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Communicating the Value of Planning

BY BART VOSKUIL AND NANCY FRANK

APA's new communication plan, unveiled at the national conference, is aimed at community influentials. The first article in this issue offers a number of talking points for planners to use in advocating for the value of planning.

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Local governments are facing a tough fiscal climate. Federal budget cuts to CDBG funding, threats of TABOR at the state level, and severe pressures from local residents to freeze or roll back local property tax levies has left many local officials scrutinizing their budgets. Local policymakers are taking a hard look at the costs of services and the value-added by a whole range of government activities.

Ironically, while planning itself is all about generating value for communities and measuring the benefits and costs of alternative programs and policies, little hard information is available on the economic benefits attributable to good planning. The absence of good data on the cost-effectiveness of planning is evident in threats (and actions) to reduce or eliminate planning. For example, when the City of Cincinnati eliminated its planning department, local officials were able to eliminate eight employees and claimed the change would "save" over \$700,000 annually (*Cincinnati Enquirer*, December 14, 2002).

When local officials face choices between keeping cops on the streets and fire stations open, the planning department may look like a luxury, especially if the benefits of planning are not clearly linked to the act of planning, as understood by policymakers.

Assigning a precise dollar value to planning activities is difficult, of course. A complete assessment of the value of planning often requires calculating the cost of bad planning, or of no planning at all. The planner must also consider another important variable: time. It is unclear exactly *when* planning benefits are realized. The dollar value of greenspace preserva-

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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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Groundwater Fact Sheets Updated

The Groundwater Coordinating Council Comprehensive Planning and Groundwater Fact Sheets, originally published in 2002, have been updated. All three are available as pdf documents by going to <http://dnr.wi.gov/org/water/dwg/gw/whp/fact.htm>. This is not a new URL for the fact sheets. The website URLs in Fact Sheets 1 (Groundwater and Its Role in Comprehensive Planning) and 2 (Resources to Help You Protect Your Drinking Water Supply) have been checked and updated as needed. All the URLs are now live, so you can click on a website in one of the pdf documents and go to that webpage. The text of Fact Sheet 2 was revised to reflect the completion of the source water assessment program and it contains a February 2005 revision date. There were no changes required for Fact Sheet 3 (Residential Development and Groundwater Resources).

Feel free to share this information with others who might be interested. If you would like paper copies of any or all of the new Fact Sheets, let me know. Enjoy!

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The Future of APA

BY BRUCE KNIGHT, DIRECTOR OF PLANNING
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I believe that the next few years will be exciting years for planners and for the American Planning Association. For the first time in my memory, planning issues are at the forefront of the agenda for most local governments. Our citizens and elected officials are asking for the outcomes of good planning. There are cries for less sprawl, less traffic congestion, and higher quality of life...all things planners can help accomplish. Unfortunately, these outcomes are often not connected to the efforts that we as planners bring



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to our communities. The time has come to help our citizens make that connection.

Every two years the APA Board adopts a new Development Plan to establish priorities and guide the preparation of the budget for the next two years. The Board began the process of updating the plan for 2006-07 at its winter retreat this January. Priorities will include becoming stronger advocates for planning; promoting social, economic and racial equity; improving the products and services provided by the organization; and growing the membership base of the organization to improve APA's political, financial and operational efficiency and effectiveness.

While all of these priorities, as well as the other goals of the plan, are important, I am particularly excited by three of the strategies that have recently been initiated. First, we have been working with a consultant to develop a communication plan for APA. This plan is designed to establish messages that convincingly illustrate the value and relevance of planning while providing opportunities to communicate the value and role of APA and its members. Implementation strategies include pilot projects, a tool kit that can be used to promote planning programs in all communities and a media strategy. These tools will allow all of APA's members to effectively communicate the value planning brings to their communities.

The second initiative is the growth strategy. By growing the organization we can create a stronger and more effective voice for planning. As APA's President Mary Kay Peck says, we need to make APA the "big tent" for everyone interested in planning and the positive outcomes planning brings. The organization's growth plan has established a number of target groups as priorities for this effort. These groups include students, appointed and elected planning officials and engaged citizens, minority planners, and academic planners. As a second priority, the plan calls for developing an affiliate membership category to allow us to strengthen our partnerships with allied professions. Our goal is to grow by 15,000 members over the next 10 years, or 1,500 members per year.

Finally, the third initiative is to create and implement a leadership development program to recruit and train a new generation of leaders for the planning movement. This will include providing leadership training and skills development as well as leadership opportunities within the organization.

We are moving into an age when planning and planners get recognized for the important contributions they provide to their communities. APA will be working to help this occur. If you have ideas for how APA can help you be more effective, or would like to get more involved in APA, please let me know. You can reach me at

bruce.knight@ci.champaign.il.us.

Government: What It Does, What It Might Do, What it Should Do, and Paying For It

BY DAVID RIEMER, SCHOLAR IN RESIDENCE
UWM SCHOOL OF ARCHITECTURE & URBAN PLANNING

REPORTED BY RUSSELL KNETZGER, AICP, MILWAUKEE

In a series of three weekly lectures at the University of Wisconsin – Milwaukee, School of Architecture and Urban Planning, in February 2005, David Riemer proved he has the intellectual scope and practical experience to tackle the dauntingly broad topic he placed before his audience in these lectures.

