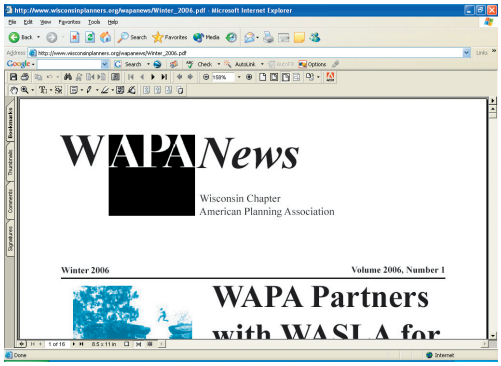
WAPA News

Wisconsin Chapter
American Planning Association

Spring 2006 **Volume 2006, Number 2**



WAPA News has been available in pdf format on the WAPA website for many years. Now, WAPA is moving to publishing WAPA News exclusively as an online edition.

In this issue . . .

WAPA News Goes Electric

Technology has changed our professional lives dramatically in the last couple of decades. WAPA is responding to these changes by joining the e-revolution. This will be the last print issue of *WAPA News*. Starting with the summer issue, *WAPA News* will be published exclusively in electronic format.

The WAPA board reached this decision for a number of reasons. First, printing and postage are expensive. Each issue costs almost $1000 to print and mail to over 600 members. Second, as planners, we understand the importance of resource conservation. WAPA can help conserve resources by using less paper and ink. A paper newsletter also poses constraints on space and the use of color. With an electronic newsletter, more stories can be printed in greater detail. And illustrations can be included in color rather than black and white.

So how will this work? The newsletter will be made available on the web page as an Adobe Acrobat (pdf) file that members (and the public) can download. When each issue is posted to the web page, the editor will send out an email message that alerts you to the availability of the newsletter, includes the direct web link to it, and briefly summarizes the contents of the newsletter.

Important! In order for you to receive the email reminding you that the newsletter has been published to the web, you need to keep your email address up-to-date through APA (see instructions below).

In order to make it easier to read the pdf file on your computer screen, the format of the newsletter will be designed to be screen-friendly. By changing the orientation to landscape and adjusting the font size, the new electronic newsletter should be fairly easy to read without printing it out. Just click on the toolbar to select the full page view, and the newsletter page

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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 in electronic formats: Articles may be submitted on 3.5 inch floppy disks, CD-ROM, or via email. If submitting the article by email, send it to wapa@uwm.edu.

Graphics: Graphics are encouraged for inclusion with the article in paper or electronic format. Please be sure that graphics submitted in paper format are crisp and clear.

Calendar listings: Although the WAPA News is published only 4 times annually, the web page at www.wisconsinplanners.org provides instant access to information about events of interest to planners. If you are aware of an event, please contact the editor as soon as possible, preferably at least 1 week before the event. If submitting calendar events by mail, email, or voicemail, please be sure to include the sponsor of the event, the date, time, and place, and the title of the event, along with a description including any admission fees or limitations in availability.

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Universal Design and Visitability Conference, July 13-14

Planners, designers, city officials, policy-makers, disability professionals, and others

Join us at the Universal Design & Visitability Conference: From Accessibility to Zoning (July 13-14, 2006). This conference is available on-line or on-site. (Preliminary program attached).

As you can see in the preliminary program, the conference has a distinguished set of keynote speakers from around the world, and encompasses a variety of areas (zoning, design, public policy, and advocacy) across different scales and settings (residential, institutional, city/regional), such as: Planning public places, Affordable Housing, Master planning for universal design, Planning for an aging population, Educating planners and designers, Public policy for access & equity, Zoning and Building Codes.

The conference registration fee is $100 or $40 for students. Registration information is available at http://knowlton.osu.edu/ped/udprogram.htm

The Universal Design & Visitability: from Accessibility to Zoning conference is presented by The Ohio State University's Knowlton School of Architecture and ADA Coordinator's Office with support from the National Endowment for the Arts and in collaboration with The Kirwin Institute for Race and Ethnicity, The John Glenn Institute for Public Service and Public Policy, The American Planning Association, The Great Lakes ADA & Accessible IT Center, ADA-OHIO, Mid-Ohio Regional Planning Commission, Mid-Ohio Board of Independent Living, and The Ability Center of Greater.

