

APA - Wisconsin Newsletter



American Planning Association
Wisconsin Chapter

Making Great Communities Happen

A Publication of the Wisconsin Chapter of the American Planning Association

New Publication

Land Use and Wetlands: Zoning Opportunities to Improve Wetland Protection

Now Available!

This May, in celebration of American Wetlands Month, the Wisconsin Wetlands Association has released a new publication, *Land Use and Wetlands: Zoning Opportunities to Improve Wetland Protection*. The publication provides detailed recommendations on how Wisconsin's local governments can use zoning and other land use ordinances to improve local wetland protections.

By February 2012 many local governments will be required to update their shoreland zoning ordinances to comply with new requirements under Chapter NR 115 of the Wisconsin Administrative Code. Though NR 115 did not substantially change minimum standards for shoreland-wetland protection, the ordinance revision process provides local governments the opportunity to evaluate current wetland provisions and amend their land use regulations to



be more consistent with, or even more effective than, federal and state wetlands laws. Local governments not affected by NR 115 can use the

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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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Change of Address: WAPA Newsletter does not maintain the address lists for any APA publication. All lists are maintained at the national APA office and are updated and mailed to the chapters each month. If you have moved, please contact Member Services Coordinator, APA National Headquarters, 122 S. Michigan Street, Suite 1600, Chicago, IL 60603-6107 or call (312) 431-9100 or FAX (312) 431-9985.

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.

Professional Services Directory: Put your business in the newsletter. Advertising rates are \$40.00 per issue or \$150.00 per year. Send business card or camera-ready copy (2 inches high x 3.5 inches wide) to the newsletter editor at the address below. Digital copy may be sent as an attachment by email to news@wisconsinplanners.org.

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 APA-WI Newsletter.

publication to guide ongoing and future zoning, planning, and conservation efforts. Citizens, environmental groups, and consultants can also use the publication in their efforts to evaluate and improve local land use and wetland policies.

WWA's publication provides a variety of recommendations for local governments to consider, adopt, and implement at their discretion. It also includes tips to help local governments more efficiently administer local wetland protection policies and address longstanding local wetland protection challenges.

The recommendations are based on findings from recent research where WWA reviewed the zoning and subdivision ordinances of Wisconsin's 15 Coastal Counties and evaluated how these counties use land use policies to facilitate wetland protection. Though the research focused on coastal counties, the findings and recommendations have applications for counties, cities, villages and towns across the state.

The research and recommendations were completed with grant support from the Wisconsin Coastal Management Program and in collaboration with numerous partners, including the Center for Land Use Education and the Wisconsin County Code Administrators. *Land Use and Wet-*

lands: Zoning Opportunities to Improve Wetland Protection can be viewed or downloaded for free from WWA's Land Use and Wetlands web-page at: www.wisconsinwetlands.org/localgovs.htm

Questions about the recommendations or how Wisconsin Wetlands Association can help your community protect local wetlands should be directed to Policy Specialist, Kyle Magyera at 608-250-9971 / kyle.magyera@wisconsinwetlands.org.

Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.



Nominations are Open Announcement of 2011 Election of APA - WI Officers

Please be advised that the Executive Committee of the Wisconsin Chapter of the American

Planners Association (APA - WI) is soliciting expressions of interest from APA - WI members to be candidates for the following elective offices:

- Chapter President
- Vice President for Professional Development
- Secretary
- At-large Representative for Membership
- Northwest District Representative

Responsibilities of Chapter President include: develop the annual Chapter budget, call meetings, appoint committees, represent the Chapter at the national level and act as spokesperson for the Chapter on the state level.

Responsibilities of the Vice-President for Professional Development include: maintain AICP Status, mentor and advise Wisconsin planners preparing to take the AICP Exam and coordinate with University planning degree programs

Responsibilities of the Secretary include: prepare minutes of meetings, maintain Chapter records and assist in the conduct of Chapter elections.

Responsibilities of the At-large Representative for Membership include: promote membership in APA and the Chapter, maintain membership reports and advocate for the planning profession.

Responsibilities of the Northwest District Representative include: be a voting member of the Chapter Executive Committee, serve as the liaison between District Members and the Executive Committee and coordinate District program activities.



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If you are interested in running for any of the above offices, please contact:

Bruce B. Wilson, Chair
2011 WAPA Nominating Committee
wilsonplan@gmail.com

Expressions of interest are desired by no later than June July 11, 2011.

Learn more about advertising in the WAPA Newsletter.

