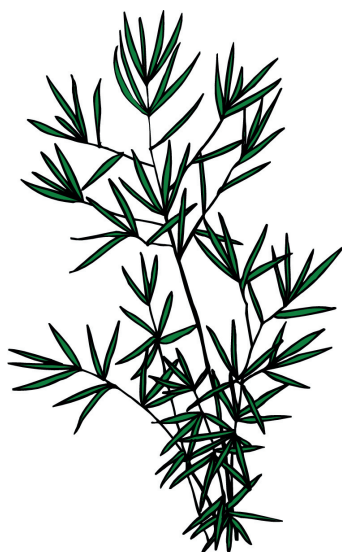


WAPA News

Wisconsin Chapter
American Planning Association

Fall 2005

Volume 2005, Number 4



Happy Holidays

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‘Tis the Season to Submit Award Nominations for WAPA *and* ASLA

In this Issue: WAPA Award Guidelines, pages 8-10
Deadline: February 1, 2006

CALL FOR ENTRIES

Wisconsin ASLA 2005 Professional Awards

Deadline: January 13, 2006

All members of the ASLA in Wisconsin are eligible to submit entries. Non-Wisconsin ASLA members and Non-ASLA members who have performed a primary role in a project located in the state of Wisconsin may submit an entry. The applicant must have primary involvement in the entry and must clearly describe his/her role in the project.

Awards may be given in each of six primary entry categories listed below.

1. Design:
 - Residential
 - Commercial & Institutional
 - Public Open Space/Environmental
2. Planning & Analysis
3. Research
4. Communication

Fee

For each project submitted by ASLA members and associates, \$75 must accompany the submittal. \$125 must accompany submittals by non-members. See the entry form for details.

Deadline: All entries must be delivered by 5:00 PM on January 13, 2006

Questions

Questions regarding entries should be directed to Christa Wollenzien ASLA at (262) 646-6855. A complete Submittal Package is available at:

www.wisconsinplanners.org

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

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

Membership Information: To become a member of the Wisconsin Chapter of the American Planning Association, simply become a member of the APA. An application form is provided on the back of this publication.

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

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.

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

Published and postage paid at the University of Wisconsin--Milwaukee, Milwaukee, WI 53201.

WAPA News is printed on recycled paper.

Legislative Update: Continued from page 14

2005 with a vote of 96-0. It was messaged to the Senate and referred to but then withdrawn from the Committee on Natural Resources and Transportation on November 2, 2005. It was read a third time and concurred on November 8, 2005. SB 198, the companion bill, was recommended for passage as amended by Senate Substitute Amendment 1, by the Committee on Natural Resources and Transportation with a vote of 5-0. SB 198 was tabled on November 8, 2005.

6. Limitation on Reasons for Which a Local Government May Withhold Permit Approval – AB 558 / SB 283

AB 558 provides that no zoning entity may condition or withhold approval of a permit that it may issue under its zoning authority based on the property owner entering into, discontinuing, modifying, extending, or renewing a contract with a third party under which the third party is engaging in a lawful use of the property. AB 558 was read a second and third time and passed the Assembly on October 27, 2005 with a vote of 62-35. It currently sits in the Senate Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform. As for SB 283, a public hearing was held on November 2, 2005.

7. Restrictions on Local Government Control Over Certain Nonconforming Uses – AB 155

Currently, municipalities and counties are authorized to enact zoning ordinances that regulate and restrict the height and size of buildings and other structures, the percentage of a lot that may be occupied, the size of yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for various purposes. Also under current

WAPA Election Results

The returns are in. The newly elected, or re-elected officers and district representatives are:

Gary Peterson, AICP (President)
Nancy Frank, AICP (VP for Professional Development)
Larry Ward, AICP (Secretary)
David Boyd, AICP (At-large Representative for Membership)
Dennis Lawrence, AICP (Northwest District)

Our congratulations to our new board members. We also wish to thank all the candidates for running. To you, and to all members, please remember that WAPA can use your talents in many ways, and board service is just one of them.

In Memorium

Walter K. Johnson, Madison

Walter K. Johnson, age 86, died Thursday, Aug. 18, 2005, of natural causes. He was born in 1919, in Buchanan, Michichan, and received a bachelor's in architecture from University of Michigan in 1942 and an SJD from the University of Wisconsin in 1960. He was a life member of APA.