JJR Receives ASLA Award for Oshkosh Riverfront Plan

The Wisconsin Chapter of ASLA presented JJR with an Honor Award for the Oshkosh Riverfront Development landscape architecture and waterfront planning. Dan Williams, ASLA, APA, CNU, accepted the award at the joint conference of WIASLA/WAPA in Wisconsin Dells on April 6, 2006. Dan is currently the Wisconsin ASLA Chapter President and acted as Project Manager. Bill Brose was the Principal in Charge.

Development of the plan coincides with other recent planning and redevelopment efforts by the City to create a vibrant urban riverfront that promotes downtown living, working, shopping, and entertainment. The design guidelines will positively influence the Downtown and strengthen the relationship of contiguous property owners with the river.

The Role of Affordable Housing & Community Development

Lecture by Leo Ries, Program Director
Milwaukee Local Initiatives Support Corp. (*LISC*)
March 1, 2006
Smart Growth Lecture Series, UW-Milwaukee

Reported by Russell Knetzger, AICP, Milwaukee

In 1977, Congress enacted the "Community Reinvestment Act", This legislation was championed by former Wisconsin Senator Bill Proxmire and required banks to meet the credit needs of all income groups in the communities in which they do business, particularly via home loan mortgage lending.

Partly in response to this legislation and partly in response to the growth the nonprofit community development corporations ("CDCs") around the country, the Ford Foundation facilitiated the creation of ***"LISC"*** – the ***Local Initiatives Support Corporation*** in 1979, a national organization that would funnel know-how and finances to local initiatives, to rehabilitate old, run-down housing, and get them into the hands of home owners.

What resulted was a network of 35 "branch offices" of LISC in urban areas around the country, as well as program to support similar efforts in rural areas. The job of local LISC offices is to be a bridge between the financial and professional resources found in local banks, corporations, foundations, and the resident groups who working to improve housing and neighborhood conditions (i.e. "local initiatives") in their local communities.

Leo Ries is the director of the Milwaukee LISC, and has a staff of five. For Ries this is a natural position both because of his faith, and his past work experience. Before he started with LISC 5-1/2 years ago, he was ten years with the City of Milwaukee Dept. of City Development doing similar work.

While the primary focus of LISC has historically been housing, the organization is now also focusing on commercial and community facility development and even some industrial rehab., through the investment of New Markets Tax Credits. One project, "*Summit Place*" office spaces, made out of vacant Allis Chalmers Mfg. Co. industrial buildings, is referenced in a companion article about West Allis, Wisconsin, this issue. Being drawn into retail commercial rehabilitation is an even more natural outgrowth of "treating the whole neighborhood", not just the housing portion. Picking up on the theme and concepts of the national and state *Main Street Programs,* the Milwaukee LISC is helping apply those principles to four Milwaukee business strips: Burleigh

David Boyd, his wife Lisa, and WAPA president Gary Peterson at David's initiation into the College of Fellows of AICP in April at the APA National Conference in San Antonio. David serves on the WAPA Board and is Senior Planner with MSA-PS in Madison, Wisconsin.

Street, N. 27th Street, National Avenue, and Lincoln Avenue.

What LISC has to do in each case, either alone or in tandem with local government planning and grant offices, is to identify local partners who are willing to take the lead in implementing a neighborhood revitalization strategy. Often, these resident driven groups become real estate developers in areas that are avoided by for-profit developers. These CDCs are a vehicle for receiving public and private grant funds which are used by buy, rehabilitate blighted properties which are then sold, ideally, to first-time, low and moderate income home-buyers.

In recent years the work of LISC and its partners has gotten harder because of the fast runup in housing

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Connecticut Takings Case Strikes a Nerve Across America

A Lecture by Brian W. Ohm, J.D.

