

APA - Wisconsin Newsletter



American Planning Association
Wisconsin Chapter

Making Great Communities Happen

A Publication of the Wisconsin Chapter of the American Planning Association

What's Up with Rail Planning

BY DAVID BOEHM, STUDENT EDITOR, AND
NANCY FRANK, EDITOR
UNIVERSITY OF WISCONSIN - MILWAUKEE

Editor's Comment: David Boehm, our APA Wisconsin newsletter reporter, started working on this story in early fall. At that time, the throttle was full speed ahead on the new high speed rail link between Milwaukee and Madison. After the November election, Governor-elect Scott Walker threw on the brakes and, as of December 4, the rail project has been shut down.

*One of the most painful aspects of this turn of events, from the perspective of planning, is that fifteen years of quiet planning by the Midwest Regional Rail Initiative, involving nine Midwest states and the Federal Railroad Administration, have been simply undone. In this holiday season, it feels a bit like the plot-line of *It's a Wonderful Life*, in which planners now have the opportunity to see what*

the world would be like if they had never engaged in planning at all.

Perhaps this reversal of long-standing state policy is a temporary political blip. Perhaps it is a signal light reminding planners of the necessity of broad-based and engaged stakeholder involvement to achieve a modicum of consensus so that plans can continue to be relevant no matter which way the political winds blow.

As of this writing, who can say what the lifeline of the Midwest Regional Rail Initiative will be. With both Ohio and Wisconsin saying "no, thanks" to federal funds for implementation of the plan, will the plan need to be completely re-imagined, or will the other partners simply bide their time until reluctant players in Wisconsin and Ohio get back on board?

This article takes a look behind the headlines to understand some of the challenges that planners themselves are

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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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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

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highlighting in the quest to achieve a more sustainable transportation network in Wisconsin. But, now that the train is stopped dead in its tracks, what lessons should planners take from this turn of events?

In the southeast corner of Milwaukee County, businesses and municipalities are working together to capitalize on the transportation assets clustered around Milwaukee's Mitchell International Airport. Gateway to Milwaukee is a relatively

new economic development consortium that is fully cognizant of the importance of transportation, even in the information age. In addition to the airport, the Amtrak Hiawatha line runs seven trains daily that stop near the airport and the on-going planning for commuter rail, known as the KRM project (for Kenosha-Racine-Milwaukee).

"Cooperation is needed to achieve the greatest potential for Milwaukee," said Tom Rave, the Executive Director of the Gateway to Milwaukee, an organization focused on economic development in the area around Milwaukee's Mitchell International Airport. The old mindset, says Rave, was for everyone to worry about themselves, but we can do much better if we all work together across all levels of government. Rave and the Gateway have managed to assemble a board of six local mayors and representatives from eight areas to cooperate. Things that would have been impossible individually became possible by collaborating on projects that help the whole area instead of just individual municipalities. Rave hopes to work across all levels of government and businesses to plan what is best for Milwaukee and the greater region.

One of the biggest areas of need is the regional transportation system where, currently, very little cooperation is visible. "The MCTS is considering cut-

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ting routes, the city is putting together streetcar lines, work is being done on the highways, the KRM rail line is trying to get traction, and of course there's debate about the high speed rail line from Milwaukee to Madison. Everyone is doing their own thing." What is most needed is cooperation to create a master plan for regional transportation. Rave points out that the region has one proposed plan, but few know about it. "SEWRPC has a great plan that addresses many of the needs of our region. We need to make more people aware of it and begin to discuss the plan as a whole community." The Southeastern Wisconsin Regional Planning Commission (SEWRPC) plan focuses on public transit, system and demand management, bicycle and pedestrian facilities, and arterial streets and highways. Asked if it's a perfect plan, Rave said that everyone does not have to agree on everything in it, but "it's a great starting point."

The Madison-Milwaukee High Speed Rail Connection

Collaboration is needed if a recent hot button issue will become reality: the Madison-Milwaukee rail line. The proposed rail line is one section of a greater network of high speed rail that is planned for the Midwest. The line was included in

the 1996 plan by the Midwest Regional Rail Initiative carried out by nine states working in cooperation with the Federal Railroad Administration. The federal plan proposes to eventually connect Milwaukee and Madison with other major cities such as Minneapolis, Cleveland, Indianapolis, and St Louis.