He worked as a professional architect and planner. He served in Wisconsin as Director of Planning for the state of Wisconsin Conservation Commission, and Deputy Director of the Wisconsin State Department of Natural Resources, as well as City Planning Director for Madison from 1946 to 1960. Richard Lehmann notes that "Walter was a pioneer in the modern era of planning in our state, the period that included many reforms in planning legislation and structure after the state learned from the huge growth of urbanization after World War II."

He later served as executive director of the Delaware Valley Regional Planning Commission from 1967 to 1980, where he oversaw the adoption of the first comprehensive long range metropolitan transportation plan for the Delaware Valley. He is survived by his wife, Emily Ball Hallowell Phillips Johnson of Gwynedd, Pa., whom he married in 1980. His first wife, Dorothy, died in 1979. He is survived by his four children, by his wife Emily's three children, 12 grandchildren, and four great-grandchildren. He also survived by three brothers and a sister.

Source: Thanks to Richard Lehmann for sending the published obituary, from which the information in this memorial was obtained.

Legislative Update: *Continued from page 2*

law, a zoning ordinance adopted by a municipality or county may not prohibit the continued lawful use of any building or premises for any trade or industry for which the building or premises is used when the ordinance takes effect, although in certain towns such an ordinance may prohibit the alteration of, or addition to, any existing building or structure that is used to carry on an otherwise prohibited trade or industry within the area that is subject to the ordinance (district). In cities, villages, towns exercising village powers, and counties, the alteration of, addition to, or repair in excess of 50 percent of the assessed value of any existing building or structure to carry on any prohibited trade or industry within the district may be prohibited. Generally, if such a nonconforming use of a building or premises is discontinued for 12 months, any future use of the building or premises must conform to the municipality's or county's zoning ordinance.

This bill extends current law to also apply to structures and fixtures, and explicitly specifies that no municipality or county may require the removal of a nonconforming building, premises, structure, or fixture, which may be lawfully used under current law, by an amortization ordinance. The bill defines "amortization ordinance" as an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used, but only for a specified period of time, after which such lawful nonconforming use must be discontinued without the payment of just compensation.

AB 155, which had passed the Assembly on September 27, 2005 with a vote of 70-27, was recommended that it be concurred by the Senate Committee on Housing and Financial Institutions on October 19, 2005. The Senate concurred on November 1, 2005. The bill was enrolled on November 3, 2005 and is available for the Governor to sign.

8. Natural Resources Board Votes to Reconsider DNR Pier Rules

On November 15, 2005, the Natural Resources Board voted unanimously to reconsider rules that it had approved in September regarding one-time permitting for certain piers. The move comes after a recent study showed that there were far fewer piers on Wisconsin waterways than once reported. The Department of Natural Resources will rework the rules and bring them back to the Board for approval at its next meeting on December 7, 2005.

(Note: There have been no other changes to introduced legislation described in previous issues of *Update*.)

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UWM's DUP Receives Special Achievement in GIS Award

At its annual User Conference in San Diego this past July (2005), the Environmental Systems Research Institute (ESRI) named UWM's Department of Urban Planning as a recipient of its Special Achievement in GIS (SAG) award. The SAG award ceremony was held on July 27 at the San Diego convention center and presided over by Jack Dangermond, the president and founder of ESRI.

The SAG awards are given annually to organizations who have exhibited exemplary use of ESRI's geographic information systems software, ArcGIS. Their web site describes SAG awardees

"By embracing GIS technology, these organizations have made extraordinary contributions to our global society and set new precedents throughout the GIS community."

Recipients of the Special Achievement in GIS award are submitted by ESRI staff from thousands of organizations worldwide, then personally reviewed and selected by Jack Dangermond. Here is what ESRI said about the UWM GIS program in Urban Planning:

"The Department's interests and activities span a broad range of topics, including: GIS in transportation, public participation GIS, and building local capacity in developing nations. The faculty are highly published and have been leading participants in URISA, UCGIS and the Wisconsin Land Information Association. In addition, they are involved in programs to bring GIS skills to at-risk students in local school districts. Their work with local transit agencies and local units of government to develop a multi-modal internet trip planning capability to has helped economically challenged individuals find ways to get to places of potential employment. The Department has a strong GIS-oriented faculty that has been and continues to be at the forefront of education, outreach and research."

Receiving the award in San Diego were Professor William Huxhold and Adjunct Associate Professor Eric Fowler.