Contact Nancy Frank
frankn@uwm.edu

Putting Your Highway on a Diet

Planners are familiar with roads that need to bulk up to meet increasing traffic demands. The opposite planning issue can occur in localities where a bypass has removed traffic or other significant land use changes have dramatically reduced traffic levels. In this case, the road may need to go on a diet, losing “weight”—or girth, at least.

Eau Claire put U.S. Highway 53 on a diet this spring. A year ago, the planning began with the

announcement that: “The reduction in traffic and function provides a unique opportunity through the road reconstruction to address many of the deficiencies that currently exist along the roadway.”

History of US-53

US-53 opened originally in 1926-1927. Stretching from La Crosse to Duluth, Minnesota, US-53 started as a two-lane gravel road and was slowly converted to a full asphalt freeway. The most recent project to decrease congestion was the building of a bypass around the City of Eau Claire in 2006. The subsequent decline of traffic on the former highway became a great opportunity for the people of Eau Claire to create a new vision for their downtown area.

Road Diet: Six-Lanes Recommended to Become Four

What was formerly known as US-53 became simply Hastings Way in 2006. The six-lane main thoroughfare of Eau Claire, Hastings Way saw a reduction of more than half of all cars between 2003 and 2008. The car count along one section had averaged 48,300 in 2003 but only averaged 21,100 in 2008.

In the wake of the change, the Chippewa-Eau Claire Metropolitan Planning Organization studied the future of Hastings Way. The MPO projected that future traffic on US-53 would be no more than 30,300 cars per day. With a threshold of 35,000 cars needed for to justify a six-lane highway, US-53 was ripe for a road diet.

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Public Participation Included from the Beginning

In a negotiated agreement, the city opted to take a lump sum payment for WisDOT to redevelop the corridor which came with additional flexibility in what could be planned. With the amount of pavement so much greater than what was needed, citizens and planners saw an opportunity to enhance their downtown. With a well thought-out plan needed for Hastings Way, planners moved into action to ensure the best results for the project.

“We included public participation from the very beginning,” says Brian Amundson, City Planner for Eau Claire. “Even before we created possible designs, we wanted to know what the people of Eau Claire really wanted.”

Their mission statement for the project included a desire for a multi-modal approach that served the needs of adjacent land uses, a walkable and sustainable neighborhood, and relating to the community quality of life for all users.

“We wanted to make sure that all different perspectives were included and considered.”

US-53 to Hastings Way

Planners proposed three alternatives with varying features. One example even offered two roundabouts. After input from the public as well as local cyclists and businesses, an alternative was finally agreed upon. The new design called for the six-lane road to be reduced to four-lanes, and the addition of off-road bicycle and pedestrian trails.

“The first thing you’ll notice is a massive reduction of pavement,” Amundson remarked. “With turning lanes, you had some Nine-Lane sections before. Now, there is a maximum of six lanes.” Another notable feature is the off-road bicycle and pedestrian paths that integrate multiple modes of transportation into one corridor—Complete Streets style. “All of this was done within the existing pavement. No new extra land was required.”

Road Diets and Safety

The plan in Eau Claire is a growing trend of “Road Diets” that are taking place across the United States. With the needs for roads changing, it has been shown that reducing the size of roads leads to fewer accidents. A report

by the Federal Highway Administration showed a reduction in crash frequency of 19-47% when reducing lanes.

Road Diets and Their Planning

Because many have never heard of shrinking a road before, people unfamiliar with the process can become concerned. Amundson experienced some of that during their planning for Hastings Way. “For Eau Claire, the biggest concern was making sure to address the needs and concerns of various different people in the community. Even now there are some final things being ironed out, but in the end, I think we got it right.” Reconstruction of Hastings Way is scheduled to be finished this fall.

For more information about US-53 and Hastings Way you can find more information at <http://www.sehinc.com/online/eauc Claire>.

APA - Wisconsin Launches Social Media

You may have received an email recently inviting you to participate in APA – Wisconsin’s “LinkedIn” group. This is just one of a number of efforts taken in the last few months to increase the opportunities for APA – WI members to stay informed and in touch—both with the Executive Committee and with each other.

Let’s review the electronic communication options that APA – WI uses or that are available for you to communicate with other planning professionals in Wisconsin and, frankly, around

the world via APA - WI.

The Old Standbys—Listservs

The two existing listservs affiliated with APA – WI continue to be used, and used regularly by members and my other planning-related professionals around Wisconsin. The official, closely-moderated listserv is wapalist@lists.wisconsinplanners.org. APA – WI uses this list to communicate chapter-specific information to its members, including election information, conference event information, legislative updates, and other matters of that the President approves for distribution to the members.

