

# WAPA NEWSLETTER



American Planning Association  
Wisconsin Chapter

*Making Great Communities Happen*

A Publication of the Wisconsin Chapter of the American Planning Association

## Green Tier Legacy Communities - A New Pathway to Sustainability

BY STEVE HINIKER

EXECUTIVE DIRECTOR, 1000 FRIENDS OF WISCONSIN

Communities in Wisconsin will soon have a new program to help them achieve sustainability objectives, thanks to a collaboration between 1000 Friends of Wisconsin, the Wisconsin League of Municipalities, the UW Center on Wisconsin Strategy and the Wisconsin Department of Natural Resources.

The four organizations came together to take advantage of the state's Green Tier program to develop a charter that helps communities set sustainability goals and receive technical assistance, recognition and help with grants to achieve those goals. The voluntary program is intended to complement—not replace—ongoing sustainability activities such as The Natural Step or other sustainability pathways.

The Legacy Community is a legally binding agreement between a municipality and the state that sets a pathway for communities to take actions and share information to achieve superior environmental performance in either water quality or general sustainability practices. The charter is designed to improve a municipality's impact on the environment, such as reducing green house gas emissions, reducing energy use, and developing a transportation system that improves transit service and walking and biking opportunities. All policies need to be consistent with and complimentary to the municipality's Comprehensive Plan.

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WAPA purchased the AICP Exam Review CDs offered by the APA Chapter Presidents' Council. We will give away the CDs for **free**. Contact Nancy Frank to reserve your copy: [frankn@uwm.edu](mailto:frankn@uwm.edu).

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:

Nancy Frank, WAPA News Editor  
Chair, Department of Urban Planning  
School of Architecture and Urban Planning  
University of Wisconsin--Milwaukee  
P.O. Box 413  
Milwaukee, WI 53201-0413  
(414) 229-5372  
(414) 229-6976 (fax)

Email: [news@wisconsinplanners.org](mailto:news@wisconsinplanners.org)

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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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President, Gary Peterson, AICP  
608-231-1199  
[plannergary@sustainablegary.com](mailto:plannergary@sustainablegary.com)

Past President, Rollie Tonn, AICP  
262-567-3888  
[tonn41@ameritech.net](mailto:tonn41@ameritech.net)

Vice Pres. of Prof. Dev., Nancy Frank, AICP  
414-229-5372 / 414-229-6976 (fax)  
[frankn@uwm.edu](mailto:frankn@uwm.edu)

Vice Pres. of Chapter Affairs, Brian Ohm, AICP  
608-262-2098 / 608-262-9307 (fax)  
[bwohm@facstaff.wisc.edu](mailto:bwohm@facstaff.wisc.edu)

Secretary, Lawrence Ward, AICP  
608-342-1713 (office) / (608) 342-1220 (fax)  
[wardla@uwplatt.edu](mailto:wardla@uwplatt.edu)

Treasurer, Connie White  
608-294-5006 / 608-259-0084 (fax)  
[cmwhite@hntb.com](mailto:cmwhite@hntb.com)

Director at Large, Carolyn Esswein, AICP,  
414-266 9221 / 414-259 0037 (fax)  
[Carolyn.Esswein@graef-usa.com](mailto:Carolyn.Esswein@graef-usa.com)

Director at Large, David S. Boyd, FAICP  
608.356.2771 / 800.362.4505 phone  
608.356.2770 fax  
[dboyd@msa-ps.com](mailto:dboyd@msa-ps.com)

N.W. District Representative, Dennis Lawrence, AICP  
715-849-5510 x304 / 715-849-5110 (fax)  
[dlawrence@ncwrpc.org](mailto:dlawrence@ncwrpc.org)

S.E. District Representative, Nikki Jones,  
262/797-2445 / 262/780-4605 (fax)  
[njones@newberlin.org](mailto:njones@newberlin.org)

N.E. District Representative, vacant

S.W. District Representative, Dan Rolfs, AICP  
608-267-8722  
[drolfs@cityofmadison.com](mailto:drolfs@cityofmadison.com)

Planning Official Development Off., Anna Haines  
715-346-2386 / 715-346-4038 (fax)  
[ahaines@uwsp.edu](mailto:ahaines@uwsp.edu)

Certification Maintenance Coordinator  
Linda Stoll  
UW - Stevens Point  
715-346-4853 / 715-346-4038 (fax)  
[linda.stoll@uwsp.edu](mailto:linda.stoll@uwsp.edu)