Law Update

**By MICHAEL R. CHRISTOPHER, WAPA LEGAL COUNSEL
DeWitt, Ross, and Stevens S.C.**

Madison, Wisconsin

October 17, 2005

Because there have not been many significant land use decisions made by Wisconsin appellate courts during the past month, I would like to summarize a legislative initiative which has created a new environmental cooperation program. Obviously, environmental and land use issues are often closely related, but a review of this program is helpful because the policy behind it might be the basis for establishing a similar public-private cooperative program in Wisconsin as it relates to planning and land use.

The Green Tier Program: Is It a Model Applicable to Land Use Controversies?

On April 16, 2004, Governor Doyle signed legislation creating a new environmental cooperation agreement referred to as "Green Tier" which is codified in Wis. Stat. § 299.83. The Wisconsin Department of Natural Resources ("DNR") has publicized this program widely and there has been a fair amount of success in implementing it this year.

Green Tier is a program that gives companies the flexibility to exceed environmental requirements and at the same time increase productivity and reduce costs. To accomplish this, contracts and charters between the DNR and businesses are used as the basis for an environmental management system ("EMS") rather than the traditional model of regulation and enforcement. Green Tier establishes a voluntary system to reward "superior environmental performance" which is defined in the legislation as:

... measurable or discernable improvement in the quality of the air, water, land or natural resources, or in the protection of the environment beyond that which is achieved under environmental requirements...

By using what is referred to as a participation contract, the DNR and the participating company agree that the participant is legally committed to superior environmental performance and that the DNR will provide incentives to the participant which may include regulatory flexibility, public recognition and branding. A charter can also be used to establish an EMS. A charter is a contract entered into by the DNR and an association committed to helping its members participate in Green Tier. An association may consist of private entities, public entities, or a combination of each. In a charter, the association must describe its goals, the responsibilities of its members, and the methods of its members that it will use to accomplish their goals. The term of a charter can be between 3 and 10 years with opportunity for renewal.

The Green Tier program offers two levels, or tiers, of participation. Tier I is an entry level, designed to encourage innovation, ongoing compliance assessment, and new environmental goal-setting. Tier II involves more rigorous participation requirements, greater emphasis on "superior environmental performance" and uses "participation contracts" as a means of offering customized regulatory flexibility proportional to environmental performance.

Participants in Tier II must demonstrate a strong environmental compliance record, including the following:

- No criminal conviction for an environmental offense within 10 years;
- No civil judgment for violation of an environmental requirement within 5 years;
- No Department of Justice lawsuit or DNR citation to enforce an environmental requirement within 2 years.

Tier II has a fairly rigorous audit requirement. A participant must conduct an annual audit of its EMS using a DNR-approved outside auditor and conduct an annual "audit of compliance with environmental requirements that are applicable to the facility's activities." See Wis. Stat. § 299.83(5)(c)3. If either audit reveals any violations, the participant must file an audit report with the DNR that includes a description of all violations, a description of the actions taken or proposed to be taken to correct the violations, a commitment to correct the violations within 90 days, or if more than 90 days is required, a proposed compliance

schedule and certain related information, and a description of the measures to be taken to prevent future violations.

A critical trade-off for businesses that wish to participate is that once a contract or charter is in place, the DNR would not be permitted to take any civil enforcement action on any violation reported as a result of the annual performance evaluation if they are corrected within 90 days, or within the time specified in a negotiated compliance schedule. There are two exceptions to this, namely, if the violation presents an imminent threat to public health or the environment, or that the DNR has discovered the violation before the company discloses it, the DNR may take civil enforcement action.

In terms of public participation, if a business wants to participate in a Tier II program, it must submit a Letter of Intent which identifies, among other things, "the involvement of interested persons in developing the proposal for maintaining and improving the applicant's superior environmental performance." Thus, it is clear that DNR will be looking for community participation in developing any alternative regulatory plan that might be proposed. The statute also gives "interested persons" the right to request participation in negotiations over any Tier II participation contract. In addition, the DNR must give public notice of any proposed participation contract and may conduct public hearings.

The Green Tier statute contemplates that the participation contract will spell out the incentives that the participant is to receive for achieving superior environmental performance. The term "incentives" is not defined by the statute. However, the participation contracts that have been approved indicate that the DNR will utilize this authority to include regulatory flexibility and the granting of variances from statutory requirements.