Smart Growth Lecture Series, UW-Milwaukee

Reported by Russell Knetzger, AICP, Milwaukee

In a February 8, 2006 lecture to the Planning Department at UW-M, Brian Ohm, a faculty member in the Urban and Regional Planning program and UW – Madison and a WAPA board member, observed that approximately two-thirds of the states across America have bills pending in their legislatures to undo or limit to some degree the essence of the New London, CT case (Kelo v.City of New London, 125 S.Ct. 2655, 162 L.Ed.2d 439 (2005) . That case has struck a

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Law Update

By Michael R. Christopher, WAPA Legal Counsel
DeWitt, Ross, and Stevens S.C.
Madison, Wisconsin

Legislative Reaction to *Kelo v. City of New London:* Is There An Appropriate Response?

In my remarks at the WAPA Spring Conference in Wisconsin Dells on April 7, 2006, I discussed Wisconsin's legislative response to *Kelo* which I characterized as being fairly moderate as compared to the strident reaction to this decision in many parts of the country. The Wisconsin legislation which has now become 2005 Wisconsin Act 233 and became effective on April 13, 2006, prohibits the condemnation of property that is not blighted if the condemnor intends to convey or lease the condemned property to a private entity. It is quite possible that in the near future there may be additional changes made to the condemnation laws in Wisconsin that will limit in some way municipalities' attempts to achieve private redevelopment. I found it quite helpful to learn about the focus of Congressional and state legislative efforts in response to *Kelo*.

There are numerous Congressional proposals that have been introduced that would prohibit the use of eminent domain for economic development purposes. Within a week of the decision, Senator Cornyn (R-Texas) introduced S. 1313 termed the "Protection of Homes, Small Businesses, and Private Property Act of 2005." In the House, Representative Sensenbrenner (R-Wisconsin) has introduced H.R. 3135 and 4128 termed the "Private Property Rights Protection Act of 2005." On the other side of the political aisle, Senator Dorgan (D-North Dakota) has introduced S. 1704 which is the Senate version of the Sensenbrenner bill and Representative Pallone (D-New Jersey) has introduced H.R. 4088 termed "Protect Our Homes Act." Some of these

bills have been the subject of Congressional hearings but the crunch of business on other fronts has resulted in limited legislative progress.

The state legislatures have joined the frenzy and have been more successful than the Congress in limiting condemnation authority. The focus of the legislation can be categorized as follows:

- Legislation condemning *Kelo*.
- Proposals focusing on a blight requirement.
- Prohibiting eminent domain for economic development.
- Redefining public use.
- Imposing additional procedural requirements.
- Increasing compensation for property owners.
- Constitutional amendments that limit condemnation authority.
- Task forces and special commissions to recommend changes.

For example, bills have been introduced in at least 20 states – including in Wisconsin – that would prohibit the use of eminent domain for economic development purposes. There are many variations to this legislative goal which include limiting the types of developments that do not qualify as permissible public uses for eminent domain, prohibiting municipalities from condemning private property to sell or to lease to a private entity, and expanding property and sales tax bases as part of economic development. There are some states which have determined economic development to be off limits entirely. Some states such as New York and Pennsylvania have added additional procedural requirements where homes are to be taken for economic development purposes. Legislation has been introduced in many states – including in Wisconsin – which requires that business income be factored into the amount of compensation.

Some state legislation is particularly creative. For example, a New York bill would require 125 – 150% of the fair market value be paid to the property owner for compensation when eminent domain is used to economic development. In Missouri, if the property is not used for the specific intended use, the original owner has a right to buy the property back. In Idaho, legislation would require a relocation payment for businesses based on the net earnings of that business.

APA Legislative Policy Conference

Michael Christopher represented WAPA at the American Planning Association 2006 Legislative and Policy Conference in Washington earlier this year. The conference presented many significant and stimulating panel discussions. You can access much of the information covered at the conference by going to the APA website at www.planning.org to review valuable materials on such subjects as "Planning for a Sustainable Energy Policy," "New Challenges in Federal Housing Policy," "The Future of CDBG and Community Development Programs," and "Searching for Causes of City and Suburban Decline and Revival," among other subjects.

Evaluating the national and state-by-state legislative reactions to *Kelo*, there are some themes that are apparent. First, legislators want to "connect" with homeowners. Second, 2005 was the year of reform proposals; 2006 will tell how real these proposals are. Third, the easiest "stall" which has been accomplished by Executive Order and in legislation is to establish study commissions/task forces to recommend changes. This reaction may represent the most prudent course rather than action based on emotions.

