

## \$ \$ \$ \$ TABOR?

## Taxpayer Bill of Rights: What Could It Mean for Wisconsin Planners and Smart Growth?

BY BART VOSKUIL, STUDENT EDITOR, AND NANCY FRANK  
UNIVERSITY OF WISCONSIN – MILWAUKEE

### *In this issue . . .*

Public Participation Training Offered.....	2
Continuing Ed Credit Tracking Online.....	2
Retirees Honored.....	3
Ron Lee (1960 - 2004) Rememberd.....	3
Nominees for Board and Bylaws Changes.....	4
Comp Plans Adopted by Ordinance.....	5
2004 Awards Presentations.....	6 - 7
Law Update	
Eminent Domain Benefits Private	
Development.....	8
Legislative Update: Leg Council Comm's	
Annexation.....	8
State-Local Relations.....	9
Sarah Johnson Joins RA Smith.....	9
WAPAProfessional Services Directory 12-15	
Executive Committee Contact Info.....	13

The Wisconsin legislature is expected to renew its efforts to pass some form of a taxpayer bill of rights (TABOR) in the next session. The political climate appears to be supportive of such an amendment. A recent Harris Interactive poll indicates that a majority of Wisconsin residents support a constitutional amendment that would limit increases in state and local government spending to the rate of inflation. In addition, most residents would balance the budget by cutting spending, rather than increasing taxes (Harris Interactive, October 6, 2004). According to Joe Murray of the Wisconsin Real Estate Magazine, a constitutional amendment to create TABOR is likely to be the first big item of business that the legislature takes up in January.

The stated purpose of a TABOR is to limit government expenditures (both state and local). According to the organization United Wisconsin for a Taxpayer Bill of Rights (UWTBR), whose mission is to pass TABOR in Wisconsin, the law would limit state, local, and school spending. For local government, spending would be limited to the previous year's spending, plus a percentage increase equal to the rate of inflation, plus an increase equal to the percentage increase in equalized value due to new construction. The version of the TABOR promoted by UWTBR would also require each unit of government to create a budget stabilization fund (rainy day fund), a feature not included in the Colorado law that has been used as a model for the Wisconsin TABOR being proposed.

Opponents of TABOR believe that a constitutional amendment is not an appropriate solution. Budgets can be balanced without an expenditure freeze, and TABOR would result in less local control of budgets, inflexibility, and inability to meet important community needs.

*Continued on page 11*

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**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.

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**Submission of Articles:** WAPA News welcomes articles, letters to the editor, articles from the WAPA districts, calendar listings, etc. Please send anything that may be of interest to other professional planners in Wisconsin. Articles may be submitted by mail, fax, or email. Articles may be edited for readability and space limitations prior to publication. Content of articles does not necessarily represent the position of APA, the WAPA Executive Committee, or the editor.

**Submit articles in electronic formats:** Articles may be submitted on 3.5 inch floppy disks, CD-ROM, or via email. If submitting the article by email, send it to [wapa@uwm.edu](mailto: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](http://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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## Improving Your Community's Public Participation

What planner has not felt that having more training in public participation would improve her skills to carry out a planning process. Even those of us who have had lots of experience facilitating public participation know that the we can always learn more.

One resource for gaining this extra knowledge, skill, and confidence in carrying out successful public participation in planning is the International Association for Public Participation, or IAP2. Attending the IAP2 annual conference is one way of getting more training in participation methods and issues. IAP2 certified trainers also offer courses here in Wisconsin.

IAP2 offers three courses offered in Madison this winter:

1. Planning for Effective Public Participation (two-day course, Jan 11-12, 2005)
2. Effective Communications for Public Participation (one-day course, February 1, 2005)
3. Techniques for Effective Public Participation (two-day course, February 2-3, 2005)

Please note that "Planning for Effective Public Participation" is a prerequisite for the other two courses. The other two courses may be taken in any order. Professionals who complete all three courses receive a Certificate in Public Participation. For more information about this training and specific course content, see the IAPW website at <http://www.iap2.org/training/IAP2TrainFactSheets.pdf>.

For more information about the training sessions in Madison this winter, contact Mary Hamel, [mary.hamel@dnr.state.wi.us](mailto:mary.hamel@dnr.state.wi.us).