Green Tier represents the wave of the future in terms of environmental performance standards. The program is too new to assess its effectiveness, but the results from the initial contracts and charters have become quite favorable. It may be that the Green Tier program could be used as a model to develop performance standards regarding land use development that could reduce the tension between the public and private sectors. That inherent tension flows from disputes regarding land use regulations. If applied to thorny land use disputes, the Green Tier model could shift the focus of

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WAPA Legislative Update

BY BENJAMIN C. GRAW
DEWITT ROSS & STEVENS S.C.
November 16, 2005

NOTE: Please view the legislative update at on WAPA website to have complete web links to all legislations cited here.

A. New Legislation

1. Senators Lassa, Harsdorf, Erpenbach, Leibham, Miller Plale and Roessler Introduce Legislation to Change Downtown Development with regard to Historic Buildings

On October 12, 2005 Senators Lassa, Harsdorf, Erpenbach, Leibham, Miller Plale and Roessler introduced Senate Bill 379. SB 379 would make numerous changes to the regulation of historic buildings and downtown development. Currently, the owner of a qualified historic building may elect to be subject to the State Historic Building Code ("SHBC") and, with limited exceptions, is exempt from provisions of other building codes that concern a matter that is dealt with under the SHBC.

This bill requires that in resolving conflicts between the SHBC and another building code, the SHBC is to be liberally construed to facilitate the preservation and restoration of qualified historic buildings. This bill creates an administrative procedure for determining the extent to which a local building code applies to a qualified historic building.

This bill allows local governments to adopt an ordinance that would grant a variance for handrail and guardrail requirements on certain qualified historic buildings. This bill also allows a person who is eligible to claim a federal rehabilitation tax credit to claim an amount equal to 20% of qualified expenses as a supplemental state rehabilitation credit, if the property meets certain location requirements. The previous amount available for the supplemental state rehabilitation credit was 5%. This new credit amount would apply to taxable years beginning in 2006.

Additionally, this bill would require the Department of Commerce to develop and publish guidelines to aid communities in reconstructing central business districts that are destroyed or severely damaged in major disasters, require the Department of Tourism to promote travel to these "certified" downtowns, and with regard to construction of state office buildings, prohibit the state Building Commission from authorizing construction of any state office building to be located outside of a certified downtown unless the cost of that building is more than 10% greater than the average cost of locating the building in an area that according to the Department of Administration is served by the functions to be performed in the building on the date of occupancy.

SB 379 was read for the first time on October 12, 2005 and referred to the Committee on Job Creation, Economic Development and Consumer Affairs. Fiscal estimates were received on November 1st, 2nd and the 8th. The companion bill

Continued on page 7



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to SB 379, AB 793, was read for the first time on October 31, 2005 and referred to the Committee on Urban and Local Affairs. Fiscal estimates were received for AB 793 on November 2nd and the 11th.

2. Senators Breske, A. Lasee, Grothman, Lassa and Plale Introduce Legislation Creating Exception to Size, Lighting Restrictions of Outside Advertising Signs in Business Areas

On November 3, 2005 Senators Breske, A. Lasee, Grothman, Lassa and Plale introduced SB 418. This legislation creates a new exception to allow for outdoor advertising signs along interstate and federal-aid primary highways erected in business areas after March 18, 1972, and before the effective date of this bill, all of the following apply:

1. The sign is located within a stadium, racetrack, or other sporting event arena in a zoned commercial or industrial area.
2. The sign is erected with the purpose of its message being read by spectators in the stadium, racetrack, or other arena.
3. The sign is consistent in size, lighting, and location with customary use in the zoned area as determined by the local zoning authority.
4. Allowing the sign will not result in reduction of federal highway aid to the state.

SB 418 was read for the first time and referred to the Committee on Natural Resources and Transportation on November 3, 2005.

3. Representatives Albers, Musser, Ainsworth and Hahn Introduce Legislation Changing the Comprehensive Zoning Statutes

On October 17, 2005, Representatives Albers, Musser, Ainsworth and Hahn introduced AB 760, legislation that changes the comprehensive planning statute. Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan. Under this bill, the county board

may only designate a single committee of the board to act in all matters pertaining to county planning and zoning. Except in Milwaukee County, the bill requires that the county zoning agency consist of a majority of county board supervisors who represent districts in which the majority of the residents of such districts reside in unincorporated, or town, territory.