The other, unofficial APA – WI listserv is wapamembers@uwm.edu. This list is also moderated to keep out spam, but it is open to anyone, not just APA – WI members. With several hundred planners on the list, planners use it to post questions like this recent post: “Does any municipality prohibit decks in the front yard? If so, could you forward your code section and comment how enforced.” Information about subscribing to “wapamembers” is available on the APA – WI website at <http://wisconsinplanners.org/members.html>. Beginning in June, an archive of posts will be created of postings so that you can browse for things even after you lose track of the original email or follow a thread in a more logical order than by reading your email. Go to <http://listserv.uwm.edu/pipermail/wapamembers/>

LinkedIn

The newest presence in APA – WI’s social media campaign is our new LinkedIn group.

You probably received an email inviting you to participate. We are in the learning mode on how to adjust the settings to best meet the needs of members in the LinkedIn group. If you have concerns about the settings or suggestions, please send those to Nancy Frank at frankn@uwm.edu. During the summer, the LinkedIn site is likely to be fairly inactive—as far as the newsletter and website staff posting items there. But you can already start to use it to communicate with each other. And when the APA – WI assistant editor, David Boehm, returns from his summer internship in D.C., you can expect items to be regularly posted on LinkedIn.

Facebook

APA – WI established its Facebook presence this winter. However, we have not publicized it a lot, and we currently have just 12 people who “Like” the site.

To find our Facebook page, just go to the APA – WI website, www.wisconsinplanners.org, and look for the Facebook logo near the bottom of the page.

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APA-WI Endowment Donation 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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APA - WI between conferences and other events. During the academic year, David supplements the APA - WI newsletter page by posting stories from newspapers around the state concerning planning issues.

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New Publication:

Highlights in the History of the Development of Land Use Law in Wisconsin

Richard Lehmann, a long-time APA - WI member and former board member, has produced a brief history of the development of land use law in Wisconsin. The nine-page publication will be posted on the APA-WI website. Wisconsin is fortunate to have this compilation of some of the key events in the development of Wisconsin's land use regulatory framework.

Topics include: the development of the 93-acre suburban style "Garden Homes" in Milwaukee in the early 1920s, the role of Jacob H. Beuscher, a law professor at UW Law School who wrote the first casebook for law students and attorneys on land use law, Wisconsin's influential Task Force on Water Pollution in 1965, the politics of land use reform in the 1970s, and the development of Wisconsin's comprehensive planning law in the 1990s.

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APA – WI Website

Of course, the website will likely continue as the way that most members stay in touch with



NORTHEAST SIDE COMPREHENSIVE PLAN

City of Milwaukee, Solomon Cordwell Buenz,
Studio 1032, Terry Guen, SB Friedman

Maintaining a vital and diverse neighborhood as a place to live, work, play, and celebrate was a key vision of the plan. Green initiatives are integrated to enhance the existing environment, along with priorities for historic preservation and economic growth. Housing variety, choices, and quality contribute to the image of the area.



BROOKFIELD COMPREHENSIVE PLAN

City of Brookfield, Vandewalle & Associates,
Engberg Anderson, Strand Associates

Brookfield's vision for the next 25 years includes preserving the high quality neighborhoods, enhancing the greenway corridors, and targeting investment areas for economic growth. The emphasis is on maintaining a balanced community, while responding to emerging trends and issues of sustainability and regionalism.



WEST ALLIS COMPREHENSIVE PLAN

City of West Allis
GRAEF

Redevelopment plans were the focus of the West Allis Comprehensive Plan with 27 areas identified for change. Plans ranged from individual blocks to large corridor transformations. Preserving the residential neighborhoods and mixed-use corridors, balanced with new housing choices and economic initiatives, the City will continue to thrive as a high quality urban community.



EXECUTIVE BOARD SERVICE AWARDS

Diana Schultz
Northeast District Rep, 2008 - 2009

Nikki Jones
Southeast District Rep, 2007 - 2010

Dan Rolfs
Southwest District Rep, 2004 - 2010



La Casa de Esperanza Campus Master Plan, UW Milwaukee Student Project

Joe Peterangelo, Colin Fleming,
Justin Ballweg, Chris Guzek, Brian Schweigl

The students worked with La Casa de Esperanza to develop a master plan to meet their planned growth. The vision creates a compact, cohesive campus, while accommodating the challenges of the site. Short-term and long-term strategies identify phasing opportunities.