Although Wisconsin does have a legislative scheme which minimizes the chances of abuse in the condemnation process due to a clear legislative definition of "blight" and having in place strong procedural protections for property owners, it is not wise to simply rest on our laurels since the

political tide in support of limiting condemnation authority is quite strong.

The Federal Budget Outlook: Will Planning and Land Use Take A Back Seat?

The FY 2006 federal budget proposal would have replaced the CDBG program.

In the President's FY 2006 Budget proposal, 150 federal programs are proposed to be eliminated or cut with a projected cost savings of $20 billion. Most of these programs were grant programs for state and local governments. The choices available for expenditure decreases is limited in that more than two-thirds of the budget is now allocated to mandatory/entitlement spending while that spending was less than 50% in the early 1960s.

A portion of the budget that directly impacts planning at the local level, was the attempt last year to eliminate 18 programs, including CDBG and EDA and to replace it with "Strengthening America's Communities." If SAC had passed, federal grants would have been reduced from $5.5 billion to $3.7 billion. The focus was to create a new unified grant program that would have emphasized job creation and private sector leveraging rather than community development. SAC was defeated last year but it is likely to be on the front burner again in 2006 and beyond.

Rather than the wholesale change in community development programs that the original SAC proposal would have brought, there were more modest cutbacks such as a $400 million cut for the CDBG program and a reduction in Brownfields Development from $24 million in FY 2005 to $10 million in FY 2006. Some programs in the planning area were hit even harder like the Rural Housing and Economic Development Program which went form $24 million in FY 2005 to $1 million in FY 2006.

It is anticipated that in FY 2007, the Congress will be considering a "SAC-Lite" proposal where the focus will be on reforming CDBG rather than eliminating it by restricting its funds to "rich communities." Also, there will be formula changes that will focus on increasing the effectiveness of the CDBG program and reviewing eligible uses of CDBG funds. All in all, if the cost of planning and economic development are only slightly reduced in the future, this will represent a major victory for the planning community.

Court Watch

The pending cases summarized below could have major potential consequences for land use attorneys and planners in Wisconsin. Below is a preview of the issues.

Continued on page 7

Can A Town Adopt A Moratorium On The Land Division Approval Process?

Analysis

The case of *Wisconsin Realtors Ass'n, Inc., et al. v. Town of West Point* was filed in Columbia County Circuit Court on February 21, 2005, so it is at a very early stage. However, the question of whether a municipality can legally establish a moratorium on land divisions until they complete their comprehensive planning process is of great significance to land use lawyers and planners, so I plan to monitor this case closely as it winds its way through the court system.

Based on the allegations contained in the plaintiffs' complaint, the Town of West Point in Columbia County adopted an ordinance on September 20, 2005, which imposed a moratorium on the acceptance, review and approval by Town officials of any application for a land division or subdivision received by the Town after the effective date of the ordinance. The intent of the ordinance was to halt development until an updated comprehensive plan pursuant to Wis. Stat. § 66.1001 was implemented by the Town Board. The moratorium on development expires 18 months from the effective date of the ordinance unless an earlier or later date is subsequently adopted. Although the Town of West Point does not have zoning authority, it may have the authority to consider land divisions pursuant to their police powers. Many municipalities have either adopted or are considering imposing moratoriums on development approval for a variety of reasons, so the ultimate decision in this case may become an important precedent.

How Far Can Wetlands Be Regulated?

Summary

The central question is whether federal authority to regulate streams and wetlands ends along the network of rivers, streams, canals, and ditches or does it reach to all of the veins and arterioles of navigable waters and all the wetlands that drain into them? In other words, does the jurisdiction end with the waterways that are actually navigable and the wetlands abutting them, or does that jurisdiction go further?

Analysis

More than one-half of the nation's streams and wetlands could be removed from the protections of the Federal Clean Water Act if two legal challenges started more than a decade ago by two Michigan developers are supported by a majority of the newly constituted Supreme Court.