Mr. Riemer has 30 years experience in government at the national, state, and local levels. In addition to a law degree from Harvard, he has worked as Legal Adviser and Budget Director for two Wisconsin Governors: Patrick Lucey and Jim Doyle. He held three high level positions with Milwaukee Mayor John Norquist: Budget Director, Administration Director, and Chief of Staff. And he has worked as Counsel to US Senator Edward M. Kennedy. His reputation in all these assignments has been that of a scholar and innovator. He is among the authors of Wisconsin's supplemental Earned Income Tax Credit, W-2 (the Wisconsin Works welfare reform program), and BadgerCare (Wisconsin's health insurance program for working families).

The scope of Riemer's lecture covered American national, state, county, regional, and local levels of government, with occasional references to European activities. He graphed how the American layers interface with each other. And most importantly he provided his nomination for the "Three Core Functions" by which the performance of government should constantly be judged. Is the specific government activity advancing: (1) **Safety and Order**, (2) **Equal Opportunity**, and (3) **Fair & Open Markets**.

He also explained that it was important to separate into three categories the specific roles performed by government in each area (a) **setting policy**, (b) **producing finances**, and (c) **providing the service**. In various cases government might perform only one of the three roles, two of the three, or all three roles. In understanding relationships among layers of government, he offered judgements about which



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Law Update

BY MICHAEL R. CHRISTOPHER, WAPA LEGAL COUNSEL
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February and March 2005

Eminent Domain, Private Property And Redevelopment

On February 22, 2005, the U.S. Supreme Court Justices heard oral argument in *Kelo v. New London*, which will probably be the most significant appellate case decided this year. I have reported on this case in my January 14, 2005 Legal Update, but I wanted to share with you a summary of what happened at the oral argument.

Attempting to read the tea leaves after the oral argument in *Kelo* would even be a more hazardous exercise than usual. Absent were Chief Justice Rehnquist, due to illness, and Justice Stevens due to travel difficulties. The Chief Justice's views on government regulation of free enterprise are fairly well known but it would have been useful to see where Justice Stevens might come down in balancing the needs of local government against the rights of individuals.

Of the Justices present, Justices Breyer and Ginsburg, seemed the least willing to curtail precedents that local governments have interpreted as giving them virtual carte blanche to condemn private property in aid of economic development efforts. The Justices asked *Kelo*'s attorney to cite circumstances where the use of eminent domain to aid private redevelopment would be permissible. They seemed dissatisfied with his suggestion that cities should be required to show that there was a good chance that a promised public benefit would materialize. None of the Justices seemed particularly happy with the idea of going into that sort of detailed economic analysis.

On the other hand, Justice O'Connor asked the attorney for the City if it would be appropriate for a city to take a

Motel 6 by eminent domain to accommodate a Ritz Carlton if the city found that that was a better deal for it, taxwise. His affirmative reply prompted a number of questions from the Justices about the fairness of transferring private resources from one landowner to another, richer one.

It is not inconceivable that the high court may try to come up with a formulation that would preserve local government's ability to condemn land to promote economic development and not require overturning long-standing precedents while applying a "goes too far" test analogous to that employed in regulatory takings cases. For example, a project with little or no conceivable public benefit might fail to meet the public use standard of the Fifth Amendment, while projects carrying a legitimate benefit to the public would pass muster. However, what the court ultimately decides is anyone's guess.

It seems to me that if the *Kelo* case were to be decided by the Wisconsin Supreme Court, that it is probable that the city's authority to exercise its eminent domain authority to achieve redevelopment would be upheld. I say that because there is a long string of cases in Wisconsin that ratifies the use of eminent domain to achieve a public use benefit. However, there are numerous instances of municipalities outside of Wisconsin that have confiscated private property for projects that are of marginal public benefit.

An estimated 10,000 cases between 1998 and 2002 involved projects where private parties benefited substantially from government seizures of property under the banner of economic development or urban redevelopment. It is argued that eminent domain in urban development projects tends to be arbitrary, inequitable, and without substantive limits. The use of that power is often driven by local politics rather than by standards and objective criteria. It often results in giving large and well-connected property developers an advantage over existing homeowners and businesses. Since it often serves private purposes, it effectively becomes a legal way private developers can circumvent the conventional real estate market and force other property owners to sell their property to developers while reaping substantial financial gains. Finally, the argument is made that because statutory criteria for blight determination are so broad they fail to constrain eminent domain's use for redevelopment purposes.

On the other hand, city officials and economic development planners argue that redevelopment could not happen without an ability to consolidate property and comprehensively redevelop it. Also, they argue that eminent domain is only used as a last resort after less intrusive and aggressive approaches have failed. Generally speaking, my experience confirms that argument.

It is very difficult to predict when this U.S. Supreme Court decision will be made, but I would not be surprised if it is decided before the end of the Court's term in June 2005.

Municipal Boundary Changes

This is a subject which one could write a book about, but the purpose of this article is to share with you the statutory scheme that is available to Wisconsin municipalities to achieve boundary changes and to analyze how frequently this tool has been used.

The statute that municipalities could turn to in order to achieve boundary changes and to increase municipal cooperation is contained in Wis. Stat. § 66.0307, Boundary change pursuant to approved cooperative plan. This statute is somewhat cumbersome due to the procedural and substantive hurdles that municipalities would have to overcome in order to end up with a cooperative plan that is fully enforceable.