GREENBUSH & VILAS NEIGHBORHOOD PLANS: REVITALIZATION STRATEGY

City of Madison, Cuninghame Group, Urban
Assets, Matt Wachter, Dimension Development

The Revitalization Strategy is a supplement to the neighborhood plans with an emphasis on implementation. Strategies included small, medium, and large scale investments that focus on redevelopment, including green streets and public amenities.

Law Update

Court Decisions

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LARA ROSEN, M.S. CANDIDATE IN URPL, CONTRIBUTED TO
THIS SUMMARY.

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

Wisconsin Supreme Court Opinions

90-day Period of Appeal Applies to Special Assessments

In *Emjay Investment Co. v. Village of Germantown*, 2011 WI 31, the Wisconsin Supreme Court addressed the issue of whether an appeal of a special assessment can be filed after the 90-day appeal period specified in Wis. Stat. § 66.0703(12)(a) has passed.

The case involved a special assessment issued to Emjay Investment Company (Emjay),

which owned two parcels of land in Germantown until 2007. In the late 1990s, Menard, Inc. (Menard) submitted a development plan to the village of Germantown for a proposed retail development that would require several significant road improvements, including widening of the road and reconstruction of an intersection. Menard agreed to install and initially pay for the improvements, while the village agreed to partially reimburse Menard through special assessments levied against benefitted properties, which included the parcels owned by Emjay. Menard significantly completed construction of the improvements by the end of 2003. In June 2004, Germantown adopted its Final Resolution levying the special assessments, explicitly citing its authority to do so as pursuant to Wis. Stat.

§§ 66.0701 and 66.0703. The Final Resolution provided that the special assessments would be deferred with interest until commercial development or redevelopment of the property, and was mailed to all interested property owners in July 2004.

When Mark and Donna Lohmann, the owners of Emjay, sold Emjay's two parcels in 2007, they received two letters of special assessment by Germantown, and were required to deposit funds in escrow to cover the special assessment costs. In May 2008, Emjay filed a notice of appeal against Germantown, requesting a judgment annulling the assessments. Germantown requested that the circuit court dismiss Emjay's appeal and complaint because the 90-day period of appeal had long passed. The

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Court of Appeals affirmed.

Emjay petitioned the Supreme Court for review, claiming that its failure to comply with the 90-day period of appeal specified in Wis. Stat. § 66.0703(12)(a) was irrelevant because the appeal could proceed under Wis. Stat. § 893.72. The Supreme Court disagreed unanimously and affirmed the Court of Appeals' decision.

Litigation Expenses in Eminent Domain Cases

In *Klemm v. American Transmission Co.*, 2011 WI 37, the Wisconsin Supreme Court addressed the issue of whether litigation expenses should be awarded to property owners

in condemnation proceedings under the negotiated price procedure.

ATC initiated condemnation proceedings against Mark and Jeanne Klemm for an easement to construct an electrical transmission line across their property. The Klemms agreed to convey the easement for the price originally negotiated by ATC. They then filed an appeal and petition with the judge of the Marathon County circuit court, who referred the matter to the county condemnation commission. Following the commission's award of just compensation, ATC and the Klemms negotiated a settlement for compensation for the easement, which provided that neither party would appeal the commission's award but that the circuit court would determine

whether the Klemms were entitled to litigation expenses.

The Klemms filed a motion seeking an order awarding litigation expenses. Wisconsin Statutes provide for an award of litigation expenses in cases where a jurisdictional offer has been made. Since this case followed a negotiated price procedure, no jurisdictional offer was made. The circuit court interpreted the Statutes to find that the Klemms were entitled to litigation expenses. ATC then filed an appeal. The Court of Appeals reversed the circuit court's decision, ruling that the Klemms were not entitled to litigation expenses because there was no jurisdictional offer.

Upon reviewing the case, the Wisconsin Supreme Court reversed the Court of Appeals' decision, finding that the statutes allowing the recovery of litigation expenses also applied to those who follow the negotiated price procedure.

Wisconsin Court of Appeals Opinions

Injunctive Relief Not Necessary for Recovery of Bid Preparation Expenses Under Town Competitive Bidding Law

When the Town of Phelps sought bids to repair its town hall in 2008, the timing of its notices violated Wisconsin's competitive bidding law for towns found in section 60.47 of the Statutes. The Town repeatedly changed the project's scope during the notice period, and the Town's



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engineering firm sent updated specifications to some potential bidders but not others. North Twin Builders received final specification changes only two days before bids were due, and though the firm tried to incorporate changes, its bid was ultimately denied. North Twin Builders filed a motion for temporary injunction, but withdrew its request for a restraining order after acknowledging that significant progress had been made on the project.