The Local Perspective

Daniel Ertl is the director of community development for the city of Brookfield where a train station is planned. The connector train is planned to stop in Brookfield and two other communities between Madison and Milwaukee. "We are very excited about the idea of Brookfield getting a train station," says Ertl. "But, we can only accept if it is fully paid for by the federal and state governments."

The state is asking the local governments to build their own local train stations with local funding, something that Brookfield is unwilling to do. "Although the state is providing some money for a train station, the money is not enough to cover the cost of obtaining the land, creating parking facilities, and building the stop itself." Rave suggested possibly creating a very basic station with the funding provided, but Ertl thinks this is still unfeasible. According to Ertl, the station itself is only a small percentage of the overall cost. Most of the cost would arise from land acquisition.

The most likely local option for funding a station would be issuing bonds. Then, the tax revenue created by the growth would be used to pay off the bonds. Though simple of the surface, an in-depth look reveals a much more complicated process. After issuing bonds, interest would immediately begin to accrue. Next, the local government would acquire land, build parking facilities, and build a station. After it was complete, the municipality would need to wait until the train was in operation and the land around the station developed economically which would generate more tax revenue. The tax revenue would then pay off the bond. "The time in between issuing the bonds and obtaining the increased tax revenue to make payments creates a financial gap," Ertl says. During this gap, interest would accrue and payments would need to be made. Brookfield is unwilling to pass that cost on to their residents.

Asked if the current state of the economy could slow down development projections, Ertl responded "Of course. And that would create a longer time" period between issuing the bonds and getting tax revenue to pay for the bonds. Overall, Ertl was excited about the train, but was opposed to using local funding. "Again, we are very excited about the idea of Brookfield getting a train station. But, we can only accept if it is fully

paid for by the federal and state governments.”

Further west up the line, Watertown was eager to see the train come to town. Channel 3000.com quotes Watertown mayor Ron Krueger as supporting the rail line, which would also have stopped in his city. “Krueger said he thinks the high-speed rail project is a good investment,” Channel 3000 reported. “‘My mind tells me this is good for the state of Wisconsin and that’s what’s going to guide me, not what’s politically popular today or tomorrow, and not to try and make friends,’ Krueger said.” (“Watertown mayor shows support for rail line,” November 11, 2010).