## Continuing Education Credits: Keep Track On-line AICP's Continuing Professional Development Program (CPDP)

BY NANCY FRANK

WAPA PROFESSIONAL DEVELOPMENT OFFICER

The APA website now allows you to keep track of your continuing education credits online. WAPA will be submitting the program from its annual conference and from the fall workshop and outing, which will allow AICP members attending WAPA programs to simply click on the sessions attended, which will then be logged electronically to your personal log. This same "click to log" system is available for the national APA conference, as well as a long list of other conferences approved for AICP continuing education credit. Organizations on the "other" list include: American Society

of Landscape Architects, Brownfields 2004, and University of Wisconsin College of Engineering. What could be easier!

Independent study using CD-ROM or video, as well as teaching a course or doing a presentation, is also eligible for CPDP credit. Just contact AICP@planning.org for information about getting those credits put into your log.

If you have attended a program that is not listed at the CPDP website, please send me the information about the course, workshop, or conference. I will review it (see criteria on the CPDP website) and then send approval to AICP if the program meets the criteria. Our goal is to have all programs in Wisconsin that are eligible for CPDP credit to be listed on the AICP website.

## Retiree Recognition

At the WAPA Annual Meeting in October, WAPA recognized retiring planners.



Gary Peterson, AICP, WAPA President, presenting the 2004 Retiree Recognition plaque to Kenneth Clark, AICP.

### Kenneth Clark, AICP

Words of Wisdom: "Don't directly participate in the politics."

### Robert Fisher, AICP

Words of wisdom for planners, "Become an expert in something, especially if it's directly related to planning. Become known among your peers as the "go to guy" for your area of expertise and make sure it's something you enjoy."



## A Tribute To Ron Lee, AICP (3/14/60 – 6/20/04)

BY STEVEN BALL

I met Ron Lee in 1986 shortly after moving to Naples. We were both young planners. He worked for Collier County and I worked for the City

of Naples. I remember him working on statistical analyses for the county, something every fast growing community needs to do. We became good friends and shared a variety of wacky times together in our youth. I left Naples and Ron eventually ended up working for the City as their Planning Director. We kept in touch mostly at planning conferences where we got updated on our lives and families. Ron died of cancer a few weeks ago.

Ron touched a lot of people in Naples and Florida as evident by the packed church at his funeral filled with friends, family and colleagues. Naples' Mayor Bill Barnett spoke of how he would set the City Council back on course when they strayed away from the issues of complicated planning and development projects. Also, of his interest in doing his best for the public good. Many people knew Ron for his ability to keep a level head when there was chaos and confusion around him, and not to engage in emotion but to focus on the merits of planning issues. He was kind but firm in his beliefs and ability and matured over the years as a planning professional. His life and work can help us remember how planners positively influence the development and growth

*Continued on page 10*

## Source Water Protection Program

BY THE WISCONSIN RURAL WATER ASSOCIATION

The source water protection program is meant to be a tool for communities to ensure their drinking water remains clean and of high quality now and for future generations. The program begins with the creation of a planning team, whose goal is to initiate, lead, and oversee the development and implementation of a The program is designed to be a multi-faceted, multijurisdictional approach to continually manage and protect public drinking water. Community's participation in the protection program is an indication to the public that the community leaders and water system managers are com-



## Slate of Nominees for Election to WAPA Board

SUBMITTED BY ROLAND TONN, PAST PRESIDENT

The WAPA Bylaws regarding election of officers indicate that the Southeast Wisconsin District Representative, the Northeast Wisconsin District Representative, and the Southwest Wisconsin District Representative are to be elected in 2004 to serve from 2005-2008. Also, we have the Executive Committee's referendum to change the bylaws to make the Planning Officials Development Officer (PODO) a voting member of the Executive Committee.

Following are the individuals nominated to run for the positions that are open. I am requesting approval of this slate of candidates by the Executive Committee at the November 5, 2004 meeting so the slate of candidates can be sent out to chapter members along with an opportunity for petition candidates to run for the Executive Committee. Anyone interested in running for a position on the board should contact Roland Tonn at 262-569-2166.

### Candidates for Southeast Wisconsin District Representative

+ **Carolyn Seboe** is an urban planner for HNTB Corporation in Milwaukee. At HNTB, Ms. Seboe has been exposed to a wide range of multi-disciplined planning activities and has developed a strong background in economic development, community and land use planning. Ms. Seboe has worked with several communities in southeastern Wisconsin and has represented various state and regional agencies. She has been involved in a variety of planning efforts including redevelopment plans, comprehensive plans, environmental impact statements and transportation corridor studies.