WAPA Conference Coordinator  
Jessica Barman  
MSA Madison Office  
608-242-6609

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UW - Madison

Adam Smith  
262-705-3847  
[ansmith5@wisc.edu](mailto:ansmith5@wisc.edu)

UW - Milwaukee

Penelope Gabor  
[penelope.gabor@gmail.com](mailto:penelope.gabor@gmail.com)

## National Officers

Michael A. Wozniak, AICP  
AICP Director, Region IV  
(651) 442-7629  
(866) 602-4999

APA National—Washington: (202) 872-0611  
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**Visit the WAPA webpage for up-to-date news and information between issues of the WAPA Newsletter.**

Participating municipalities will be encouraged, but not required to pursue both tracks.

Municipalities subscribing to the sustainability component of the charter will achieve superior environmental performance by using a variety of suggested strategy options that may include:

- 'Build and Buy' green strategies and programs.
- Strategies to promote environmental stewardship in the private sector.
- Transportation policies that improve bikability and walkability.
- Land use policies and actions that identify, cleanup and redevelop brownfield sites, promote street connectivity and mixed-use development, and protect natural resources.
- Energy efficiency improvements
- Waste and materials management policies and the use of renewable

fuels to reduce total energy consumption throughout the community.

- Local government practices that encourage municipal employees to conserve energy, preserve the environment, and decrease greenhouse gas emissions from municipal facilities, services, and vehicle fleets.
- Encourage residents and businesses to adopt sustainable practices.

Municipalities subscribing to the water quality component of the charter will achieve superior environmental performance by addressing wastewater, stormwater, drinking water, wetlands, and other water issues in a holistic, watershed based manner. Municipalities will prepare, evaluate and implement an overall watershed plan that integrates the municipality's full range of water resources issues. This may include the following elements:

- Wastewater management, including treatment plant compliance, collection system maintenance and long term sewer service area planning.
- Stormwater management including stormwater quality controls, stormwater quantity and floodplain management, and integration with DNR permitting.
- Integration of rural water management issues, including agricultural drainage ditch issues and agricultural nonpoint runoff into urban lands within the watershed.
- Navigable waters, wetlands and shoreland management including associated habitat issues.
- Groundwater management issues including management of groundwater quality, groundwater quantity and regional recharge issues.
- Public water supply issues including drinking water quality and water



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conservation.

- Water budget issues, including the overall evaluation of water quantity and quality entering and leaving the watershed considering ground and surface water issues.

Communities may subscribe to one or both of the available tracks.

The Department of Natural Resources has established a resource team of agency experts to assist communities in identifying and implementing strategies to achieve locally set goals. The resource team includes key agency staff in the programs related to air management, forestry, water regulation, environmental remediation, energy and cooperative assistance. The DNR will provide access to senior agency officials so that barriers to sustainable practices may be identified and removed.

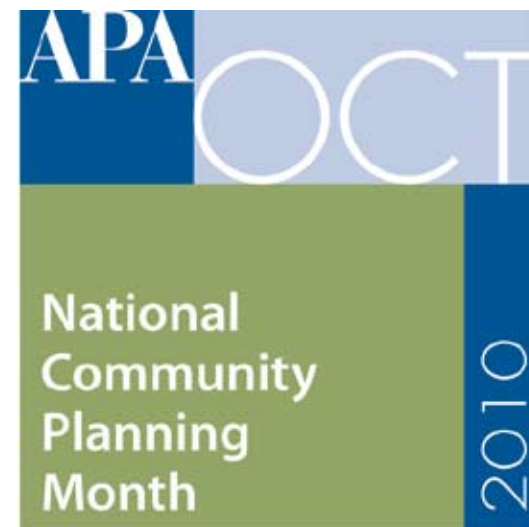
Participants in the water track of the Legacy Communities will have additional regulatory flexibility inherent in existing water regulatory programs to address specific standards or requirements of a particular water program.

The Legacy Community Charter is established with the overall goals of enhancing the environmental quality within a community, reducing local costs associated with energy, water and related infrastructure costs and making the community a more desirable place to live.