The Town filed a motion to dismiss and, later, a motion for summary judgment, asserting that controlling case law required that a disappointed bidder obtain injunctive relief before recovering the cost of its unsuccessful bid preparation. The circuit court denied both motions, concluding that existing case law had made no such determination and that the public interest is served allowing unsuccessful bidders to recover costs of preparation when the competitive bidding statute has been violated. The Town appealed the circuit court's denial of its summary judgment motion, and the Court of Appeals affirmed the circuit court's judgment.

The case, [*North Twin Builders v. Town of Phelps*](#), is recommended for publication.

Town May Not Impose Special Assessment for Trail

In May 2008, the Town of Menasha charged David and Susan Hildebrand a special assessment for the installation of an asphalt trail abutting their commercial property. Wisconsin law allows a municipality to levy and collect special assessments when special benefits are conferred on that property. The Hildebrands challenged the

assessments arguing the trail did not confer any special benefit on their property. The Court of Appeals agreed, finding that the primary purpose of the trail was to complete the trail system in Winnebago County, thereby conferring a general benefit shared by everyone in the community and not a special benefit to the Hildebrand property. The Court nullified the special assessment.

The case, [*Hildebrand v. Town of Menasha*](#), is recommended for publication.

Dismissal of Inverse Condemnation Claim for Damage Due to Deep Tunnel Project Upheld

Bostco LLC and Parisian, Inc. (Bostco) sued the Milwaukee Metropolitan Sewerage District (MMSD) for damages to the Boston Store in downtown Milwaukee. Bostco charged that the ground under the Boston Store had been dewatered due to MMSD's negligent maintenance and operation of the Deep Tunnel, an extensive sewage and stormwater tunnel running 300 feet below downtown Milwaukee. Bostco's amended complaint against MMSD included claims of negligence, continuing nuisance, inverse condemnation, and excavation protection. At trial, Bostco only prevailed on the negligence claim. Both parties filed post-verdict motions. The court reversed several findings from the original jury trial and upheld others, including the dismissal of the inverse condemnation claim.

Bostco appealed several of the trial court's decisions, including its denial of inverse condemnation. The Court of Appeals upheld the trial court's dismissal of Bostco's claim for inverse

condemnation. It argued Bostco had failed to demonstrate that MMSD had either physically occupied its property or prevented it from leasing the property or utilizing the building for its intended purpose.

The case, [*Bostco, LLC v. Milwaukee Metropolitan Sewerage District*](#), is recommended for publication.

Conditional Use Permit Unenforceable If Zoning District Revised to Exclude the Conditional Use

In [*Hussein v. Village of Germantown Board of Zoning Appeals*](#), the Wisconsin Court of Appeals addressed the issue of whether a conditional use permit (CUP) remains enforceable after a municipality amends its zoning code to remove the conditional use that is the basis for the CUP from the zoning district at issue.

In 1973, Germantown Auto Sales received a conditional use permit (CUP) for car sales, repair, and service. The CUP limited the number of cars for sale to 25. In 1988, the village eliminated selling cars as a conditional use in general business districts. Under this zoning change, Ger-



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mantown Auto Sales' used car lot became a legal nonconforming use.

Hussein acquired Germantown Auto Sales in 2002 and by 2009 wanted to increase the number of parked cars allowed on the property. He requested that the village rezone the property as a "highway business district," which would allow car sales as a conditional use, and if so granted, give him a CUP for an expanded operation. The village denied his requests and demanded that he comply with the 1973 CUP. Hussein went before the Zoning Board of Appeals, which held that the 1973 CUP still applied and that Hussein could not ask for an amendment to the 1973 CUP nor could the village further restrict the terms of the CUP. Hussein contested the Board's decision in the circuit court, which reversed the Board's decision.

The Board appealed the circuit court decision. The Court of Appeals decision reviews the basic law of zoning -- permitted uses allow uses as a matter of right while conditional uses allow uses but only in a controlled manner, and a legal nonconforming use is when there is an active and actual use of the land and buildings which existed prior to the commencement of the zoning ordinance that banned the use and which has continued in the same or a related use until the present.