Municipalities would have to prepare a cooperative plan which would address boundary line changes, the physical development of the property in question, a section addressing environmental consequences and housing needs, and the compatibility with current zoning. Procedurally, timely public hearings, a time for public comment, and submission of the plan to be reviewed by the State Department of Administration are all requirements of the statute. The possibility of an advisory referendum and judicial review of the Department's decision to approve or not to approve a cooperative plan or an amendment to the plan could further complicate the process.

One of the consequences of having this fairly complicated statutory scheme in place is that municipalities have

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WAPA Legislative Update

By JORDAN K. LAMB

DEWITT ROSS & STEVENS S.C.

2005-07 Biennial Budget

On February 8th, Governor Doyle announced his proposed 2005-07 Biennial Budget. This is the only piece of legislation that is authored by the Governor. His budget bill has been introduced as 2005 Assembly Bill 100 and has been referred to the Joint Committee on Finance for review by the Legislature.

The Joint Committee on Finance consists of sixteen members. Eight are from the Assembly and eight are from the Senate. The committee is currently made up of twelve Republicans and four Democrats. The committee co-chairs are Representative Dean Kaufert (R-Neenah) and Senator Scott Fitzgerald (R-Juneau).

The Joint Committee on Finance is charged with reviewing all state appropriations and revenues, including the biennial budget bill. This spring, the Committee will conduct in-depth analysis of the budget as it was proposed by the Governor and will make amendments to the bill before it will be considered by both houses of the legislature.

The following are narrative descriptions of some of the Governor's budget proposals and subsequent legislative activity that may be of interest to WAPA members.

Property Tax Relief. The Governor recommends providing substantial property tax relief through a package of levy limits, incentives, bonuses and state aid.

Following the Legislative Fiscal Bureau comparison of Governor Doyle's property tax freeze plan and the legislative Republican's original plan in February, Republican leaders in the Legislature revised their plan and passed their proposal on February 22, 2005. (See Assembly Bill 58 on the Internet at <http://www.legis.state.wi.us/2005/data/AB58hst.html>.)

As expected, Governor Doyle vetoed the Republicans' proposed property tax freeze on March 11, 2005. In a press release on March 11, the Governor stated, "I support a responsible property tax freeze—one that works by funding education, not cutting education." "Now that this Republican

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political sideshow is out of the way, I hope they will work with me to pass a responsible plan. I'm still optimistic that legislators will heed the wishes of parents and educators to fully fund the state's commitment to education so we can have a property tax freeze that protects taxpayers and our schools."

Later, Republicans tried, but failed, to override the Governor's veto of AB 58. However, the property tax freeze will continue to be a topic of debate during the budget process.

To review the *Milwaukee Journal Sentinel* report covering the failed veto override go to <http://www.jsonline.com/news/state/mar05/310244.asp> on the Internet.


County and Municipal Levy Limits. The Governor recommends establishing county and municipal levy limits for levies collected in 2006 and 2007. The limits will allow these local governments to increase property taxes by no more than inflation plus a growth factor related to new construction. For municipalities, the growth factor will be calculated on a regional basis. Debt service and tax increments are excluded from the limit. A locality may exceed the limit by referendum.

Expenditure Restraint Reform and Expansion. The Governor recommends expanding the expenditure restraint program to include counties and restructuring the program to focus on limiting property taxes rather than expenditures. For qualifying municipalities (with mill rates over five) and for all counties, the Governor recommends rewarding localities if they limit property tax increases to no more than 85 percent of the sum of inflation plus a growth factor based on new construction. The Governor further recommends that bonus payments be provided to municipalities and counties that increase their levies by less than the maximum allowed. Local governments will need to limit levy increases beginning with December 2005 tax bills to be eligible for the new payments beginning in 2007.

School Levy Credit. The Governor recommends increasing the school levy credit by \$150,000,000 in General Purpose Revenue (GPR) beginning in 2007. This increase will be paid in July of each year unless additional revenues are available in the 2005-07 biennium to pay all or a portion of the increase in June. This additional amount will be distributed in proportion to each school district's share of general school aids.

Local Revenue Sharing Agreements. The Governor recommends allowing counties to enter into revenue sharing agreements with municipalities or other counties and expanding the scope of revenues that may be allocated under local revenue sharing agreements to include state payments and fees.

Land Information Program. The Governor recommends transferring the responsibilities of the Wisconsin Land Information Board and Wisconsin Land Council to the Department of Administration including: (a) approval of land records modernization; (b) administration of land records modernization grant funding; (c) recommendation of land use goals and priorities; and (d) establishment of a state



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agency resource working group to study state land use issues. The Governor also recommends eliminating the sunset for the \$2 deed recording fee to ensure continued funding for state comprehensive planning and land records modernization grants. The Governor further recommends the elimination of funding for the completed soil survey and mapping project with the U.S. Department of Agriculture.

Land and Water Resource Management. The Governor recommends providing \$520,000 annually for cost-share grants to farmers required to implement nutrient management plans and other nonpoint source pollution control practices. The Governor further recommends providing \$500,000 for grants to support county conservation staff. The Governor also recommends providing \$7,000,000 in new GPR-supported general obligation bonds for grants to counties for implementation of land and water resource management plans, including cost-share grants to landowners.