Communities or individuals wanting to learn more about the program are encouraged to contact Steve Hiniker, Executive Director of 1000 Friends of Wisconsin at [Hiniker@1Kfriends.org](mailto:Hiniker@1Kfriends.org) or call at 608-259-1000

## Celebrate Planning Month

Each October, APA celebrates National Community Planning Month to raise the visibility of the important role of planners and planning in communities across the U.S. APA has developed a web-full of ideas and materials to reach



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out to your residents, students, the media, and elected officials to elevate the visibility and appreciation for good planning in your community.

The APA website ([www.planning.org/ncmp](http://www.planning.org/ncmp)) has links to the National Community Planning Month logo, posters, a sample proclamation, PowerPoint presentation templates, fact sheets, and a communication guide.

Here are just a few of the ideas that planners have implemented in other communities during October.

Ask your mayor, city council, or county executive to declare October Community Planning Month in your area. Ask your state legislator to pass a resolution designating it Community Planning Month in your state. Tailor these sample proclamations to suit your purposes. APA has a sample proclamation available in the National Community Planning Month toolkit.

Meet with your Congressional Representative in his or her district office.

Work with elementary, high school, or local college students and show them that their actions and ideas can help shape their community now. APA has a whole suite of materials, including resources for educators, a poster contest, a Safe Routes to School activity, and GIS for Kids. Make a date with an educator or local youth group, share one or more of these resources with them,

and agree on how you can work together to enrich the curriculum or after school programming by introducing young people to planning. For more information, go to <http://www.planning.org/ncmp/education/k12.htm>

Show your community the connection between planning and great places. APA's Community-Wide Audio/

Web Conference [Great Plans, Great Communities](http://www.planning.org/ncmp/greatplansgreatcommunities) provides a striking introduction to planning and makes the case for the importance and wide-ranging benefits of planning. See a preview of the presentation below. Go to <http://www.planning.org/ncmp/yourcommunity/index.htm> for the link to the video.



## APA Tweets about Wisconsin Planners

By NANCY FRANK

I am tooting my horn about APA's tweet. On September 9, APA sent out

this tweet to its Twitter followers about Wisconsin planners Michael Bayer, Jason Valerius, and Nancy Frank (yes, me!)

APA posted a video interview with us at the National Planning Conference in New Orleans last spring. The interview is



about our new book, *Becoming an Urban Planner*.

Both Mike and Jason are longtime Wisconsin residents and alumni of the MUP program at UWM. Mike now works in Maryland for ERM, while Jason is here in Wisconsin with MSA-PS.

To learn more about our book, watch the APA video: <http://tinyurl.com/nxh739>

### Did you know . . .

. . . the WAPA webpage posts RFPs and RFQs related to planning work.

Email to:

[wapa@wisconsinplanners.org](mailto:wapa@wisconsinplanners.org)

. . . you may post planning jobs for free on the WAPA webpage.

Email to:

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. . . WAPA is always looking for members (or their friends, relatives, and neighbors) willing to volunteer to make WAPA stronger and provide better service to our members.

Email Gary Peterson:

[petersong@sustainablelegacy.com](mailto:petersong@sustainablelegacy.com)

### WAPA Endowment Donation Card



The WAPA 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.

WAPA 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 WAPA Treasurer Connie White with your contribution.

Your gift is tax deductible.

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# Law Update

## Court Decisions

Brian W. Ohm, JD, Vice-President of  
Chapter Affairs  
c/o Dept. of Urban & Regional Planning,  
UW-Madison  
925 Bascom Mall  
Madison, WI 53706  
[bwohm@wisc.edu](mailto:bwohm@wisc.edu)

July Update

## Wisconsin Supreme Court Opinions

### Personal E-mails Not Subject to Open Records Law

In *Schill v. Wisconsin Rapids School District*, 2010 WI 86, the Wisconsin Supreme Court held that personal e-mails are not subject to disclosure under the Wisconsin Public Records Law. The case is one of first impression in Wisconsin, dealing with a form

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of communication that was not available at the time the Public Records Law was passed. The facts involved a request by a third party to have the Wisconsin Rapids School District release all the emails of several teachers for about a six week period of time. The teachers did not object to the release of work-related e-mails. The teachers, however, did object to the release of personal e-mails—e-mails that contain only personal information whose contents have no connection to a government function. The School District had a written Internet Use Policy that permits employees to use their school e-mail accounts for occasional personal use limited to times that did not interfere with the user's job responsibilities. There was no allegation that the teachers violated this policy. The Court noted that the case did not involve the right of the government employer to monitor, review, or have access to the personal e-mails of public employees using the government e-mail system. The Court concluded that the Public Records Law did not require the disclosure of the purely personal emails and remained the case to the circuit court to enjoin the School District from releasing the contents of the personal emails.

