the Village's ordinance impermissibly defines unregistered vehicles as junk vehicles because Wis. Stat. § 340.01(25j) does not include unregistered vehicles in its definition of a "junk vehicle." Krongard also argued that the state traffic regulations allow for vehicles to be parked on private property with the owner's consent and that the regulations only permit municipalities to regulate unregistered vehicles on highways.

The Village countered that the state traffic regulations are concerned "with the licensing, regulation of, outfitting and operation of vehi-

cles" and its ordinance is "concerned with the upkeep of private property[.]" It argues that its ordinance is not inconsistent or contrary to the state traffic regulations because they regulate "two completely different issues."

The Court of Appeals agreed with Krongard that nothing in the traffic regulations provides that a municipality can regulate unregistered vehicles on private property. However the Court was persuaded by the Village's argument that the ordinance may have been enacted not as a traffic regulation but under a different power, such as zoning. The Court could not tell from the record the source of the authority used by the court to enact the regulation. The Court therefore sent the case back to the circuit court to figure out the source of authority.

The Case will not be published. However, it is a good reminder that local ordinances should expressly refer to the authority they are using to enact an ordinance.

## Notice Pleading and Relation Back statutes Apply to Special Assessment Appeals

In *CED Properties LLC v. City of Oshkosh*, the Wisconsin Court of Appeals held that the notice pleading and relation back statutes apply to special assessment appeals. The case involved the challenge to special assessments levied by the City of Oshkosh on a corner lot for improvements to an intersection abutting the corner lot. The City levied two assessments against the parcel at issue in the case – one for each street abutting the intersection. Under Wisconsin's special assessment laws (Wis. Stat. § 66.0703(12), a



property owner has 90 days after publication of the final resolution imposing the assessment to initiate an appeal of the special assessment in circuit court. The property owner in this case initiated the appeal of one of the assessments within the 90 days. After the 90 day period, the property owner filed an amended complaint that attempted to also appeal the other assessment.

Wisconsin's notice pleading statutes require that the party initiating a lawsuit set forth a short statement of the claim identifying the transaction or occurrence that gave rise to the claim. Wisconsin's relation back statutes allow amendments to pleadings to relate back to the date of filing of the original claim if the amendment applies to the claim set forth in the original pleading. The Court of Appeals held that the notice pleadings and relation back statutes apply to the special assessment appeal process. However, in this case, the Court of Appeals held that these provisions did not apply because the Court viewed the two special assessments as two separate claims, even though the special assessments were for the same intersection. Since each special assessment represented a separate claim, the Court held that the amendment to include the other special assessment did not relate back

to the original complaint and therefore was untimely under the 90 day limitation to challenge special assessments. The case is recommended for publication.

### **Soil Sampling For Highway Project Did Not Violate 4th Amendment Protection From Unreasonable Search and Seizure**

[Wisconsin Central Ltd v. Gottlieb](#) involved a challenge to the Wisconsin Department of Transportation's (DOT) collecting soil samples from Wisconsin Central's property as part of the planning for a highway overpass over the railroad tracks on Lakeshore Drive leading into and out of the City of Fond du Lac. Wisconsin Central agreed to the overpass to remedy a troublesome railroad crossing. Wisconsin Central also consented to soil sampling as part of the design phase for the project. The DOT's initial sampling discovered a site owned by Wisconsin Central adjacent to the project corridor which prompted DOT to recommend additional investigation. Wisconsin Central objected to this sampling but DOT collected the soil samples nonetheless. Wisconsin Central initiated this

lawsuit arguing that DOT's taking the samples without a warrant was an unreasonable search and seizure in violation of Wisconsin Central's Fourth Amendment rights. The Wisconsin Court of Appeals disagreed. According to the Court, this was not an issue of unreasonable search and seizure since Wisconsin Central had consented to soil sampling as part of the design phase of the project. The case is recommended for publication.

# Legislative Update

By GARY PETERSON  
APA - WI EXECUTIVE DIRECTOR

*Note: Draft APA - Wisconsin positions on proposed legislation are the considered opinions of Gary Peterson. The APA - Wisconsin Executive Committee has not had an opportunity to discuss or take action on these draft positions. They are presented here as information to our members.*

## Zoning

### **Senate Bill 138 Notice for Frac Sand Mining**

Under current law, a political subdivision (a city, village, town that is authorized to exercise village powers, or county) is authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, the location and use of buildings, structures, and land for various purposes, and the areas in which agricul-

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ture, industry, mining, and other activities may be conducted.

Under this bill, before a political subdivision may take any action on an application for a frac sand mine, the governing body must publish a class 2 notice at least 30 days before the meeting, and must also send written notice of the meeting, by first class mail, at least 30 days before the meeting, to the owner or occupant of any land that is located within one mile of the proposed mine.

The bill defines frac sand as a type of industrial sand that could be used in deep well applications to prop open rock fissures and increase the flow rate of natural gas or oil.

**Draft APA-WI Position:** Neutral. Additional notice could be positive, but a one mile mail requirement could be a problem. Chapter Member input would be helpful.

### **Senate Bill 141 Listing Frac mining as a conditional use or prohibited use in certain types of Zoning Ordinances**

Under current law, a political subdivision (a city, village, town that is authorized to exercise village powers, or county) is authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards and other open spaces; the density of population; the location and use of buildings, structures, and land for various purposes; and the areas in which agriculture, industry, mining, and other activities may be conducted.

Under this bill, with regard to a zoning ordinance that is enacted and relates to agricultural use, frac sand mining must be listed as a conditional use. Also under this bill, with regard to a zoning ordinance that is enacted and relates to residential use, frac sand mining must be listed as a prohibited use.