Managed Forest Law. The Governor recommends providing \$2,000,000 in each year to create a public access grant program funded by closed acreage fees under the Managed Forest Law program. This proposal fulfills the intent of the veto message relating to 2003 Wisconsin Act 228. A new Managed Forest Land Board will award grants to local units of government, the department and nonprofit conservation organizations for the purpose of acquiring easements or purchasing land for public access to offset the impact of closed acreage under the Managed Forest Law program. The Governor further recommends reducing operations funding by \$800,000 in each year related to consultant contracts to prepare Managed Forest Law plans because these costs will be covered by the fees created in Act 288 for this purpose. Lastly, the Governor recommends providing \$64,300 in FY06 and \$405,300 in FY07 to improve the processing of Managed Forest Law applications, transfers and withdrawals.

Nonpoint Source Pollution Abatement. The Governor recommends providing \$10,700,000 in new GPR-supported general obligation bonds for grants to counties and municipalities for installation of nonpoint source pollution abatement practices. The bonding will be issued for the priority watershed program (\$6,000,000 bonding revenue to meet existing cost-share grant agreements) and urban nonpoint, municipal flood control and riparian restoration (\$4,700,000 bonding revenue for cost-share grants to municipalities).

Stand-Alone Legislation

Plan Period for County Forest Land Use Plans – 2005 Assembly Bill 9

Representative John Ainsworth (R-Shawano) introduced AB 9 on January 18, 2005. Under current law, a county board may enact an ordinance designating a committee to manage lands designated as county forests in that county. A comprehensive county forest land use plan must be prepared for the county forest land by that committee. The plan must include land use designations, land acquisition, forest protection, annual allowable timber harvests, recreational developments, projects to be undertaken during the plan period and other information, and the plan must be prepared for a 10-year period and must be revised when the plan period expires.

Assembly Bill 9 requires that each county forest land use plan be prepared for a 15-year period rather than a 10-year period and that the plan be revised every 15 years. The bill specifies that if the plan is not revised, the plan remains in effect until it is revised and the revised plan takes effect. To review a copy of Assembly Bill 9, go to <http://www.legis.state.wi.us/2005/data/AB-9.pdf> on the Internet.

Quorum Requirements for a Zoning Board of Appeals or Adjustment – 2005 Assembly Bill 24

On January 20, 2005, Representative Sheryl Albers (R-Reedsburg) introduced 2005 Assembly Bill 24, which makes changes to the quorum requirements for zoning boards.

Under current law, a municipality or county is authorized to enact zoning ordinances that regulate and restrict the height,



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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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number of stories, and size of buildings and other structures; the percentage of 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.

A municipality's board of appeals or a county's board of adjustment is authorized under current law to hear and decide appeals that allege that there is an error in the enforcement of a zoning ordinance, to hear and decide special exceptions to the terms of a zoning ordinance, and to authorize a variance from the terms of a zoning ordinance. Currently, the county board chair of a county with a population of 500,000 or more and the chief executive officer of a municipality (a city mayor, village board president, or town board chair) may appoint two alternate members of the board of adjustment or appeals, who act when a member of the board of adjustment or appeals refuses to vote because of a conflict of interest or when a member is absent.

This bill requires all municipalities or counties that have a board of appeals or adjustment to appoint alternate members of the board. The bill also specifies that if a quorum is present the board of appeals or adjustment may take action by a majority vote, and repeals a current law provision that requires four out of five votes for action by a city, village, or certain town board of appeals.

AB 24 has been referred to the Assembly Committee on Property Rights and Land Management. To review a copy of AB 24, go to <http://www.legis.state.wi.us/2005/data/AB-24.pdf>.

Property Tax Exemption for Arts and Education Centers – Senate Bill 3

Senate Bill 3, introduced by Senator Ted Kanavas (R-Brookfield) has been passed by the Senate and concurred in by the Assembly. To review a copy of Senate Bill 3, go to <http://www.legis.state.wi.us/2005/data/SB-3.pdf> on the Internet.

Size of County Boards of Supervisors and Cities' Common Councils – Senate Bill 4 and Assembly Bill 60

2005 Assembly Bill 60 was introduced by Representative Gregg Underheim (R-Oshkosh) on January 27, 2005. AB 60 is the Assembly companion bill (i.e., identical bill) to Senate Bill 4, which was introduced by Senator Ted Kanavas (R-Brookfield). (See January 2005 WAPA Update for detailed information on SB 4 bills.) To review a copy of Assembly Bill 60, go to <http://www.legis.state.wi.us/2005/data/AB-60.pdf> on the Internet.

Outdoor Advertising – 2005 Senate Bill 77

Senator Fred Risser (D-Madison) has introduced Senate Bill 77, which makes changes to the law governing outdoor advertising.

The federal Highway Beautification Act requires states to restrict advertising along interstate and federal-aid primary highways, and current state law incorporates these requirements. Current law prohibits, with certain exceptions, the erection or maintenance of outdoor advertising signs within 660 feet of, or beyond 660 feet but visible (and erected for the purpose of being visible) from, the main-traveled way of an interstate or primary highway.

One of the exceptions to this prohibition include signs located within 660 feet of the highway in areas zoned for business, industrial, or commercial activities, or in unzoned areas used for commercial or industrial activities, that were erected after March 18, 1972. These signs must comply with certain size, lighting, and spacing requirements.