Subsequent to the Court's decision the Wisconsin Attorney General's office issued a memorandum with the following guidance for following the law: "If

there is any aspect of the e-mail that may shed light on governmental functions and responsibilities, the relevant content must be released as any other record would be released under the Public Records Law. If a document contains both personal and non-personal content, a records custodian may redact portions of the document so that the purely personal information is not released." The full memorandum is available at: [http://www.doj.state.wi.us/news/files/Memo\\_Interest-edParties-Schill.pdf](http://www.doj.state.wi.us/news/files/Memo_Interest-edParties-Schill.pdf).

### **Budget Transfer of Funds from the Injured Patients and Families Compensation Fund Constitutes a Taking**

While not a planning case, in *Wisconsin Medical Society, Inc. v. Morgan*, 2010 WI 94, the Wisconsin Supreme Court decided that the section of the 2007-2009 state budget (2007 Wis. Act 20) transferring \$200 million from the Injured Patients and Families Compensation Fund to the Medical Assistance Trust Fund was an unconstitutional taking of private property without just compensation. (The Injured Patients and Families Compensation Fund was

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concluded that the health care providers have a constitutionally protected property interest in the Fund. The Court remanded the case to the circuit court requiring that the State replace the money removed from the fund, plus interest, and permanently barred the State from transferring money out of the Fund.

## Wisconsin Court of Appeals Opinions

### Challenge to Denial of Rental Assistance Must First Exhaust State Remedies.

*Collins v. City of Kenosha* involved a challenge to the decision of the City of Kenosha Housing Authority (KHA) upholding the termination of Collins's federally funded rent assistance. Collins never sought the state-proved remedy of certiorari review within 30 days of the final determination. Rather, more than two years after the denial, she brought a federal 42 U.S.C. § 1983 claim of deprivation of procedural due process. The Wisconsin Court of Appeals denied the claim stating that Collins should have pursued the remedy available under state law. The case is recommended for publication in the official reports.

established in 1975 to help cover medical malpractice claims.) The case is an important reminder that the "takings" provision of the Wisconsin Constitution ("[t]he property of no person shall be taken for public use without just compensation therefor") applies to all types of property, not just land (real property). The Court's opinion notes that there was no dispute that the state took money from the Injured Patients and Families

Compensation Fund, did so for a public use (the Medical Assistance Fund) and did not compensate the Injured Patients and Families Compensation Fund. The sole issue was whether the health care providers have a property interest in the fund. Since the Injured Patients and Families Compensation Fund was established by the legislature as a formal trust fund held by the health care providers as named beneficiaries, the Court

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## Federal Court of Appeals for the Seventh Circuit Opinions (includes Wisconsin)

### RLUIPA

In *River of Life Kingdom Ministries v. Village of Hazel Crest*, the Federal Court of Appeals for the Seventh Circuit considered the proper standard for applying the equal-terms provision of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc. That provision states that “no government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” § 2000cc(b)(1).

The River of Life church wanted to relocate to a part of the Village of Hazel Crest, Illinois, which is zoned commercial. The commercial zoning prohibits non-commercial uses such as churches and a variety of secular noncommercial uses. The church sued the Village under RLUIPA. The Seventh Circuit Court did not look favorably on the challenge and announced a new test. Unlike other Federal Circuit Courts that look to the regulatory purpose of the ordinance

for determining if religious institutions are treated on equal terms with secular institutions, the Seventh Circuit decides to focus on zoning criteria. According to the Court: “‘Purpose’ is subjective and manipulable, so asking about ‘regulatory purpose’ might result in giving local officials a free hand in answering the question ‘equal with respect to what?’ ‘Regulatory criteria’ are objective and it is federal judges who will apply the criteria to resolve the issue.” Looking at the criteria of the Village’s commercial zoning district that excluded both secular and religious noncommercial uses, the

Court concluded that the religious institutions were treated on equal-terms with the secular institutions prohibited in the district. The Court also noted the challenges posed by its test: “Of course we can’t be certain, or even confident, that a particular zoning decision was actually motivated by a land-use concern that is neutral from the standpoint of religion. But if religious and secular land uses that are treated the same (such as the noncommercial religious and secular land uses in the zoning district that River of Life wants to have its church in) from the standpoint of an accepted zoning



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criterion, such as “commercial district,” or “residential district,” or “industrial district,” that is enough to rebut an equal-terms claim and thus, in this case, to show that River of Life is unlikely to prevail in a full litigation.”