The bill defines frac sand as a type of industrial sand that could be used in deep well applications to prop open rock fissures and increase the flow rate of natural gas or oil.

**Draft APA-WI Position:** Oppose. Frac Sand mines do impact the community. Certainly there are positive impacts, but there can be significant negative impacts. The Zoning requirements are even more of a problem. Not every community has frac sand, so why make them adopt. Not every community has prohibited uses. Now they would need to list all possible prohibited uses or they are vulnerable to many uses. Not every community has conditional use standards and on and on. A significant problem would develop in the State if adopted. Chapter Member input would be helpful.

### **Senate Bill 139 Disclosure of Contracts for Frac Sand Mining on Neighboring Properties**

Under current law, with certain exceptions, owners selling residential real property or vacant land must give prospective buyers a form, known as a real estate condition report for residential real property and as the vacant land disclosure report for vacant land, on which the owner discloses certain conditions of, and other information about, the real property of which the owner is aware. This bill requires an owner to disclose

on the applicable report whether the owner has notice or knowledge of a contract, or an option to contract, that allows a person to mine frac sand on a neighboring property.

**Draft APA-WI Position:** Neutral. I suggest we take a pass on this one. Chapter Member input would be helpful.

### **Senate Bill 142 Regulating the location of Frac Sand Mines and Facilities**

This bill prohibits a frac sand mine, a frac sand processing facility, or a frac sand loading facility from being located within 2,500 feet of a single-family or two-family residence or within 2,500 feet of a single-family or two-family residential zoning district.

The bill defines frac sand as a type of industrial sand that could be used in deep well applications to prop open rock fissures and increase the flow rate of natural gas or oil.

**Draft APA-WI Position:** Oppose. I think this is an unreasonably long distance. We need data on just what distance the negative impacts are significant. Chapter Members input would be helpful.

### **Assembly Bill 7 Civil actions and zoning conditions related to noise that are applicable to bird hunting preserves**

Under current law, a person who owns or operates a sport shooting range is immune from civil liability relating to noise and is not subject to an action for nuisance related to noise or to

zoning conditions related to noise. Under this bill, bird hunting preserves that are licensed by the Department of Natural Resources are considered to be sport shooting ranges for purposes of these liability, nuisance, and zoning provisions.

**Draft APA-WI Position:** Neutral. Not a planning issue

## Planning

### **Assembly Bill 122 (similar to Senate Bill 112) for changing the elements that must be included in a County Development Plan**

Under current law, a county may create a county zoning agency, which is a policy-making body in the county that determines the broad outlines and principles governing the county's administrative zoning powers. The county agency may direct the preparation of a county development plan. Currently, if a county creates a development plan, the plan must include a master plan adopted by a city or village. If one exists, it must also include, without changes, the city's or village's official map.

This bill repeals the requirement that a city's or village's master plan must be included in a county development plan and also repeals the requirement that any official map be included without changes.

**Draft APA-WI Position:** Neutral. This appears to be a conflict between Towns and Counties.

In the past the Chapter has stayed out of these conflicts. Chapter Members input we would be helpful.

## Tax Incremental Financing

### **Senate Bill 85 and Assembly Bill 129**

These two bills if passed will give Wausau authority to extend the length of time TIF 3 can be in existence. It will only apply to this one TIF District.

## Executive Director's Report, May 2013

First, I continue to work on the June APA-WI and CNU Conference. I am concentrating on obtaining sponsors. We invite you to contribute to the Silent Auction. Contributions are welcome even if you can not attend. The beneficiary of the Silent Auction and Raffle is our Grad Student Scholarship Fund. It welcomes funds from throughout the State as all Wisconsin High

Schools Grads are eligible after receiving a BA or BS degree.

Second, there was no Executive Committee meeting this month. So there is no new report on the workshop titled Purposeful Board-Powerful Fund Raising. However, I have also attended a webinar titled Governance: New Challenges, New Opportunities, New Models presented by Forward Community Investments a Wisconsin based non-profit dedicated to helping other non-profits succeed. Among many things it pointed out are the rapid changes occurring in every aspect of our life. This is why APA-WI needs to examine the relevance of everything we do.

Third, I have attached a Draft of a Legislative Report. I would appreciate your comments. The bill summary is that prepared by the Legislative Reference Bureau. I prepared the Chapter position. I used the Chapter Lobbying Policies as my guide. These are not yet formally adopted as our Policies. Therefore, your comments would be most relevant. To repeat from last month, the Lobbying Policies are as follows:

1. APA WI represents planners from Towns, Villages, Cities, Counties, RPCs, the State, the Universities

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and Consultants. We have at least 8 groups of constituents in APA-WI. We cannot be between groups.

2. APA WI has always tried to represent good planning without making a judgment if any group of constituents (that I will refer to as groups) has better ideas or is in the right when compared to another group.

3. The Chapter will be most effective if we represent neither side when these groups have conflict. We should speak for good planning.

4. I do not think we should be in the alienation business. We should try to be, in this case, in a business promoting compromise or arbitration.

I believe our goal should be that APA-WI wants good planning by communities and less conflict between communities.



**Editor's Note:** I took a few minutes last week to visit a bioswale on Grange Avenue, where both Milwaukee and Greendale have installed bioswales along more than a mile of median. The City of Milwaukee is developing a protocol for the Department of Public Works to be used in all street renovation projects, to identify when, where, and what kind of green infrastructure to incorporate in the project. For more information, visit: <http://www.waterstarwisconsin.org/documents/GrangeAveBioswales.pdf>