This bill freezes (as of the effective date of the bill) the application of this exception to signs in existence on the bill's effective date, thereby prohibiting the erection of signs under that exception after the bill's effective date. Signs erected under this exception prior to the bill's effective date may continue to be maintained and to vary their advertising and informative displays.

This legislation has been referred to the Senate Committee on Natural Resources and Transportation. To view a copy of the bill, go to <http://www.legis.state.wi.us/2005/data/SB-77.pdf> on the Internet.

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Special Legislative Council Committee on Municipal Annexation

The drafting subcommittee of the Special Legislative Council Committee on Municipal Annexation has created several draft pieces of legislation for the full committee to consider at its next meeting. The drafts relate to municipal boundaries that are subject to contested court actions; the authorization of certain boundary agreements under Wis. Stat. § 66.0301; and allowing a cooperative boundary plan by mediated agreement.

The full committee will meet to decide which, if any, of these drafts it would like to be introduced for consideration by the State Legislature. (Note: No meeting of the full committee has been scheduled.)

To review the current drafts and to see a history of the Committee's work, go to http://www.legis.state.wi.us/lc/3_COMMITTEES/Special%20Committees/2004/ANNEX/index.htm on the Internet.

Technical Changes to the Tax Incremental Financing Law – Senate Bill 83 and Assembly Bill 147

Senator Cathy Stepp (R-Sturtevant) and Representative Mark Gottlieb (R-Port Washington) have introduced companion bills Senate Bill 83 and Assembly Bill 146, which make technical changes to the TIF law. These bills are moving simultaneously through both houses, however the Senate bill has made faster progress and has been amended since its introduction. (It is expected that AB 147 will be amended in an identical manner.) AB 83 has been passed by the Senate as amended and now awaits Assembly action.

Current law specifies that for certain TIDs, subject to a number of exceptions, the expenditure period to pay off project costs is limited to five years before the unextended termination date of the TID. This bill makes a technical change to clarify that the five-year expenditure period limit applies to all TIDs, subject to a number of exceptions and also makes a technical change related to the amount of vacant land that a TID may contain if it is suitable for mixed-use development.

Also under current law, a planning commission may adopt an amendment to a project plan, which requires the approval of the common council or village board and the same findings that current law requires for the creation of a new TID. Current law also authorizes the amendment of a project plan up to 4 times during a TID's existence to change the district's boundaries by adding or subtracting territory. This bill clarifies that if a single amendment to a project plan both adds and subtracts territory, this amendment counts as only one amendment of the plan in counting toward the allowable maximum of 4 amendments to the TID's boundaries.

Under current law, before a TID may be created or its project plan amended, the city or village must issue a finding that the equalized value of taxable property of the TID plus the value increment of all existing TIDs does not exceed 12 percent of the total equalized value of taxable property in the city or village (the "12 percent test"), unless the amendment of the project plan subtracts territory from the TID. This bill clarifies that the 12 percent test applies only to TIDs that are being created or whose project plans are amended in a way that adds territory to the district.

To review a copy of SB 83 and the two amendments that have been adopted, go to <http://www.legis.state.wi.us/2005/data/SB83hst.html> on the Internet and click on the links to the bill and the amendments.

Allowing Certain Counties To Create Tax Incremental Financing Districts – Assembly Bill 156

Representative Jeffrey Mursau (R-Crivitz) has introduced Assembly Bill 156, which allows certain counties to create TIF districts.

Under the current Tax Incremental Financing Program, a city or village may create a tax incremental district (TID) in part of its territory to foster development if at least 50 percent of the area to be included in the TID is blighted, in need of rehabilitation, or suitable for industrial sites. Before a city or village may create a TID, several steps and plans are required. Also under current law, once a TID has been created, the Department of Revenue (DOR) calculates the "tax increment base value" of the TID, which is the equalized value of all taxable property within the TID at the time of its creation. Current law also authorizes towns, under very limited circumstances, to create TIDs for agricultural, forestry, manufacturing, and tourism projects and for related retail and residential development.

This bill authorizes counties in which no cities or villages are located to use tax incremental financing and create a TID if the town board of each town in which the proposed TID is to be located approves.

AB 156 has been referred to the Assembly Committee on Ways and Means. To review a copy of this legislation, go to <http://www.legis.state.wi.us/2005/data/AB-156.pdf> on the Internet.

Kenosha TIF Districts – Senate Bill 102 and Assembly Bill 193

Senator Robert Wirsch (D-Pleasant Prairie) and Representative John Steinbrink (D-Pleasant Prairie) have introduced companion bills Senate Bill 102 and Assembly Bill 193, which make changes to TIF laws affecting the City of Kenosha.

Generally, under current law, project costs of a TID are required to be expended within the boundaries of a TID. Under this bill, the project costs of a TID in the city of Kenosha may be spent on territory within a one-half mile radius of the boundary of the TID if that TID is a blighted area TID.

Current law also specifies that for certain TIDs (subject to a number of exceptions) the expenditure period to pay off project costs is limited to five years before the unextended termination date of the TID. This bill applies that same expenditure period, five years before the termination date of the TID, to certain donor TIDs in the city of Kenosha.

SB 102 has been referred to the Senate Committee on Job Creation, Economic Development and Consumer Affairs. Assembly Bill 193 has been referred to the Assembly Committee on Ways and Means. To review a copy SB 102, go to <http://www.legis.state.wi.us/2005/data/SB-102.pdf> on the Internet.