### August Update

## Wisconsin Court of Appeals Opinions

### Jurisdictional Offer Needed for Litigation Expenses Fees in Condemnation Cases

The American Transmission Company (ATC) sought an easement from the Klemms to place high-voltage electric transmission lines across their property. ATC obtained an appraisal, which ATC provided to the Klemms, indicating the easement would decrease the value of their property by \$7,750. The Klemms agreed to a negotiated offer of \$7,750 compensation, with the understanding they had the right to appeal the amount. Accordingly, the Klemms conveyed the requested easement, which was recorded along with a certificate of compensation. The Klemms subsequently exercised their right to appeal and the condemnation commission awarded the

Klemms just compensation in the amount of \$10,000. The Klemms then sought litigation expenses pursuant to Wis. Stat. § 32.28. The circuit court held the Klemms were entitled to litigation expenses even though they accepted ATC's negotiated offer and there was, consequently, no jurisdictional offer. ATC appealed, arguing the court misinterpreted Wis. Stat. § 32.28(3)(d). Section 32.28(3)(d) of the Wisconsin Statutes provides that litigation expenses shall be awarded to the condemnee if "[t]he award of the condemnation commission ... exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least \$700 ...." (Emphasis added.) The Wisconsin Court of Appeals interpreted the plain meaning of the statute and agreed with ATC. Since the Klemms accepted the negotiated offer and there was subsequently no jurisdictional offer, the statute did not require the payment of litigation expenses.

The case, *Klemm v. American Transmission Co., LLC*, is recommended for publication in the official reports.

### **Clinic is Not Tax Exempt**

***Covenant Healthcare System, Inc. v. City of Wauwatosa*** involved an appeal by the City to the circuit court's

decision that the Clinic was a nonprofit hospital and thus a tax-exempt property under Wis. Stat. § 70.11(4m)(a). The Clinic included a 24 hour Urgent Care, services at the Clinic were provided under license of a nearby hospital, the Clinic was constructed to hospital standards, and the Clinic's services qualified for hospital-based reimbursement through Medicare. In a very fact-specific decision, the court determined that the Clinic was a doctor's office and not a hospital and therefore did not qualify for the tax exemption. The case is recommended for publication in the official reports.

### **Ordinance Regulating Withdrawal of Groundwater Preempted by DNR's Authority**

In ***Lake Beulah Management District v. Village of East Troy***, the Wisconsin Court of Appeals held that a 2006 ordinance adopted by the Lake Management District regulating the withdrawal of ground water was preempted by the Legislature's explicit grant of authority to the Wisconsin Department of Natural Resources (DNR) to permit the construction of certain wells. The case is a companion case to the one reported in the June case law update. The dispute

involves a challenge by the Lake Beulah Management District to the Village of East Troy to operate an additional municipal water well. Following DNR's approval of the well, and the commencement of litigation related to that approval, the Lake Management District adopted an ordinance entitled "An Ordinance Prohibiting the Net Transfer of Groundwater and Surface Water from Lake District Hydrologic Basin." The Ordinance prohibited the transfer or diversion of surface water or groundwater out of the District's jurisdiction without a permit. The Village refused to comply with the ordinance, arguing it was preempted by State law. This case involved the efforts by the Lake Management District to get the Village to comply with its ordinance. The Court of Appeals agreed with the Village that the Ordinance was preempted by state law. According to the Court of Appeals: "If a municipal body could make well construction contingent upon its own permit, based on its own standards, a DNR permit would be wholly insignificant, and the legislature's stated goal of creating a uniform scheme to supervise the extraction of groundwater would be eviscerated. Therefore, the Ordinance conflicts with the general laws of the state and is preempted by the state's delegation of authority to the DNR."



## Legislative Update

The legislature has been on recess. The Spring issue of this newsletter and the WAPA Law and Legislation webpage provides an overview of the 2009-2010 legislative session.

Steve Hiniker has posted a list of all candidates to the Senate and Assembly on the WAPA website, with their party affiliations and incumbency status.

<http://www.wisconsinplanners.org/law/index.htm>