Under the bill, the comprehensive planning statute applies only to a local governmental unit that has a population of more than 1,500 people, and requires a local governmental unit to issue written findings that indicate how the actions it undertakes are consistent with its own comprehensive plan. If a circuit court case challenges the validity of a comprehensive plan, including whether an allowable action is consistent with a local governmental unit's comprehensive plan, the bill requires a court to conclude that the plan is valid. The bill also requires a court to presume that the action is valid if the local governmental unit issues written findings that describe their reasons for its action.

The bill also requires a local governmental unit, at the initial stage of the preparation of a comprehensive plan, to invite and consider written comments from property owners on their proposed or contemplated uses for their property over the next ten years.

If a local governmental unit engages in any planning activity under its comprehensive plan, the bill requires it to attempt to determine which territory from an adjacent local governmental unit, which abuts territory in the local governmental unit that is taking action, may be affected and to so notify that other local governmental unit and consider any comments or plans submitted for review by the affected local governmental unit to the local governmental unit that is taking

Continued on page 11



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Attorney Schalig, Brookfield City Attorney for the past twelve years, has joined the firm of Schmidt, Rupke, Tess-Mattner & Fox, S. C., and will concentrate her practice in land use issues, including zoning, development, and commercial real estate.



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2006 Awards

Call for Entries

**Wisconsin Chapter of the
American Planning Association**

Purpose

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

Eligibility

A WAPA or an APA member must submit the application. Planning and Urban Design nominations must be for projects located in Wisconsin and must have included a WAPA or an APA member throughout the planning process. Individual 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 a project.

Questions

For questions on the 2006 WAPA Awards, please visit www.wisconsinplanners.org or contact Carolyn Esswein at 414.271.2545 or cesswein@pdisite.com.

Categories (check one)

Planning

Planning Document

- ☐ Large Jurisdiction (20,000 or larger population)
- ☐ Medium Jurisdiction (5,000 to 19,999 population)
- ☐ Small Jurisdiction (4,999 or smaller population)

Plan Implementation

- ☐ Large Jurisdiction (20,000 or larger population)
- ☐ Medium Jurisdiction (5,000 to 19,999 population)
- ☐ Small Jurisdiction (4,999 or smaller population)

Planning Tool

- ☐ Regulation, Ordinance, or Guideline
- ☐ Program or Technology

Urban Design

- ☐ Large Project (more than 5 acres)
- ☐ Small Project (less than 5 acres)

Individual

- ☐ Elected Official of the Year
- ☐ Citizen Planner of the Year

Media

- ☐ Outstanding Journalism

Judging Criteria

Planning

1. Originality/Innovation
2. Transferability
3. Quality
4. Comprehensiveness
5. Public Participation
6. Role of Planners
7. Effectiveness/Results
8. Intergovernmental Cooperation

Urban Design

1. Visual Form
2. Innovative Circulation and Transportation
3. Relationship to the Natural Environment
4. Long-term Sustainability
5. Integration of Social and Economic Activities

Individual and Media

1. Support of Planning/Planners
2. Effectiveness/Results

There can be any number of winners per category.

**Entries must be received by 4:00 PM on Wednesday, February 1, 2006 and submitted to:
2006 WAPA Awards, c/o Carolyn Esswein, PDI, 241 N. Broadway, Suite 300, Milwaukee, WI 53202.**



2006 Wisconsin Chapter of the
American Planning Association

Awards Application

I nominate _____
for a 2006 WAPA Award in the category of _____.

Nominator

I certify that the credited parties performed the submitted work and meet all eligibility requirements.

Signature / Date

Print Name

APA Membership Number

Address

City / State / Zip

Phone / Fax

Nomination

Project Location

or

Address of Individual Nominee or Media Contact

City / State / Zip

Phone / Fax

Email

Materials received after the due date will not be considered.

Submission Requirements

The following attachments are mandatory. If any requirement is omitted, the application will not be considered. Five (5) collated sets of the following are required.