Applying these concepts to the present case, the Wisconsin Court of Appeals found that the 1988 zoning changes, which had eliminated car sales as a conditional use, had the effect of both voiding the 1973 CUP and transforming Germantown Auto Sales into a legal nonconforming use. The village therefore could not enforce the 1973 CUP. As a legal nonconforming use, Germantown Auto Sales could continue operations in accor-

dance with the historical use of the property. The Court of Appeals noted that if there is an identifiable change in the legal nonconforming use, the enlargement is illegal. But if the expansion is a result of a mere increase in the historically allowed use, the expansion will be allowed subject to nonconforming use law.

The case is recommended for publication.

In Takings Case, Uneconomic Remnant Issue Must Be Addressed Before Compensation

American Transmission Co., LLC (ATC) took part of the property of the Wallers to construct a high voltage transmission line. The Wallers contested the partial taking, alleging that it had rendered their remaining property an "uneconomic remnant" as defined in the Wisconsin Statutes. The Wallers argued that ATC was therefore required to pay them full compensation for the property. The case was split into two parts; the first dealt with the uneconomic remnant issue and the other dealt with the just compensation issue. The circuit court postponed hearing the uneconomic remnant case until after the jury reached a verdict in the just compensation case. Because the jury decided that the value of the property was still greater than \$0, the circuit court dismissed the uneconomic remnant claim.

The Wallers appealed. In an earlier case, the Court of Appeals decided that the uneconomic remnant issue must be resolved prior to the addressing the compensation issue. The Court of Appeals then remanded the case to the circuit court to determine whether the proposed partial

taking would result in an uneconomic remnant. The circuit court, however, ordered that a jury determine the amount of damages prior to resolution of the uneconomic remnant issue. The Wallers appealed again, and the Court of Appeals again reversed and remanded the case to follow the proper procedure.

The case, [Waller v. American Transmission Co.](#), is recommended for publication.

Legislative Update

By STEVE HINIKER, 1000 FRIENDS OF WISCONSIN
APA - WI LEGISLATIVE ANALYST

Wisconsin Budget as Passed

Changes Related to Transportation

1. Eliminates bonding authorization for Kenosha-Racine-Milwaukee commuter train.
2. Increases spending on major highway projects by \$348 million.
3. Modifies the definition of a major highway project from projects that cost more than \$5 million to two types of projects:
Capacity expansion projects that cost more than \$30 million
Any project costing more than \$70 million
(*This gives the administration more ability to build highways without legislative approval.*)
4. Approves the Governor's recommended funding for major highway development,
5. Approves funding for the I-94 North-South

freeway and Zoo Interchange.

6. Increase funding for highway rehabilitation by \$7,000,000 (2011-12) and \$28,000,000 (2012-13) for state highway rehabilitation.

7. Decrease discretionary funding of local road improvement by \$5,000,000; deletes provision that would add \$5,000,000 to country road projects, but maintains the increase for town roads.

8. The proposed limitation on appeals and litigation expenses in eminent domain proceedings **was deleted**.

9. The provisions added by the Joint Finance Committee that would place restrictions on the ability of local governments to use their own workforce to perform highway improvement or public construction projects **were deleted**. Modifies current law to prohibit a county from using its workforce to perform improvement on a highway outside of its jurisdiction unless a portion of the highway is within the county doing work and it extends no further than the adjoining counties and/or the highway is within a municipality that is at least partially within the working county. The county is also prohibited from using its workforce for a city with a population over 5,000 except under limited circumstances.



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10. Prohibits a local government from using its workforce to perform construction/infrastructure projects for a private entity.

11. The provision added by the Joint Finance Committee that would place new restrictions on the ability of counties to use their own workforce to perform highway improvement projects **was deleted**. Current law restrictions with regard to use of a county workforce remains however.

12. DoT is no longer able to designate a local government as its agent on behalf of the state to perform bidding, contracting, and oversight for highway projects.

13. Decrease funding in 2012-2013 by \$15,000,000 (as recommended by the Joint Finance Committee) for the state highway maintenance program to return to the level of funding proposed by the Governor. Funding in 2012-2013 would revert to the level proposed by the Governor.

14. Deletes the provision added by the Joint Finance Committee that would eliminate the DoT's ability to designate a local government as its agent on behalf of the state to perform bidding, contracting, and oversight for highway improvement.

15. Lengthy modifications to the current law that exempts soil/gravel/stone excavation sites from local zoning ordinances dependent on certain conditions.

Changes from Original Governor Walker Budget

1. Eliminates Regional Transportation Authorities.

2. Increases funding to the bicycle and pedestrian facilities program by \$1,000,000 totaling \$3,720,000 annually when added to base funding.