One case involves a developer who wanted to sell a wetland for a shopping center and in preparation filled it with sand without applying for a permit. The companion case was brought by a would-be condominium developer who applied to the Army Corps of Engineers for a permit to fill a wetland and was denied. On February 21, 2006, arguments were heard by the high Court in the *Rapanos* and *Carabell* cases which pitted developers and their industrial, agricultural, and ideological allies against both the Solicitor General and a who's who of environmental lawyers over the scope of one of our most fundamental environmental laws. The ultimate decision will determine how many of the country's approximately 100 million acres of wetlands have a close enough connection to regulated waters to fit under the same regulatory umbrella.

The two case raise questions that take aim at the constitutional and legal underpinnings of the federally run

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WAPA

2006

Planning Awards

City of Evansville Comprehensive Plan

Category: Planning Document

Awarded to: City of Evansville with Omnni Associates

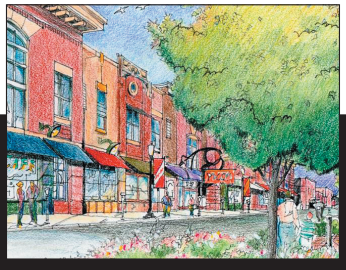
The City of Evansville, with Omnni Associates, developed a Comprehensive Plan for the City that focuses on the following: historic preservation, balancing growth with the desire to maintain the City's small town atmosphere, and providing new residential development that is attractive to people who want to live in an urban setting with close proximity to the rural environment. The three year planning process included extensive public participation with a Community Interactive Strategic Planning Conference at the beginning. The City has already completed several of the plan objectives.

City of River Falls Comprehensive Plan

Category: Planning Document

Awarded to: City of River Falls

The City of River Falls prepared a Comprehensive Plan that embraces all segments of the community and serves as a guide for the City and surrounding regions. The plan is a statement of direction for physical development and conservation of the City. It reflects the community's vision to be a people-oriented, enduring, vibrant, and environmentally sensitive place. The plan incorporates 13 overall themes in response to public input. The themes influenced the plan goals, policies, and implementation strategies. A detailed staging plan addresses utilities, roads, trails, park locations, and priorities for development and



Annual Conference 2006

City of Eau Claire Comprehensive Plan

Category: Planning Document

Awarded to: City of Eau Claire

The City of Eau Claire developed a Comprehensive Plan that is strategic as well as comprehensive. The plan identifies concerns for the long-term well-being of the community and focuses most actions to support them. Three conceptual alternatives were developed based on key issues: Actively Plan for the Region, Meet the Minimum Requirements, and Rely on the Market. After the committee discussed the alternatives a hybrid concept plan was developed. Other areas of focus include: joint cooperative planning, New Urbanism principles for future neighborhoods, and utility staging plans for future development.

Village Center Pattern Book

Category: Planning Tool

Awarded to: Planning & Design Institute, Inc. with AN Ansay Real Estate

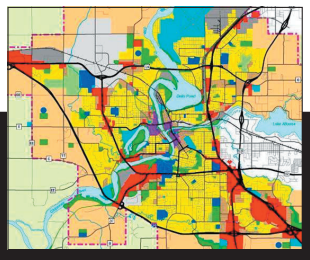
The Village Center Pattern Book is a tool that allows for innovative solutions to the complex problem of integrating deep-rooted cultural traditions with a contemporary marketplace. The book shows developers, prospective buyers, business operators, and public officials how they can accommodate new development that represents historic Luxembourg architecture and landscape. National and international significance is validated by the ongoing active participation from the Luxembourg government. The book will be used for mixed-use, multi-family, and single family developments in Belgium, Wisconsin.

Union Corners Master Plan

Category: Urban Design

Awarded to: McGrath Associates with Schreiber Anderson

Union Corners is a 15 acre, $100 million mixed-use redevelopment project on East Washington Ave. in Madison. The project involves the redevelopment of an industrial and underutilized site for the creation of a "new neighborhood." The plan calls for approximately 450 residential units, 110,000 square feet of commercial space, including a grocery, restaurant, and other retail that will serve area residents. The development team also included the following: Eppstein Uhen Architects, Engberg Anderson Design Partnership, Inc., and SGN+A. The first phase of construction is scheduled for late 2006.



system that controls the nation's web of waterways. The developers argue that the regulators have overreacted by asserting jurisdiction over ditches and wetlands far from the large waterways over which Congress has clear authority.