1. 2006 WAPA Awards Application Form.
2. An **8.5x11** three-ring binder up to one (1) inch in thickness containing all the required attachments – including a “CD-ROM Page” to hold CD-ROM media within the binder.
3. An Executive Summary of the nomination (one-page maximum).
4. A two-page explanation of how the nomination meets the judging criteria for the Planning, Urban Design, Individual or Media categories.
5. One (1) to three (3) one-page letters in support of the nomination.
6. For the **Planning** categories: The adopted Planning Document, eight (8) Powerpoint slides, provided digitally on CD-ROM media in .ppt format – highlighting the project with a brief caption for each image. A three (3) to five (5) page summary of the document provided digitally on CD-ROM media in .pdf format. List of all consultants and municipalities that worked on the document.
7. For the **Urban Design** categories: The approved Plan, five (5) slides, provided digitally on CD-ROM media in .ppt format – highlighting the project with a brief caption for each image. The Plan on CD-ROM media in .pdf format.
8. For the **Individual** categories: One (1) portrait of the individual nominee and up to five (5) Powerpoint slides in 8.5 x 11 format – highlighting the work of the individual with a brief caption for each image. The portrait and slides must be provided digitally on CD-ROM media in .ppt format.
9. For the **Media** category: One (1) essay, document, article, article series, or transcript that best represents the nomination. The text and any associated images must be provided digitally on CD-ROM media in .doc and .jpg formats.
10. Identify who should be listed on the award if you are selected as a winner.

Entries must be received by 4:00 PM on Wednesday, February 1, 2006 and submitted to:
2006 WAPA Awards, c/o Carolyn Esswein, PDI, 241 N. Broadway, Suite 300, Milwaukee, WI 53202.



Wisconsin Chapter of the American Planning Association RETIREE RECOGNITION FORM

Entries for Retiree Recognition at the Spring 2006 WAPA Conference are due by 4:00 p.m. on **Wednesday, February 1, 2006**.

The Wisconsin Chapter of the American Planning Association would like to recognize current and former WAPA members for their contributions to the planning profession. If you have retired since 2004, complete this form and return it to the address at the bottom of this page. If you know of someone who has retired since 2004, please share this form with him/her. If you need additional room, please write the information on the back of this form.

Retiree Information

I certify that I am or was a member of the Wisconsin Chapter of the American Planning Association.

Signature/Date

Print Name

Address

City/State/Zip

Phone

Fax

Email

Employment History

Please list your employment history starting with your most recent position.

(Example: City of Anywhere, Planner I, 1976-2003)

Education

Please list your educational history starting with your most recent degree.

(Example: University of Somewhere, MUP, 1971)

Words of Wisdom

What is the biggest lesson you learned during your career that you would like to share with your fellow planners?



Yes, I would like to attend the Spring 2006 WAPA Conference, April 6-7, in Wisconsin Dells. Please contact me for more information.

Entries must be received by 4:00 p.m. on **Wednesday, February 1, 2006** and submitted to:
WAPA Retiree Recognition, c/o Carolyn Esswein, AICP, PDI, 241 N. Broadway, Milwaukee, WI 53202 or fax 414.271.2542

*** Keep a copy for your records. ***



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Legislative Update: *Continued from page 7*

action.

Currently, the county development plan may be adopted, and amended, by the county board and may be endorsed by the governing bodies of the incorporated jurisdictions (cities and villages) included in the plan. Under the bill, the plan may be adopted by a majority of the members-elect of the county board, but the plan may be so amended only if the proposed amendment is endorsed by the governing bodies of the unincorporated and incorporated jurisdictions included in the plan.

Under the bill, a town and a city or village may agree that the city or village may exercise extraterritorial zoning jurisdiction over the entire town. This bill also limits a city's and village's extraterritorial zoning jurisdiction to those towns that have not enacted a master plan and to town territory that is not covered by a cooperative boundary agreement to which the town and the city or village are parties.

Also under the bill, if a territory has received final plat approval from a town or county and if after that approval the territory comes within the extraterritorial zoning jurisdiction of a city or village, no city or village zoning ordinances may apply to the territory if the application of the ordinances would preclude the developer from developing his or her land in accordance with the final plat approval for five years after the territory received town or county final plat approval. Current law also allows a town to adopt an official map under certain situations if the town is located in a county that has not enacted a county zoning ordinance.

This bill authorizes a town that may exercise village powers to adopt an official map at any time. The bill requires that a county development plan include both the official map of any town in the county that has adopted a comprehensive plan and the comprehensive plan. Also under the bill, a city's or village's master plan and official map control in the city's or village's extraterritorial zoning jurisdiction only if an official town map is not part of the county development plan.