Use It or Lose It

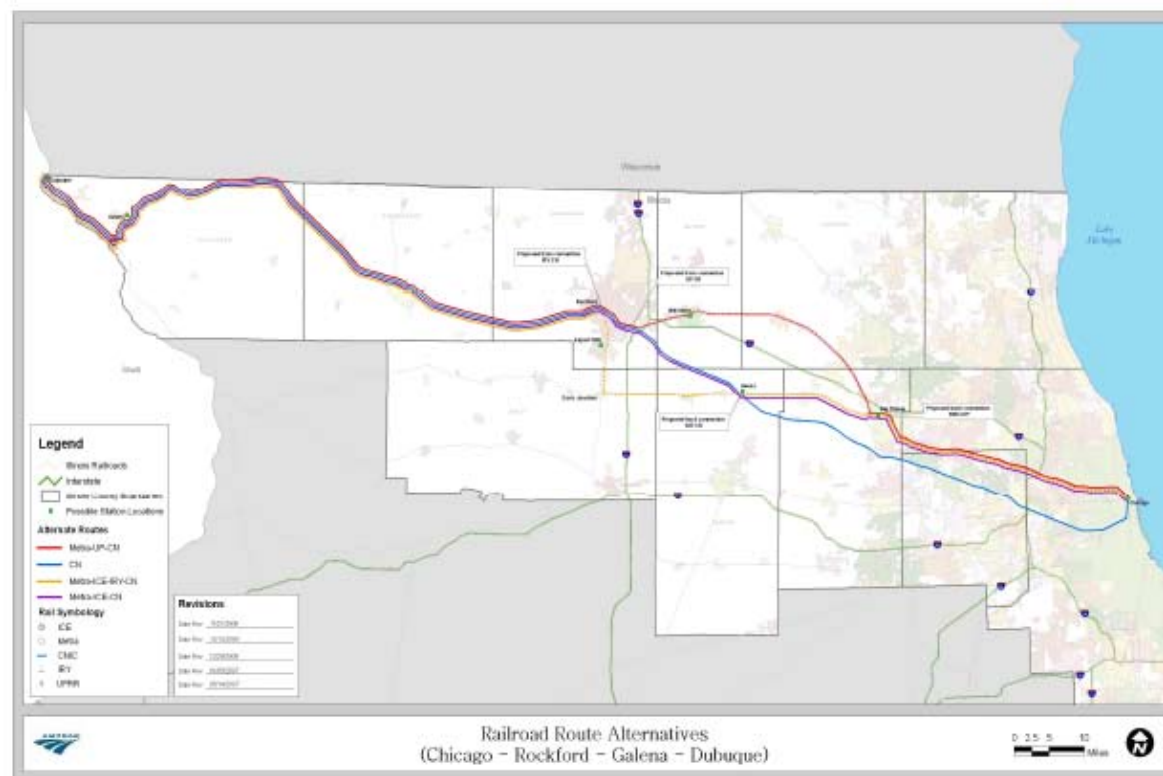
Rave, concerned about the current economic climate, agrees with current public sentiment about government spending. “Our government spends too much money on things it shouldn’t,” he said. “But whether or not you agree with where this money came from, if we don’t use it on the high speed rail project here, it’s going to go somewhere else.” Asked what will happen if Wisconsin turns down the money, Rave answered, “There are a lot of other places that have high speed rail plans. Use it here, or realize it’s going to be used in another state. It’s that simple.” The Milwaukee Journal Sentinel

reported that the funding turned down by Wisconsin will be redistributed to California, Florida, Washington, and Illinois, with smaller amounts going to nine other states. Larry Sandler, “High-speed rail funds scatter to other states,” December 9, 2010.

Midwest Regional Rail Initiative Now

The Midwest Regional Rail Initiative (MRRI), was launched in 1996. “In 1995

and 1996, state legislators across the region wanted to do something to further the development of high speed rail in the region. They asked the Midwestern Legislative Conference for help. The MLC formed a task force of interested legislators, who first met in December of 1996” (Midwest High-Speed Rail web-site, <http://www.connectthemidwest.com/history/>, accessed December 12, 2010). The task force launched a series of planning efforts, resulting in the publication of plans in 1998, 2000, and 2004.



The 2004 report updated infrastructure and equipment capital costs and ridership estimates. According to the implementation schedule included in the 2004 update, the project appears to have been on schedule. The implementation table shows that for the Milwaukee-to-Madison leg preliminary engineering and

environment impact assessments were to be completed in the five years after 2004, with construction to begin in the six year—which would be 2010 if the clock started ticking in 2004.

The 2000 version of the plan estimated economic benefits of the entire MRRI at a benefit to cost ratio of 1.7,

History of the Midwest Rail Initiative

Excerpted from Midwest High-Speed Rail Steering Group webpage, <http://www.connectthemidwest.com/history/>

"In 1995 and 1996, state legislators across the region wanted to do something to further the development of high speed rail in the region. They asked the Midwestern Legislative Conference for help. The MLC formed a task force of interested legislators, who first met in December of 1996. Over the course of time and many discussions, amongst themselves and with federal, other state, and local officials, members of the private sector and advocacy groups, the task force decided that a compact among the Midwestern states was the best way for state elected officials to help spur better passenger rail service in the region. The Compact language was developed during 1998 and 1999, and first introduced in 2000. . . .

"On April 16, 2009, President Obama

announced his "Vision for High Speed Rail". This vision includes the development of high-speed train lines in at least 10 regions across the country, including the Midwest with a major hub network centered in Chicago. To "jump start" the implementation of high-speed and intercity passenger rail, \$8 billion has been included in the American Recovery and Reinvestment Act (ARRA) of 2009.