In addition, the cases bring a cast of characters to the Court. It includes a developer who has likened environmental regulators to Nazis, a legal foundation dedicated to reigning in government and a diverse group of supporters on both sides, including the Association of California Water Agencies and the libertarian CATO Institute.

One of the key arguments of the developers is that the existing interpretation of the law infringes on the rights of states and individuals and impermissibly gives the federal government authority over "any area over which water flows, including a public street with an attached storm drain, a private lawn that drains to the street, or quite literally the kitchen sink." In response, the government, backed by major environmental groups, federal and state regulators, (including from Wisconsin) and a bipartisan group of former administrators of the Environmental Protection Agency argue that if the developers were to prevail more than one-half of the existing waterways would be eliminated from federal water pollution controls. Thus, they argue that the purpose of preserving wetlands, namely, to filter out nutrients and pollutants out of streams and to buffer against flooding, would be severely undercut. Further, they argue that "if the Court interprets the Clean Water Act as controlling only actually navigable waterways and their immediate tributaries and adjacent wetlands, then discharges of such materials as sewage, toxic chemicals, and medical waste into those tributaries would not be subject to regulation under the law."

The argument before the high Court on February 21, 2006, did not give too many clues to the justices' thinking, except that they appeared to be impatient with the apparent inability of either side to come up with a bright-line rule that would guide regulators and landowners as to what wetlands are within the ambit of the Corps of Engineers' jurisdiction. Predictably, Justice Scalia said that he would limit federal jurisdiction to the literal language of the Clean Water Act. Justice Souter, on the other hand, pointed out that that interpretation would give upstream polluters a free hand, undeterred by regulation. Chief Justice Roberts seemed to be genuinely seeking a viable middle ground, pointing out that "at some point the definition of tributary has to have an end." He wondered how to determine if a stream claimed to be a tributary of a navigable body of water in fact has a significant nexus to that waterway. He asked that if a wetland contributes "one drop a year" to a tributary of a navigable body of water, would that be enough to make it subject to regulation?"

It is quite likely that these cases will be decided by a slim majority. Whatever the outcome, it promises to have significant impact as to how far streams and wetlands can be regulated in Wisconsin.

There is one other matter pending in Wisconsin which I want to alert you to.

Can A City Be Subject To Civil Rights Violations During The Course Of A Development Project?

Our firm currently represents developers in the City of Sturgeon Bay who have prevailed at the trial court level regarding a Title 42, Section 1983 claim against the City which will likely be appealed.[1]

Summary

What may appear to be a contract dispute regarding a development can turn into a civil rights violation when the city is found to have engaged in outrageous conduct.

Analysis

There are certain situations that allow citizens who believe that they have been harmed by municipalities to make successful claims pursuant to Title 42, Section 1983, which allows them to collect damages and attorney fees if their civil rights have been violated. Many people believe that civil rights laws apply only to racial discrimination or acts such as police brutality. This is not the case; the civil rights laws can apply to other situations as well. A recent decision in the federal district court in Milwaukee in the case of *Peninsula Properties v. City of Sturgeon Bay* is an example of that.

In this case, Sturgeon Bay made a contract in 1996 with private developers to build a hotel/convention center and three residential condominium buildings on the water as part of a TIF redevelopment project. In 1999, a dispute arose when the City wanted the developers to construct all three buildings by the end of 2000. The developers wanted to wait until there was a market demand for the condominiums. However, the developers signed a contract amendment which contained the City's schedule, but they claimed that the City forced them to sign it by telling them that it would refuse to issue building permits for the buildings until they agreed.

In 2003, another dispute arose. The City held a mortgage on the construction site which it partially released to the condominium purchasers. After one of the development companies involved in the project filed bankruptcy, the City refused to issue any more releases and as a result the developers could not sell any more condominiums. The developers attempted to negotiate with the City but to no avail.