Towns May Withdraw from County Zoning – LRB 1655/2

Representative Samantha Kerkman (R-Burlington) is circulating LRB 1655/2 for co-sponsorship (i.e., this is draft legislation that has not yet been introduced.) This bill would allow towns to withdraw from county zoning if the town has

adopted a town zoning ordinance that is at least as restrictive as the current county zoning and is based on a town comprehensive plan.

Legal Update: *Continued from page 9*

not used the Wis. Stat. §66.0307 cooperative plan procedure to the extent that the Legislature envisioned in 1991 when the law became effective. Besides the numerous legal requirements that need to be fulfilled in order to have a binding cooperative plan, another major reason why it has been sporadically used is the requirement of State review. Many municipalities shy away from using this statute even though it might be in their long-term interest to do so because of a fear that local control may be taken away from them because of the requirement of State oversight.

However, the reality is that since cooperative agreements are initiated by the municipalities themselves, the Department is not in an adversarial relationship and in fact often assists the municipalities involved to make the intent of the parties more clear. The Department staff have also convened meetings among the parties to facilitate potential resolution of objections by land owners or electors.

Before 2000, there were only five cooperative plans that were approved in the first nine years that the law was in place. The first approved cooperative agreement was in 1996 between the Town of Plover and the City of Stevens Point. However, beginning in 2000 the perceived need of Wisconsin municipalities to enter into cooperative agreements greatly increased. Between 2000 and 2004, 13 cooperative agreements have been approved and eight more are currently being reviewed. A list of approved cooperative agreements that Wisconsin municipalities have entered into with the year that they became effective as well as agreements that are currently being reviewed is available in the March 2005 Legal Update on the WAPA website.

Due to shrinking municipal resources and the incentives available to municipalities that do cooperate with their neighbors, I suspect that Wis. Stat. § 66.0307 will be used more frequently in the future.

Can Land Use Decisions Unduly Burden Religious Exercise?

In my July 2004 Legal Update, I reported the case of *Civil Liberties for Urban Believers v. City of Chicago*, which upheld Chicago's Zoning Ordinance in light of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), I indicated at that time that this decision was typical of how most courts have concluded that although this law is constitutional, they have not been prepared to equate the legitimate protections that RLUIPA affords with a "free pass" for religious-based property owners.

However, on February 1, 2005, the 7th U.S. Circuit Court of Appeals ruled that a Wisconsin Town's insistence upon assurances that if it rezoned land to permit construction of a church, the property could never be used for

non-religious purpose violated the RLUIPA. The Beckett Fund which tracks and often litigates RLUIPA cases across the country, says that the *Sts. Constantine and Helen Greek Orthodox Church, Inc., v. City of New Berlin* case is the first in which a federal appeals court has found a course of conduct by municipal officials to constitute a "substantial burden" on religious activity. The DeWitt law firm represented the Church in this landmark decision.

In 2002, the Church applied to rezone from residential to institutional 14 acres of a 40-acre residential-zoned parcel it had previously acquired. Churches are not a permitted use in residential zones in the City of New Berlin, although the City had previously agreed to rezone property to allow for a Protestant church to be built which adjoined the parcel. The City's Planning Department was concerned that if the Church could not raise the estimated \$12 million to build this new facility, or for some other reason decided not to proceed with construction, the parcel could be used for a non-religious purpose. The Church proposed that the City impose a Planned Unit Development (PUD) overlay ordinance on the parcel, limiting it to church-related uses. Based on that condition, the Planning Department staff recommended approval of the rezoning. However, the Planning Commission recommended against the rezoning and the City Council voted not to approve it. The Church sued in federal court and the trial court granted summary judgment in favor of the City.

The Appeals Court noted that the Planning Commission appeared to be concerned that if the Church failed to build on the property and instead sold it, the PUD ordinance would not bind the purchaser. The Court stated that this belief was incorrect. Nothing in the proposed PUD, the Municipal Code, or general property law supported the notion that the PUD ordinance would lapse at the sale of the property. The Court reasoned that because the ordinance restricted the use of the property rather than the actions of the current owner, the Church's successors would be bound.

The City's Mayor had suggested two possible alternative courses of action. One was for the Church to apply for a conditional use permit. However, a conditional use permit would lapse after one year and under the municipal code of New Berlin, could not be extended. If the Church waited to apply for the permit until it was within a year of beginning construction, it would be very difficult to raise the funds needed because it could not assure potential donors the church would actually be built, the Court pointed out.

The other course the Mayor suggested was an application for a PUD that would override the existing residential zoning so that if the City were right that a sale would void the PUD, the property would revert to residential zoning. The Court noted, however, that the PUD the Church proposed would have had the same effect as the one the Mayor proposed indicating that the Mayor was merely trying to stall the proceedings.

The Church was not arguing that having to apply for what amounted to a variance to build in a residential area was a substantial burden on religious exercise. Rather, it complained about having to either sell the parcel it owned and find a suitable alternative parcel, or be subject to unreasonable delay by



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having to begin the application process all over again.

The City argued that the Church could not complain about being treated badly as long as it was treated no worse than other applicants for zoning variances. However, another provision of RLUIPA forbids government from implementing a land use regulation in a manner that treats a religious assembly on less than equal terms with a non-religious entity.