"In July 2009, Illinois Governor Pat Quinn was joined by Senator Richard Durbin and Chicago Mayor Richard M. Daley to host Midwest Governors and rail executives at the Midwest High Speed Rail Summit in Chicago.

"The Governors and Mayor Daley announced an agreement between the eight states and the City of Chicago to work cooperatively to achieve funding from (ARRA) to develop the Midwest network. Eight Midwest states signed the Memorandum of Understanding (MOU) in support of high-speed rail including Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin."



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which was the highest benefit-cost ratio of any corridor in the U.S. except for Amtrak's Northeast Corridor.

The Executive Summary of the 2004 planning report does not describe the stakeholder involvement activities during the planning process. The report notes that "Efforts should continue to build a coalition of regional stakeholders to solicit active support for the MWRRS [Midwest Regional Rail System] and secure the required level of federal and state." The report also advised states to be ready to proceed as soon as federal funds were made available. "Several states have already proceeded with corridor environmental assessments and impact statements, as well as preliminary engineering studies. These activities should continue." Wisconsin was one of the states that had moved forward with implementation. The environmental assessment for the Milwaukee to Madison link went to public hearing in June 2001, with a Finding of No Significant Impact in August 2004 (Wisconsin Department of Transportation, <http://www.dot.wisconsin.gov/projects/d1/hsrail/envIRON.htm>).

The seeming consensus on moving forward with high speed rail in the Midwest, evidenced by an MOU signed by MRRRI participating states in July 2009 [see sidebar], fell apart after the November 2010 elections. In addition to Wisconsin and Ohio, the Michi-

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gan legislature also turned down federal funding of \$161 million for the proposed MRRI link between Detroit and Kalama-zoo, because the legislature could not find \$45 million in state matching funds (MichiganNOW.org, December 10, 2010).

At this time, the future of the Midwest Regional Rail Initiative is unclear. On November 11, the Rockford Register Star reported that a routing from Chicago via Rockford and Dubuque to Minneapolis looks attractive is Wisconsin remains out of the implementation for the MWRRS. Rick Harnish, executive director of the Midwest High-Speed Rail Coalition, told the Milwaukee Journal Sentinel that the routing options that bypass Wisconsin are unrealistic for high-speed service because of a curvey right of way in Minnesota.

Two other options requiring routing through Wisconsin but not through Madison include the existing Amtrak Empire Builder route, with stops in Milwaukee, Columbus, Portage, Wisconsin Dells, Tomah and La Crosse, or an alternate route “through Fond du Lac and Neenah before turning west, through Stevens Point” (Milwaukee Journal Sentinel, “Rail route could be built—without stop in Madison,” November 25, 2010).



American Planning Association Wisconsin Chapter

2011 CHAPTER AWARDS CALL FOR NOMINATIONS

Nomination deadline: Thursday, January 13th at 3:00 PM

Entries shall be submitted to: APA-WI Awards
c/o Carolyn Esswein, AICP
GRAEF
125 S. 84th Street, Suite 401
Milwaukee, WI 53214

PURPOSE

To give recognition to outstanding achievements in planning and to publicize persons and organizations whose activities advance planning in Wisconsin.

ELIGIBILITY

An APA-WI or APA member must submit the application.

Plan Document, Planning Tool, Urban Design, and Plan Implementation nominations must be for projects located in Wisconsin and must have included an APA-WI or an APA member throughout the planning process. Elected Official of the Year and Citizen Planner of the Year nominees must live and work in Wisconsin. Outstanding Journalism nominations must have a reporter from, and a story about, a Wisconsin community.

No project may be considered if a member of the Jury, or his/her organization, had a role in planning or implementing the project. Jury members are selected from outside of Wisconsin.

JUDGING and ANNOUNCEMENT

The Jury has the right to select one or more winners per category. Neither the Awards Jury nor the Chapter is under any obligation to grant an award in each category. The Awards Jury may also consider a nomination for an award in a category other than the category indicated by the Nominator.

Awards will be presented at the APA-WI / ASLA Annual Conference on March 10, 2010 in Milwaukee. Nominators will be notified of Jury decisions in February.

QUESTIONS

For questions, contact Carolyn Esswein at Carolyn.Esswein@graef-usa.com or 414.266.9221.