3. Provides \$2,500,000 annually to supplement the costs of paratransit service.

4. Deletes transit workers from the collective bargaining changes so that the federal funding of \$46 million is not affected or jeopardized.

5. Establish a Transportation Finance and Policy Study Commission to investigate future financing of transportation.

6. Clarifies the expedited review procedure while deleting the passive review process, approves the recommendation for four major highway projects, and maintains current law TPC policy.

7. Reduce funding by \$2,000,000 (2011-12) and \$8,000,000 (2012-13) for the general transportation aid program for county payments. Reduce the statutory distribution for county payments from \$102,615,600 to \$94,615,600 for 2012 and thereafter.

8. Blocks auto-sales tax revenue from being deposited in the transportation fund instead of the general fund. Transfers at least \$35,127,000 annually from the general fund to the trans-

portation fund along with a separate sum of \$125,000,000.

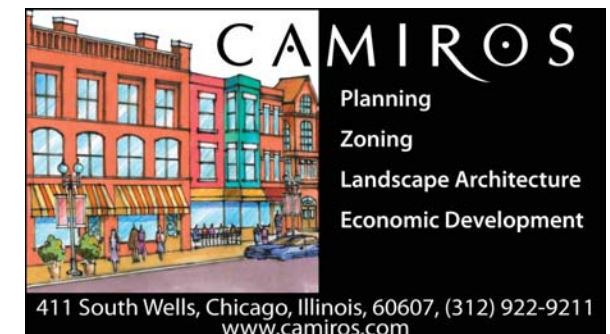
9. A provision that would switch funding for the Mass Transit Aid Program from the transportation fund to the general fund is deleted. Increases funding by \$106,478,300 while reducing GPR funding by the same amount

DNR – Air, Waste, and Contaminated Lands

Changes from current law

1. The DNR may not enforce and provision of an administrative rule establishing nonagricultural performance standards for runoff from urban areas, excluding performance standards for new development or redevelopment if the provision specifies a percentage reduction in total suspended solids exceeding 20% from no controls that are to be achieved by a political subdivision holding a WPDES. Any municipality that has achieved a reduction in TSD exceeding 20% from no controls shall maintain all bmps in use on the bill's passage date.

2. Deletes \$2,065,000 environmental fund



SEG annually in DNR and repeal the green space grant program. Transfers brownfields site assessment from DNR to WEDC and provide \$1,000,000 environmental fund SEG to WEDC for the program.

3. Renames the recycling and renewable energy fund the economic development fund and transfers all appropriations to the environmental fund except for the Department of Revenue surcharge administration appropriation. Deposit the \$7 per ton recycling tipping fee in the environmental fund.

4. Repeals the \$9 per vehicle environmental impact fee.

5. Provides an additional \$1,472,800 SEG from the dry cleaner environmental response fund for payment claims.

Changes from Original Governor Walker Budget

1. Restore the recycling grant program and provide \$19,000,000 annually.

DNR – Water Quality Changes from current law

1. In general, reduces continuing appropriations by ~10%.

2. Increases maximum lake planning grant award from \$10,000 to \$25,000. Lake planning grants may not exceed \$50,000 per year on any one lake and the state planning grant may not exceed 67% of project costs.

3. Erosion control regulation at commercial

building sites is transferred to the Department of Safety and Professional Services.

Changes from Original Governor Walker Budget

1. DNR must repeal, rewrite, and submit NR 151 to the Legislative Council Rules Clearinghouse.

2. The DNR must create an economic impact analysis regarding the phosphorus effluent limitation rule changes in NR 102.06 and NR 217 and the shoreland zoning rule changes in NR 115.

DNR – Stewardship

Changes from current law

1. DNR cannot obligate more than \$60,000,000 annually under the stewardship program from fiscal year 2011-12 to 2019-20. Sets limits for appropriations to the property development and local assistance subprogram. Requires the DNR to set aside at least \$6,000,000 from the subprogram for dam safety grants.

2. Adjusts the aids in lieu of the property taxes formula by defining the estimated value of

the property to mean the lower of the equalized value of the property in the year prior to purchase by the Department or the purchase price.

3. A city, village, town or county may adopt a nonbinding resolution in support or against a proposed acquisition using stewardship funds if a portion of the land is within its limits.

4. Public access to nature-based activities may be prohibited on land acquired by the DNR, through a stewardship program, or by an easement only if the Natural Resources Board determines it is necessary to protect the public safety or a unique animal or plant community.

5. The Joint Committee on Finance would review stewardship projects over \$250,000, no time would be specified for the meeting, and a majority of the Committee members must vote to approve the project.