If a land use decision imposes a substantial burden on religious exercise, and the decision maker cannot justify it, an inference arises that hostility to religion or to a particular sect influenced the decision. The Court concluded that the burden on the Church was substantial. The Church might have been able to find another suitable parcel, or it could have continued filing applications, but in either case, there would have been delay, uncertainty and expense. Despite the fact that the burden might have been overcome, the Court ruled that this did not make it insubstantial.

The decision in *Sts. Constantine and Helen Greek Orthodox Church, Inc.*, represents an important message to municipalities that land use regulations when applied to religious organizations have to be tailored so that they do not create a substantial burden.

How Were the Barriers to Land Use Reforms Overcome in Wisconsin and in Illinois?

In the January 2005 issue of *Zoning and Planning Law Report*, the author who is an Honors Fellow at the Land Use Law Center at Pace University, wrote an excellent article comparing how political leadership and citizen participation resulted in significant land use law reforms in Wisconsin and Illinois. The process involved in adopting Wisconsin's "Smart Growth Law" in 1999 and the adoption in Illinois of the "Local Planning and Technical Assistance Act" in 2000, and the "Affordable Housing Planning and Appeal Act" in 2004 are contrasts in the process used to adopt these significant pieces of legislation.

Although Wisconsin and Illinois face the same land use problems that are typical throughout the country which include urban exodus, loss of farmland and open space, and the decay of once vibrant inner cities, the approaches used in each state were quite different.

For more information on this comparison, see Michael

Government: Continued from page 3

layer was currently performing a **Primary Role** and which a **Supporting Role**.

Rierner's functional analysis can be illustrated by applying the concepts he uses to an area of development familiar to *WAPA News* readers: **building codes**. Local government has the Primary Role, the state performs a supporting role, and there is virtually no role for the county and national layers. Local government is responsible for setting the policy, but local taxes do not necessarily finance the service, nor do local officials necessarily carry out compliance inspection service. The builder must construct according to local government building codes, but the cost of inspecting for code compliance is increasingly by building permit fees, while in many communities inspection itself is contracted out to private inspectors.

Building inspectors may originally have been government employees funded by general taxes. But the switch to permit fees that are high enough to pay for inspections has facilitated substituting private contractors for government employees. Such fee-for-service approaches stand tall in Mr. Rierner's hierarchy of financing, perhaps because they allow for the reduction of property taxes while retaining vital government services that protect the public's safety.

While the function of **Safety and Order** focused on traditional local and state government activities in the area of policing, fire suppression, and public health, Rierner argued that it should also include "attractive communities." He stated that, presently, this function includes crime suppression, emergency response, fire suppression, clean water, waste sanitation, public health, and efficient transportation, as well as general planning, code enforcement, and outdoor recreation and conservation.

Under the function of **Equality of Opportunity** in social and economic life, Rierner groups several forms of social insurance, including health insurance, public education, and economic security programs (disability and elderly payments, unemployment insurance, and work supports). Optional services such as school lunches, public housing, and food stamps are listed, but Rierner argues these could be done away with if the system of assuring unemployed



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families employment and making work pay for low-income workers was improved.

Sustaining Open and Productive Markets is the function dominated presently by the national government, with local, county and state governments playing no role or only a small supporting role. Some governmental tasks in this area are so basic we no longer notice them: coining and printing money, regulating the money supply, establishing and enforcing rights of property and contract, and postal services. Others seem always to be evolving: regulation of

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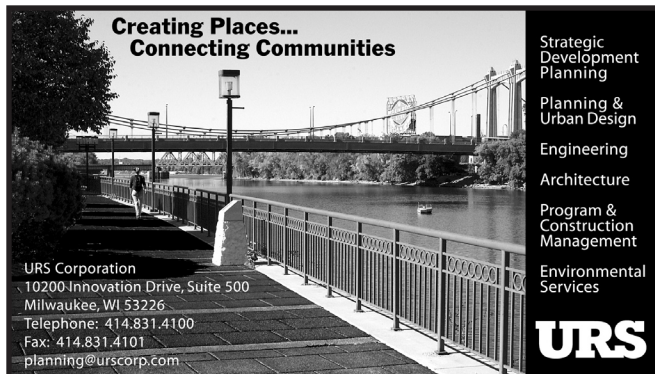
communications and energy, consumer foods, drugs and products, and financial and insurance businesses.

In suggesting what government **should do**, Riemer points us toward a renewed skeptical evaluation of all subsidies that have crept into government. He would greatly reduce property, income, and other taxes, paying for such tax cuts by cutting back government's huge role in subsidizing transportation, housing, and agriculture. He would replace "categorical assistance" for narrow groups of low-income people by extending health, education, and economic security policies to broad groups. He would also reduce the means-testing elements of most social insurances, which penalize work and marriage, in favor of covering all persons regardless of means, using the tax system to assure that those with means are not subsidized. These changes would greatly reduce the bureaucracy necessary to administer the programs.

In the matter of **Revenue**, Riemer accepts the premise that each major known tax has positives and negatives. Therefore, the best government finance is one that uses the widest possible types of taxes, but keeps low the tax rates applied to each. He would look seriously at replacing the property tax with Henry George's "land tax," and he favors reducing taxes on "virtues" such as property, sales, and income with taxes on "vices" such as cigarettes. Riemer prefers in general, however, to reduce the role of taxes in raising revenue, substituting where possible **user fees and charges** on services rendered. One advantage of fees is they can include rate reductions to recognize private efforts to reduce government expense, such as a lower fire rate for buildings with smoke alarms.