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Brownfields Redevelopment: Funding Availability for 2011

As community leaders across Wisconsin look ahead to a bright new year, each one hopes to find ways to make their cities, towns and counties better places to live and work. At the Remediation and Redevelopment (RR) Program of the Wisconsin Department of Natural Resources (DNR), we do our part by helping local governments redevelop properties – known as brownfields – which are contaminated, blighted or underutilized.

The DNR has multiple sources of funding which local governments can access to investigate, clean up and redevelop eyesore properties and turn them into community gems. Funds available in 2011 include the following.

DNR Wisconsin Plant Recovery Initiative Assessment Monies

The Wisconsin Plant Recovery Initiative is a DNR-led effort to assist communities dealing with the environmental impact and job loss due to a closed manufacturing plant. With minimal paperwork, communities can apply for contractor services funding, where a state-selected environmental consultant performs assessment work at a closed industrial site. In many brownfield transactions, simply assessing the threat of contamination can make a property much more attractive to potential buyers or developers.

DNR Ready for Reuse Cleanup Loans and Grants

Communities needing funding to address the cleanup phase of a redevelopment project should consider Ready for Reuse Loans and Grants through the RR Program. This funding is available to address contamination from petroleum and hazard-

ous substances. Grants are available up to \$200,000; loans can be much larger and come with zero percent interest.

DNR Brownfields Site Assessment Grants

Applications for the popular DNR Brownfields Site Assessment Grant Program are generally available in late August, with awards in the late winter/early spring the following year. Local governments can request up to \$100,000 to assess contamination at brownfield sites.

Want to Know More? Call Our Green Team!

If you'd like to meet with DNR and other state agency brownfields staff, please contact Jessica Coda (Jessica.Coda@wisconsin.gov, 608-267-6743) to arrange a face-to-face Green Team meeting and discuss a brownfields rede-

velopment project in your community. To learn more about brownfields funding opportunities, please visit the RR Program's web site at: dnr.wi.gov/org/aw/rr.

APA Now Offering Specialty Certifications in Transportation, Environmental Planning

Two new certifications are now offered by the American Planning Association (APA). "Just as doctors need to demonstrate their expertise and knowledge within specialized fields of medicine, so too do planners in specialized fields of planning," according to the APA website. The Advanced Specialty Certifications in Transportation Planning (CTP) and Environmental Planning (CEP) recognize "an individual's in-depth knowledge, experience, and leadership" in their specialty.

The certification hopes to bring more credibility and respect to specialists as well as provide a way for employers to differentiate between applicants.

Planners who wish to become certified must be an AICP member in good standing, pass an exam, and have full-time experience for at least eight years in their chosen specialty. If the applicant has only worked part-time in their specialty, an equivalent time may be substituted. As an example, a person working on transportation issues for 20 hours per week for two years may count the experience as full-time for one year.

CTP and CEP costs include a \$100 application fee and \$590 testing fee. Applications will be accepted now through March 30th, 2011. The testing window is May 9th-May 23rd, 2011. More information can be found at <http://www.planning.org/asc>.

Assistance Received	Brownfields Site Assessment Grant	WI Dept. of Commerce Brownfields Grant	Brownfields Green Space & Public Facilities Grant	Local Governmental Unit Liability Exemption	Liability Clarification Letter	State-Funded Cleanup	Petroleum Environmental Cleanup Fund Act (PECFA)	Voluntary Party Liability Exemption	EPA Brownfields Grants	Other DNR Assistance (Technical, Meetings, etc)	Other Funding Assistance (Federal, Tax Incentives, etc.)
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Law Update

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Case Law Update

Wisconsin Court of Appeals Opinions

Need to Strictly Follow Notice Requirements in Condemnation Appeal

Section 32.06(8) of the Wisconsin Statutes requires that for non-transportation eminent domain proceedings, after the condemnation commission determines its award, the clerk of court "shall": (1) send notice of the award, including a copy of the award; (2) by certified mail with return receipt requested; (3) to the party seeking condemnation and to the landowner. In *Dahir Lands, LLC, v. American Transmission Co., LLC*, the clerk of court sent a copy of the award to the attorney had appeared for the landowner at the condemnation hearing via U.S. mail. Under section 32.06(10) a party