6. Modifies the definition of purchase price for lands owned fewer than three years.

7. DNR may contract with nonprofit conservation organizations and other third parties to perform land management, maintenance, and improvement activities on Department land. The DNR may also receive gifts and grants from these groups.

8. Provides \$550,000 forestry SEG annually and requires the DNR to establish a program to cooperate with foresters and private contractors in order to assist the state in regeneration of previously harvested areas on state land.

9. Provides \$92,800 SEG annually from the forestry account of the conservation fund for increases in reimbursement to fire departments



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for wildfire suppression.

Changes from original Governor Walker Budget

1. Maintains current law related to stewardship program easements and the acquisition of development rights program.

Commerce, WEDC, DATCP, DSPS (Department of Safety and Professional Services)

1. Restores provision that requires DOT to establish criteria for evaluating harbor assistance grants, but deletes the requirement that DOT consults with Commerce.

2. Apply current law Main Street provisions to WEDC and require WEDC to spend at least \$250,000 annually on the Main Street program.

3. Repeal the small business clean air assistance program in Commerce. DNR would assume full responsibility for the federal small business clean air assistance program. Transfers the Small Business Environmental Council to the DNR and deletes the references in council membership and duties to Commerce.

4. Delete the brownfields redevelopment activities appropriation, including \$194,000 SEG annually and 2.0 SEG positions under DSPS.

5. Rename the recycling surcharge the “economic development surcharge” and deposit the surcharge into the economic development fund. Create a new, segregated revenue, continuing appropriation funded with economic development fund revenues under the WEDC to fund

New Bill Introduced:

AB 179 - authorizing the creation of a multi-jurisdictional tax incremental financing district

New Bills Introduced:

AB 178 relating to the authority of a county to enact ordinances governing certain land divisions. (subdivision or land that lies in the unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within one and one-half miles of a fourth class city or village.)

AB 181 relating to authorizing towns to challenge certain city or village annexation procedures. (This bill changes current law by repealing the provision that prohibits a town from challenging in court direct annexation by unanimous approval.)

New Regulations on Powered Mobility Devices in Parks

By NANCY FRANK, UW - MILWAUKEE

This spring, Linda Stoll brought to our attention a new set of regulations concerning the need to accommodate powered mobility devices in parks. While planners will likely be sympathetic with the goals of the new rules, many may be surprised at the breadth, and may view them as overbroad.

The rules have been promulgated by the U.S. Department of Justice. The Federal Register notice stated that DOJ had “received questions



from public entities and individuals with mobility disabilities concerning which mobility devices must be accommodated and under what circumstances.” In addition, a number of lawsuits had been filed concerning the use of vehicles like “scooters” for people with disabilities and Segways™. In 2008, DOJ launched rule-making.

Ultimately, the rule proposed a “two-tier definition” of mobility devices that defined the term “wheelchair” separately from “other power-driven mobility device.” Defining the difference between a “wheelchair” and other devices proved challenging, however. The term “other power-driven mobility device” is defined as “any of a large range of devices powered by batteries, fuel, or other engines— whether or not designed solely for use by individuals with mobility impairments—that are used by individuals with mobility impairments for the purpose of locomotion, including golf cars, bicycles, electronic personal assistance mobility devices (EPAMDs), or any mobility aid designed to operate in areas without defined pedestrian routes.” Park managers and others have expressed concern that this definition is so broad that it will allow the use of vehicles like snowmobiles and ATVs in parks and areas of parks where they have been restricted

in the past.

The rule specifies that “public entities are by default required to permit the use of other power-driven mobility devices; the burden is on them to prove the existence of a valid exception.” In determining whether to allow such “other” devices, the facility (such as the park managers) must consider five factors:

- (i) The type, size, weight, dimensions, and speed of the device;
- (ii) The facility’s volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- (iii) The facility’s design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
- (iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- (v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

The entity may not ask a user about the nature and extent of the individual’s disability, but may ask whether the use of the power-driven mobility device is required because of the person’s disability. In addition, the rule states:

In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public entity shall accept as a

credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability.

The DOJ’s discussion of the comments it received on the draft rule are very informative, regarding the competing interests that needed to be accommodated between the ethical principal of providing full access to people with disabilities and park managers’ and other concerns that the rule could open all public open space to all manner of devices.

For more information on the new rule, the American Trails website provides links to the original rule-making documents and their own analysis and answers to questions about the new rule. It is worth a read.

<http://www.americantrails.org/resources/accessible/OPDMD-DOJ-requirement-basic.html>