While pursuing her Master Degree in Urban Planning, Ms. Seboe was an urban development intern for the City of Milwaukee. At this position, she promoted retail development in Milwaukee's neighborhood commercial districts by conducting surveys, creating marketing flyers, submitting grant applications and coordinating with public officials, community-based organizations, developers, and business owners. Also, she participated in public outreach activities for neighborhood planning efforts. Ms. Seboe also served as a teaching assistant.

### Candidates for Northeast Wisconsin District Representative

+ **Linda Stoll** is the current NE District representative to the WAPA board. She is the Executive Director of Fox-Wolf Watershed Alliance, a nonprofit agency working to protect and improve the water quality in the Fox and Wolf Rivers in northeast Wisconsin. Current projects include the development of regional water quality information for the inclusion in Land and Water conservation plans and community Smart Growth plans, a conflict assessment for the Shawano Lake Association, planning and coordination for

2 research workshops and the 2005 statewide Stormwater Management Conference and the creation and delivery of a stormwater management education program for staff and elected officials in the cities of Appleton and Green Bay. She has an extensive background in facilitation, mediation, and strategic planning and has served as a private consultant in these areas, with a special emphasis on their application to environmental issues. Prior to her current position, she was the Open Space planner for Portage County, Wisconsin.

Stoll holds a master's degree in resource management and land-use planning from the University of Wisconsin - Stevens Point and an undergraduate degree in environmental science from Carroll College, Waukesha, WI. She has completed certificate programs in Conflict Mediation from the Mennonite Peace Institute, Lombard, IL, Land Use Dispute Mediation from the Lincoln Institute for Land Policy, Cambridge, Massachusetts, Facilitation Techniques from UW Madison, WI and Public Participation from the International Association for Public Participation, Denver CO. Stoll has two decades of experience as an environmental educator.

+ **Jonathan Bartz**, is a Principal Planner for Martenson & Eisele, Inc. of Menasha, has a solid track record of success in leading and participating in planning, community development, and economic development programs at the local, regional, and state level. Since joining Martenson & Eisele in 2001, he has worked with rural and urban communities on comprehensive plans and community and economic development planning. He also developed a unique economic development training program targeted at community and business leaders new to the field of economic development.

Jon has also held economic development positions with the Fond du Lac County Economic Development Corporation, the City of Appleton Department of Planning and Development, East Central Wisconsin Regional Planning Commission, and Bay-Lake Regional Planning Commission.

Jon has a Masters in Urban and Regional Planning from the University of Wisconsin-Madison, and received his undergraduate degree from the University of Wisconsin-Ville.

Jon is familiar with the work and effort needed in a statewide professional association as a result of his active participation in the Wisconsin Economic Development Association. He was elected to the WEDA Board of Directors for two terms, and served as the president of the association.

### Candidates for Southwest Wisconsin District Representative

+ **Daniel W. Rolfs**, AICP, is a Project Planner at MSA. He is experienced in a broad range of planning activities including community and economic development, land use planning, and downtown redevelopment. Dan is a skilled meeting facilitator, with a solid background in land use and demographic analysis. Dan was hired by MSA in January of 2002. Prior to his work at MSA, Mr. Rolfs worked as the Village of DeForest Redevelopment Authority (DRA) Liaison. While at the DRA, he coordinated the implementation of a downtown redevelopment plan, drafted an issues analysis for the reconstruction of Interstate 90/94 &

Cty. Hwy V interchange, while also heading up the creation and implementation of a new GIS system. Mr. Rolfs served as the project manager for the DRA's Town Square Redevelopment project. This project involved purchasing property for the DRA, preparing the property for transfer to a developer by removing structures and cleaning up environmental contamination, as well as marketing the property to potential investors. The downtown project was also the site of the new Village Library. Mr. Rolfs was also responsible for saving one of the most historic buildings in the Village, the Lyster home, by coordinating with the DeForest Area Historical Society to move the structure to a new location near other historic buildings.

Dan holds a MS degree in Urban and Regional Planning, and a B.S. degree in History, both from the University of Wisconsin-Madison.

Dan's goals for WAPA are to (1) Increase the connection with the UW-Madison URPL program and the students and faculty therein; (2) Increase the number of members participating in local district events; (3) Provide ongoing career development and educational opportunities to the members, and; (4) Build and enhance connections with other organizations that share similar goals with WAPA.

### By-Law Changes Recommended by the WAPA Executive Committee

1. RESOLVED, that the following subsection shall be added to Section 4.1., "Officers and Terms of Office":

O. Planning Official Development Officer (PODO).

2. RESOLVED, that subsection "I" of Section 4.3, "President's Duties," shall be stricken in its entirety and that the following revised paragraph "I" shall be substituted:

I. Appoint, subject to approval of the Executive Committee, a Chapter member to represent the interests of all citizen planners in Wisconsin. This person shall be known as the Planning Official Development Officer (PODO). The PODO will serve as a member of the Executive Committee.