This bill authorizes the creation of a joint planning body (JPB) to approve or reject an applicant's request for a zoning permit or other zoning approval in areas that are subject to both town and county zoning ordinances and not subject to a cooperative boundary agreement. A JPB is convened upon the request of such an applicant. The JPB consists of three members appointed by the county and three members appointed by

the town. After issuing its written decision to approve or reject the applicant's request, the JPB is disbanded. An approval of the request constitutes final approval of the county and the town.

This bill was read for the first time and referred to the Committee on Property Rights and Land Management on October 17, 2005. A fiscal estimate was received on October 19, 2005, and a public hearing was held on October 19, 2005.

4. Representative Underheim Introduces Legislation Exempting Certain Activities Affecting Navigable Waterways and Artificial Bodies of Water

On October 13, 2005, Representative Underheim introduced Assembly Bill 759. This bill creates an exemption from DNR permitting requirements for certain activities affecting navigable waters if the activity will not result in the enlargement of the water body by a specific size and depth. These activities include the removal of material from the bed of a navigable lake and the construction, dredging, or enlargement of an artificial water body that connects with a navigable waterway.

AB 759 was read for the first time and referred to the Committee on Natural Resources on October 13, 2005.

5. Representatives Suder, Musser, Krawczyk, Owens, Hahn, Davis, Hines, Pettis and Petrowski Introduce Legislation Allowing Counties to Participate in the State Main Street Program

On October 31, 2005, Representatives Suder, Musser, Krawczyk, Owens, Hahn, Davis, Hines, Pettis and Petrowski introduced AB 794. This bill allows counties to participate in the State Main Street Program. Currently, only municipalities are eligible to participate in the program, which provides technical support and training to promote historic and economic development of traditional or historic business districts. This bill provides that if the Department of Commerce selects a county to participate in the State Main Street Program, no municipalities located within that county may participate.

AB 794 was read for the first time and referred to the Committee on Rural Development on October 31, 2005.

6. Representatives Sherman, Ainsworth, Bies, Sheridan, Freese, Lehman, Staskunas, Owens, Turner, Pope-Roberts, Poca, Travis, Boyle, Molepske, Ziegelbauer, Vruwink,

Continued on page 13



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Legislative Update: *Continued from page 11***Hubler, Nelson and Sinicki Introduce Legislation to Prohibit Condemnation of Property**

Representative Sherman and several other Representatives introduced AB 682 on September 22, 2005. This bill would prohibit counties, towns, villages, cities and other government bodies or agents from acquiring property by condemnation unless expressly authorized to do so by statute.

AB 682 is in the Committee of Property Rights and Land Management.

7. Senator Grothman Introduces Legislation Regarding the Sale of Abandoned Property

On November 7, 2005, Senator Grothman introduced SB 424. This bill shortens the time period for reporting the name and address of the last known owner of abandoned property in connection with its sale by the State Treasurer. This bill requires that the State Treasurer sell the abandoned property to the highest bidder in a manner that affords the most favorable market for the property, and not at a public sale as current law provides.

Additionally, under current law if property is unclaimed for five years, or is dormant for an assigned or specified dormancy period, it is deemed abandoned and is reported and delivered to the State Treasurer. Property delivered to the custody of the State Treasurer before the five-year period has expired is presumed not to be abandoned. This bill repeals this presumption, and allows the State Treasurer to deposit, advertise, and distribute the property before the five-year period has expired.

SB 424 was read for the first time and referred to the Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform on November 7, 2005.

B. Update on Previously Introduced Legislation**1. Constitutional Amendment – Senate Joint Resolution 33 Passes Senate**

Introduced by Senator Harsdorf, SJR 33 would prohibit partial vetoes from creating new sentences. SJR 33 was recommended for adoption by

Continued on page 14

If you are not receiving monthly email updates from WAPA on court decisions and Wisconsin legislation, and would like to, please contact the editor at:

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Legislative Update: *Continued from page 13*

the Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform on October 19, 2005, with a vote of 4-1. It was calendared, read a second and third time, and passed on October 25, 2005, with a final vote of 23-10. It was then messaged to the Assembly.

2. Creation of a Joint Committee on State Mandates – Senate Bill 5

Introduced by Senator Darling on January 12, 2005, SB 5 states that any bill placing a statutory requirement on a local governmental unit must be referred at once to the Joint Committee on State Mandates and the bill may not be considered further until the committee submits a report or 30 days have lapsed.

On November 1, 2005, SB 5 was amended by Senate Amendment 1 to change the membership of the newly created Committee on State Mandates to five majority party and five minority party members divided equally among the Senate and Assembly. The bill was read as amended for a second and third time, and passed on November 1, 2005.