In the lawsuit, the City argued that the case was only a contract dispute and did not involve civil rights, but the federal court disagreed. The court said that a municipality does not commit a civil rights violation if it makes an honest mistake of judgment or even if it breaches a contract, but if it uses its governmental powers to force a change in the terms of a contract or if it denies a benefit without giving a fair hearing, this may result in a civil rights violation.

At trial, the jury agreed with the developers that the City had violated their civil rights by refusing to issue building permits unless the developers agreed to a quick construction schedule and by refusing to listen to the developers' requests for partial mortgage releases. The court then ordered the City to pay the developers more than $500,000 in damages and more than $275,000 in legal expenses.

The City is considering whether to appeal this decision to the 7th Circuit Court of Appeals. The case is a reminder that municipalities should maintain good written records, should always be careful to establish fair procedures for dealing with their residents, and should follow those procedures consistently.

Footnote

[1] The lead attorneys who represented the plaintiffs in this action are Attorney Howard B. Schoenfeld in the Metro Milwaukee office of DeWitt Ross & Stevens S.C., and Attorney Joseph A. Ranney in their Madison office.

Brian Ohm Lecture: *Continued from page 4*

nerve with property rights defenders, generating a backlash fueled by AM talk radio, sufficient to generate this large volume of potential "remedial" legislation.

The US Supreme Court held in that case that the City of New London had the power, and had followed sufficient due process steps, to condemn by the power of eminent domain, property from private persons (single family homeowners), in order to transfer those properties to other private entities, developers pledged to provide expanded economic opportunity in the City. The City, which was an economically depressed community, had enticed a large Pfizer Pharmaceuticals plant and the City wanted to encourage additional economic development near the new Pfizer facility.

On its face the 5th Amendment to the US Constitution would seem to make it an open and shut case in favor of the homeowners, and against the City. The pertinent parts of the amendment read:

US CONSTITUTION
The Bill of Rights, Article V (In part)

> *"No person shall…be deprived of life, liberty,or...property,*
> *without due process of law; nor shall* ***private property*** *be*
> *taken for* ***public use*** *without just compensation."*

The City was not keeping the property for itself (public use), it was acting as a transfer agent on behalf of the developers. Public power was being used to transfer **private** property to another's **private** use.

All that stood in the way of this potential clear victory for the homeowners is what the courts have been ruling to the contrary for the past 150 years .

Wisconsin's Supreme Court (Newcomb v. Smith) interpreted Wisconsin's version of the federal 5th amendment, in favor of a state law supporting economic development by allowing ***private*** builders of dams across ***public*** streams

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for the purpose of creating mill ponds, even if that pond flooded other upstream owners. The law made it the responsibility of the dam builder to compensate owners of the flooded lands. Mill ponds provide water to those picturesque "water wheels" that power grinding stones inside the wheel house to make flour out of grain (milling). Wisconsin's version of the "federal 5th"reads:

> Article I., Declaration of Rights
>
> **Private Property for public use.** Section 13. "The property of no person shall be taken for public use without just compensation therefor."(Wisconsin Constitution)

When railroads began to spread across the country, states like Wisconsin wanted those railroads to service their communities. Laws were passed giving private railroad companies the right to condemn easements or rights of way for railroad construction across the property of private landowners. A half century later as electricity became available, those same rights of eminent domain were extended to private utility companies, such as for their generating plant sites, and transmission and distribution lines. Telephone systems followed in their wake.

In 1897, the US Supreme Court (*Chicago, B. & Q. R. Co.* v. *Chicago*) ruled that the Bill of Rights, originally accepted as a restraint only upon the Federal Government, was also applicable to States via the 14th Amendment adopted in 1868 as an aftermath of the US Civil War. It reads (in part):

> Article XIV US CONSTITUTION (1868)
>
> **Citizenship rights not to be abridged** "1. … No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...nor deny to any person within its jurisdiction the equal protection of the laws."