3. RESOLVED, that the following shall be added as a concluding sentence to subsection "B" of Section 4.9, "Student Representatives":

A Student Representative may designate another student meeting the qualifications specified in Subsection A above for the purpose of attending an Executive Committee meeting on his or her behalf.

4. RESOLVED, that a new section 4.10 shall be added to the bylaws as follows:

Section 4.10 PLANNING OFFICIAL DEVELOP-

#### MENT OFFICER (PODO)

A. The PODO shall be appointed by the President, subject to the approval of the Executive Committee, for a term of three (3) years. The PODO shall serve as a voting member of the Executive Committee and shall:

1. Educate citizen planners in Wisconsin towns, villages, cities and counties.

2. Use newsletter articles, website information, and written materials; conduct sessions at Chapter conferences or stand-alone workshops to fulfill the education function.

3. Monitor quality of review of planning and zoning issues by citizen planners.

5. RESOLVED, that subsection "A" of Section 5.2, "Executive Committee," shall be stricken in its entirety and that the following revised paragraph "I" shall be substituted:

A. COMPOSITION: The voting members of the Executive Committee shall consist of the President, the Vice-President for Chapter Affairs, the Vice-President for Professional Development, the Past President, the Secretary, the Treasurer, the two At-Large Representatives, the four District Representatives, the two Student Representatives (or their qualified substitutes), and the Planning Official Development Officer.

6. RESOLVED, that the following shall be added as a concluding sentence to subsection "C" of Section 5.2, "Executive Committee":

Substitutes for Student representatives shall be counted toward the quorum.

## Adopting a Comprehensive Plan by Ordinance: Is It a Regulation? Answer: No

BY BRIAN W. OHM, J.D.

UNIVERSITY OF WISCONSIN-MADISON

[An earlier version of this article appeared in *The Municipality*, vol. 96, no. 4, pp. 120-121 (April 2001)].

The 1999 comprehensive planning law changed the form of the local government action adopting the comprehensive plan or amendment. Prior law required that city, village, and town plan commission adopt master plans by resolution. The county board was also required to adopt the county development plan by resolution. The 1999 law requires that the governing body (common council, village board, town board, county board) enact an ordinance adopt-

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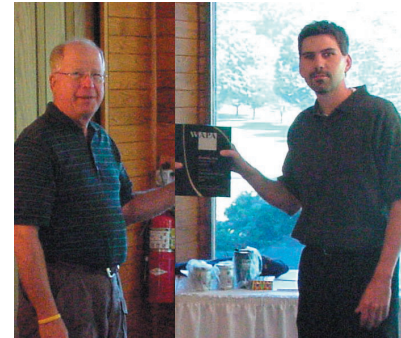
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# Awards Presentation



Gary Peterson, AICP, WAPA President, presenting the 2004 WAPA Award to Patrick Cleary, AICP, of Vierbicher Associates, Inc.



Gary Peterson, AICP, WAPA President, presenting the 2004 WAPA Award to Shaun Mularkey, AICP, of Planning & Design Institute, Inc.

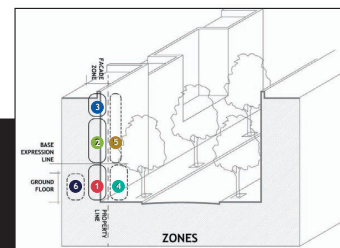
## Planning Implementation – City of Wisconsin Dells

The City of Wisconsin Dells partnered with Vierbicher Associates to develop and implement a downtown capital revitalization program and comprehensive planning initiatives for the next 20 years. Vierbicher recommended the creation of a Business Improvement District (BID). A unified theme was developed for the five-mile BID corridor including street paving, lighting, street furniture, color schemes and landscaping. Vierbicher Associates also assisted the City in implementing a variety of construction projects including gateway entry points into the City, continuation of the “RiverWalk” pedestrian network, and the development of character overlay zones for the entire City.



## Planning Tool – Westown Design Guidelines, City of Milwaukee

The Design Guidelines promote development of the western half of Milwaukee’s Central Business District as a vibrant commercial area with a mix of street and building types. Because all places in Westown do not share the same character they should not be designed in the same manner. There is no one-size-fits-all design formula. In order to ensure that this unique character is maintained many of the guidelines are organized by ‘Street Type’. ‘General Guidelines’ describe principles and standards of how all buildings should relate to their surroundings. PDI worked with Jim Piwoni, AIA, the Westown Business Association and the City of Milwaukee on the development of the guidelines.