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Chapter Dues⁴ (see table on reverse) <i>Chapter membership is mandatory for U.S. members.</i>	\$	\$	\$
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has 60 days following the date of filing of the commissioner's award to appeal the award in circuit court. The landowner appealed the award after the 60 day limit. The American Transmission Company sought to dismiss the appeal as untimely. The Wisconsin Court of Appeals disagreed, concluding that strict compliance with section 32.06(8) is required. In this case, the notice was given to the landowner's attorney and not the landowner as required by the statutes and the clerk of court did not send the notice via certified mail with return receipt requested, also as required by statute. Since the clerk of courts had not complied with the statutory requirements, the Court of Appeals allowed the landowner's appeal of the commission's award to proceed. The case is recommended for publication.

Contractor Was Agent of City and Entitled to Governmental Immunity

Beverly Bronfled was injured when she tripped over a barricade protecting the work area for a road construction project for the City of River Falls. Bronfled sued Pember Companies, a subcontractor working on the road construction project alleging Pember negligently constructed barricades and safety signs and failed to maintain a safe site for the public. Pember argued that it was

entitled to governmental immunity. Wis. Stat. § 893.80(4) immunizes local governments and their officers, employees, or agents from liability for acts involving the exercise of discretion or judgment. In *Estate of Lyons v. CNA Insurance Cos.*,

207 Wis. 2d 446, 457, 558 N.W.2d 658 (Ct. App. 1996), the Court of Appeals extended Wis. Stat. § 890.80(4) immunity to government contractors. In that case, the Court concluded a contractor should not bear liability when "simply acting as

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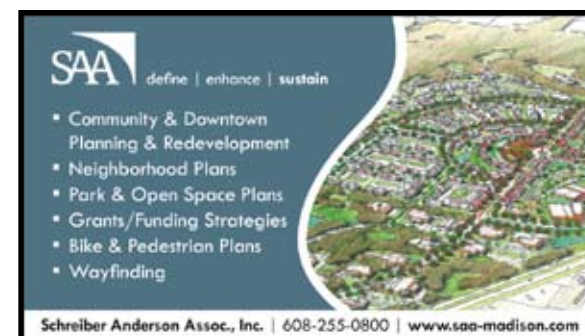
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an 'agent' of governmental authorities who had retained ultimate responsibility" for a project. An independent government contractor is an agent for purposes of Wis. Stat. § 893.80(4), and is therefore entitled to immunity, if: (1) the governmental authority approved reasonably precise specifications; (2) the contractor's actions conformed to those specifications; and (3) the contractor warned the supervising governmental authority

about possible dangers associated with those specifications that were known to the contractor but not to the governmental officials.

In this case, the Court of Appeals determined that Pember met the Lyons test and was therefore entitled to governmental immunity. As noted by the Court of Appeals, "if the City of River Falls had placed the barricades at the Main Street-Maple Street intersection itself rather



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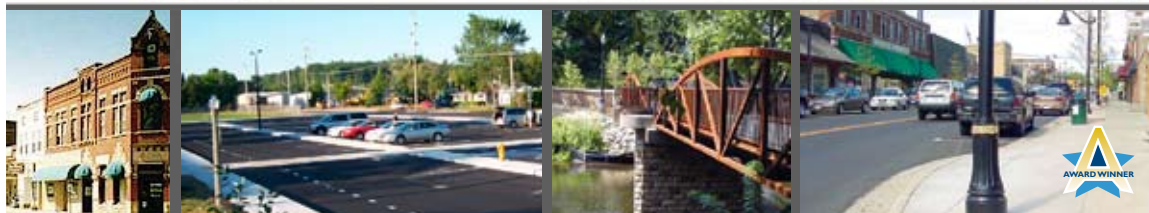
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than delegating this task to Pember, it would be immune from suit pursuant to § 893.80(4).” It was therefore appropriate to apply the immunity to Pember. The case is *Bronfeld v. Pember Companies, Inc.*, and is recommended for publication.



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