Between 1897 and the Kelo case in 2005, cases occurred applying the federal constitution to actions taken under state law. The 1950s the federal courts expanded the application of eminent domain to "urban renewal" situations where cities bought areas to be cleared because they were "blighted" and the land was turned over to developers. State Courts also continued to expand the power of eminent domain. One extreme case was -"Poletown Neighborhood v. the City of Detroit" in 1981, where the Michigan Supreme Court allowed Detroit to condemn 465 acres so General Motors could build an auto assembly plant. (The Michigan Supreme Court recently overturned this decision.)

Given this history, the Kelo decision in support of the City of New London was no surprise. But the pressure on the US Supreme Court was going the other way. The list of organizations that filed "amicus curiae" (friend of the court) briefs in favor of the homeowners was overwhelming (including John Norquist, the former Mayor of Milwaukee and President of the Congress of New Urbanism), while those standing with the City were few in number. Those few included the American Planning Association, for which APA has taken some heat. The Kelo decision was 5 to 4, so the shift of membership now taking place on the Supreme Court may produce different results in the future.

WAPA Executive Committee

Leo Ries Lecture: *Continued from page 4*

values. Fueled by exceptionally low interest rates set by the Federal Reserve over that period to revive the sagging national economy, the impact upon housing values has been substantial. Inner city homes and duplexes that could be purchased for renovation five years ago for $10,000-$40,000 each, now sell for $60,000 to $80,000. With renovations costing $60,000-$80,000, the resulting values are above the inner city wages necessary to meet the mortgage payments.

The rule of thumb still prevails that housing costs should not exceed 30% of household expenses, or 2-1/2 times annual income. A $70,000 rehabilitated house requires $28,000 of wages, or about $14.00 per hour. Single mothers, constituting the bulk of the buyers, seldom earn at that level. Ries figures $17 an hour is now the aver-

Share Your Planning Success Stories

Brian Ohm, Vice President of Chapter Affairs, is collecting stories from WAPA members and other Wisconsin planners and residents about how a planner's involvement in a community issue either avoided costs (both monetary and non-monetary) or generated benefits with direct or indirect monetary advantages.

Send your planning success stories to Brian at bwohm@facstaff.wisc.edu.

The stories will be compiled on the WAPA website for use by planners across the state.

AICP Exam Fee Scholarship

AICP offers one Reduced Exam Registration Fee Scholarship each year to a Wisconsin planner taking the AICP exam. This program was put into place to offer assistance to approved applicants who may defer taking or are unable to take the AICP exam because of the high cost.

Send a brief letter of application to **by August 1** to:

Nancy Frank, AICP
Department of Urban Planning
University of Wisconsin - Milwaukee
P.O. Box 413
Milwaukee, WI 53201-0413

Or fax to: Nancy Frank at 414-229-6976

Selection criteria and other details are provided on the WAPA website. Go to the "AICP and Professional Development" page and take the linke to "AICP Exam Fee Scholarship."

Please note that all applicants must **provide a letter from the employer** stating that it is the policy of the department to not subsidize the cost of taking the AICP exam.

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will appear in full (with nothing cut off) and in a print size that should allow easy reading.

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age wage needed to purchase the new average cost of a rehabilitated home.

Both in his lecture and in his Winter 2005 Editorial in "Field Notes," the newsletter of the Milwaukee LISC office, Ries notes that his work is driven by a desire to improve the economic and social well-being of all Milwaukee residents but also by a philosophy of life which evolved from growing up in a religious household and being exposed to Catholic social teachings identifies how faith provides the driving force for his own energy to help the poor.

"Catholic teaching", he notes, "is rooted in the Jewish scriptures which teach that the quality of faith in a people depends upon the character of justice in the land – and the character of justiceis to be judged by how we treat the most vulnerable groups in society." He is critical of the Bush Administration proposals to cut up to 50 percent in community development programs. He also casts a suspicious eye on the tendency of Americans to romanticize "individualism" rather than trying to advance the "common good". He concludes his Editorial by drawing these two ethics together this way: "the work of community development isn't 'charity' in the traditional sense, but it is about helping poor people to help themselves. It's about developing collaborative responses to the challenges we face as a community." "Let's remember that we are not just taxpayers, but also citizens and members of a community with obligations to each other." LISC may be contacted at 414-273-1815, or 161 W. Wisconsin Avenue, Suite 308, Milwaukee, 53203.

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