In general Riemer favors a philosophy of "**leave no human behind**," and yet "**give all persons the freedom of being in charge of their own lives**." Government should "set the stage for personal freedom and the pursuit of satisfaction," but rely on market forces to determine the flow of resources through the economy. If the reader knows their political philosophies, Riemer fits in no box. He favors elements cherished by Libertarians and Conservatives (emphasizing the worth of work, use of vouchers, use of private production of services wherever possible, and above all the importance of markets in allocating resources). He also favors as well elements held by Liberals and Progressives (raise the minimum supports of life for everyone to an acceptable level, regulate against monopolies, and avoid subsidies).

Riemer has no book in the offing. He spoke from extensive lecture notes. Once he has had an opportunity to edit and expand his notes, the School of Architecture and Urban Planning will post them on their Publications webpage. For more information about accessing the text of these lectures, contact Nancy Frank, frankn@uwm.edu, 414-229-5372.



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Value of Planning: *Continued from page 1*

tion, for example, is likely to differ if measured immediately, compared to decades in the future.

Peter Hall observed that planning is “multidimensional and multi-objective...oriented towards *process* rather than the production of one-shot (or end state) plans” (Hall, *Urban and Regional Planning*, Chapter 1). Plans are adopted. Implementation occurs slowly over many years. Some elements of the plan are postponed or eliminated all together. Priorities change and plans are amended. How are we to determine whether poor outcomes might have been avoided with more or better planning or plan implementation (or, conversely, to what degree good outcomes are the result of good planning)?

Because planning is itself such a complex process, evaluation of its effects or absence cannot be summed up in a simple formula.

Certain characteristics of spatial development can be approximately quantified, of course; for example, the value of successful planning can be linked to the value of real estate development. The costs of suburban sprawl can be derived (to take just one example) from estimates of water and sewer service extension. “Every study shows that sprawl has strained public budgets, increased traffic congestion, threatened public health and the environment, over-consumed land, and damaged the social fabric of our nation” (American Planning Association, “Paying for Sprawl,” see Further Reading for details). Insofar as planning is associ-

Share Your Planning Success Stories

Both WAPA and APA are compiling collections of anecdotes documenting the value added through good planning planning and funding of planning and community development.

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.

APA is collecting stories about the positive impact of Community Development Block Grant funding (CDBG). Add your stories and use the stories that have been posted in communications with your congressional representatives to preserve CDBG funding.

<http://www.planning.org/legislation/CDBG/>

Click on Tell Your CDBG Stories to share an anecdote. Click on Case Studies to read what others have submitted.

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ated with a physical resource, planners can claim a reasonably accurate estimate of their work's value.

A more complete analysis of the fiscal impact of planning, however, also has to include more abstract considerations (Bunnell 2002, 23). For example, when a planner works with a developer to improve the aesthetic and functional qualities in a site plan, the community reaps benefits in improved traffic flow, increased desirability of the area, and (ultimately) increased property values. As planners, we rarely track or document even those impacts that are easy to measure. And we are unable to separate the impact of improved aesthetics on the overall rise in property values following build-out of the site plan. But the benefits are there.

Similarly, a planner's response to ethical questions also has an effect on a community's bottom line. For example, by virtue of our code of ethics, planners recognize a professional responsibility to promote affordable housing in the communities we serve—as well as promoting the equitable distribution of affordable housing throughout the region. By monitoring the supply of affordable housing and promoting policies to increase the number of affordable units, planners help to build the wealth of lower-income residents. Supplying adequate affordable housing increases household disposable income, increasing the household's ability to participate more fully in the consumption of other goods and in saving for future needs.

Likewise, the planner's ethical insistence on including all stakeholders in shaping the city also reaps benefits. The risks of backlash following approval of a development proposal or passage of a new ordinance are reduced when stakeholders have an opportunity to participate. In addition,

inclusive planning contributes to a culture of civic engagement that can unleash the creativity and energy of volunteerism for local government. And a city that is viewed by its residents and neighbors as creative and energetic will be a magnet for new residents and businesses alike, enhancing property values, sales, and the attraction of employers.

Communicating Strategically

In order to be effective in spreading the planning message that “planning saves,” planners can't wait until the budget-cutting ax is about to fall. Planners need to continually celebrate planning successes and communicate planning's value to the communities in which they work. Successful cities don't just happen. Neither does recognition of planners' roles in creating those successes. A planner who consistently questions how planning is contributing to a community's success is more likely to be able to communicate how planning adds value to the community.

Further Reading

Gene Bunnell, *Making Places Special*. APA Planners Press, 2002.

Bunnell's book presents evidence of planning's success in several American cities. The municipal case studies are accompanied by comments on popular critiques of planning (such as Kunstler's *Home from Nowhere* and *The Geography of Nowhere*). The book concludes with a helpful “Lessons Learned” chapter, in which the author presents principles of successful planning as well as methods of evaluating projects.

American Planning Association, “Cincinnati Talking Points,” <http://www.planning.org/newsreleases/pdf/Cintalkpts.pdf>

This webpage offers useful statements about the value of planning for use in letters or public testimony.

American Planning Association, “Paying for Sprawl.” <http://www.planning.org/viewpoints/sprawl.htm>

Provides a summary of some of the key research on the benefits of planned growth over unplanned growth.



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