3. Allowing Certain Counties To Create Tax Incremental Financing Districts – Assembly Bill 156 / Senate Bill 153

AB 156 (Representative Mursau), which allows certain counties to create TIF districts, came out of the Joint Committee on Finance with concurrence on October 27, 2005 with a vote of 16-0.

4. Location of a Town Board Meeting – AB 295

Introduced by Representative LeMahieu, this bill allows the polling place in a joint town/village hall, even if the town hall is not within the boundaries of the town. Designed to offer more alternatives to town governments – more efficiencies. AB 295, along with Assembly Amendments 1 and 3 was read a third time and passed the Assembly on November 8, 2005 with a vote of 93-4. Note that Assembly Amendment 3 (below) was not adopted. This bill is now in the Senate Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform.

Assembly Amendment 2 provides that if the town board meets to adopt or amend a comprehensive plan it must meet in the town unless there is no place in the town large enough to hold the number of town residents expected to attend the meeting.

5. Definition of Brownfield for Reassignment of Property – AB 464 / SB 198

AB 464 changes the definition of a brownfield subject to disclosure for delinquent taxes, and adds to that definition any abandoned residential property. AB 464 was read for a second and third time, and passed the Assembly, as amended by Assembly Substitute Amendment 1, on November 1,

Continued on page 2




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Law Update: *Continued from page 5*

these disputes from regulation and enforcement to the goal of achieving “superior **land use** performance.”

Will the Legal Disputes Over Area Variances Ever Come to an End?

I am sure that when the Wisconsin Supreme Court decided last year the case of *State, ex rel., Ziervogel v. Washington County Board of Adjustment*, that it hoped that their decision would put to rest the question of when a Board of Adjustment could grant an area variance. Based on the number of cases that have come after *Ziervogel*, that hope has not materialized.

This case involved a 45-acre lot situated beside the St. Croix River. The property was platted as a residential lot in 1957 and purchased by the Swensons in 1965 before the St. Croix Riverway Zoning Ordinance, at issue in this appeal, was enacted. Due to the lot's size and slope, it is unbuildable under that ordinance. In February 2002, the defendants agreed to purchase the lot conditioned on the defendants obtaining a building permit and the necessary variances to build a home on the lot. The house plans were revised to meet DNR objections so the application was to build the main floor residence to 1,368 sq. ft. and the garage to 432 sq. ft. The variance application requested a 100-ft. variance from the ordinary high water mark setback and a variance to

build and excavate on slopes exceeding 12%. In November 2003, the Board granted the variance and the plaintiffs began a certiorari action challenging the Board's decision.

The court began its analysis by discussing the policy reasons as to why county zoning boards have been given the authority to grant variances from ordinances. The primary justification it referred to was to allow a means of obtaining relief from the strict enforcement of zoning restrictions where individual injustices might occasionally occur. In addition, variance requests also had to consider the public interest and zoning compliance against the private interest of property owners in individual cases. Finally, the court noted that variance procedures sometimes prevent inflexible zoning codes from precipitating regulatory takings.

The Court recognized that since *Ziervogel* the test for an area variance was an unnecessary hardship test which would prevent the owner from using the property for a permitted purpose, or would be unnecessarily burdensome if conformity were to be achieved. The Court recognized that *Ziervogel* attempted to define “unnecessary hardship” when it required that the Board consider the purpose of the zoning restriction, its effect on the property, and the effect of a variance on the neighborhood. Finally, *Ziervogel* required that a finding of unnecessary hardship must be based on conditions unique to the property rather than considerations personal to the property owner and cannot be self-created.

The plaintiffs that the Board improperly granted the variances because there was no evidence that the lot was unique. They also argued that the Board was required to consider the enumerated purposes of the St. Croix Riverway Zoning Ordinance in order to determine that the relief requested was consistent with the public interest.

Finally, the plaintiffs challenged the extent of the variances granted arguing that the variances were excessive and were improperly granted for the personal convenience of the owners. The Court rejected this argument as well based on the fact that boards of adjustment are generally granted broad discretion not only to grant or not grant variances, but also to determine the scope of those variances.

Although an unpublished decision, it represents a court review of an area variance post-*Ziervogel*. The message of this case is that courts are probably going to give broad discretion to local zoning boards when they determine what is an unnecessary hardship.



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