# Annual Meeting in La Crosse



Gary Peterson, AICP, WAPA President, presenting the 2004 WAPA Award to Todd Violante, accepting for Vandewalle & Assoc.



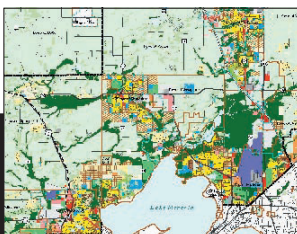
Gary Peterson, AICP, WAPA President, presenting the 2004 WAPA Award to Carolyn Esswein, AICP, of Planning & Design Institute, Inc.



Gary Peterson, AICP, WAPA President, presenting the 2004 WAPA Award to Maria Pandazi, AICP, of Planning & Design Institute, Inc.

## Planning Tool – North Mendota Parkway Alternatives Study

The North Mendota Study identified a transportation solution to carry traffic around the north side of Lake Mendota in central Dane County. The Study recommends a ten-step implementation program that will prepare the region for the development of a new four-lane roadway facility, a regional parkway. The new “North E-Way” will provide over 50 miles of recreation trails and will link Gov. Nelson State Park with three County Parks and numerous wildlife areas. The Study can serve as a model process and implementation tool for addressing highly controversial regional issues, and for building sustainability into land use and transportation decision-making.



## Planning Document, Large Jurisdiction – Fond du Lac and North Neighborhood Comprehensive Plan

PDI worked with the City of Milwaukee, and three subconsultants, on a community-based planning effort for the central city neighborhood around Fond du Lac and North Avenues. The comprehensive neighborhood plan promotes investment and provides guidance for public and private development initiatives, with the aim of creating a clear identity for the neighborhood, and providing the necessary momentum for further development. The Plan is organized into land use policies and strategies that apply to the neighborhood as a whole. In addition, there are strategies for districts and corridors and eight high-profile catalytic projects.



## Urban Design – River Shores

River Shores is a 38-acre industrial site in the City of West Bend that is being redeveloped into a traditional mixed-use neighborhood. PDI coordinated with architecture and engineering firms, a national sales and marketing firm, the City of West Bend and State agencies to ensure a common vision for the neighborhood. The focal point of the development is a centrally located Village Green that organizes the site and provides a meaningful gathering space for the residential, civic and commercial uses that surround the Green. Smaller public spaces are incorporated throughout the development, such as the Performing Arts Plaza. The public spaces are a combination of hard and soft landscape to provide a variety of pedestrian experiences.



# Law Update

BY MICHAEL R. CHRISTOPHER, WAPA LEGAL COUNSEL  
DeWitt, Ross, and Stevens S.C.  
Madison, Wisconsin

It is very important for Wisconsin planners to be aware of important land use case law in other states that could have legal and policy consequences in Wisconsin. Therefore, this month's Legal Update focuses on two significant cases from other states. More legal updates are on the WAPA website

## Can Eminent Domain Be Used To Benefit Private Development?

Two recent State Supreme Court decisions have wrestled with the fundamental issue of whether government can take property, even with payment of just compensation, where the property would be turned over to private interests.

In 1998, the City of New London, Connecticut, approved a Comprehensive Redevelopment Plan which was intended to re-energize the City's economy and tax base by developing a mixed residential and office project. The City's intent to embark on this development was driven by its desire to keep Pfizer's main research facility in New London and to attract new upscale residents.

In order to implement the redevelopment plan, the City formed a non-profit development corporation to assemble the land and delegated its eminent domain power to that entity. The development corporation would acquire the entire parcel and then lease several large subdivided parcels to individual developers for 99 years at a rent of \$1 a year. As a result of resistance from neighborhood property owners, the development corporation condemned their land. The landowners sued to block the taking and the net result was an 87 page opinion by the Supreme Court of Connecticut issued in March 2004 in *Kelo v. City of New London*, 843 A.2d 500 (2004).

The Court held that the power of eminent domain extended not just to takings for a public use, but also to takings for exclusively private use where that private use will yield a "public benefit." On one hand, it is argued that in these times of limited public resources, it is critical that municipalities be allowed to use their eminent domain authority to achieve development goals that would benefit the public. On the other hand, if the reasoning of the *Kelo* court were followed, any commercial development in a city is arguably going to benefit the public but it is hard to imagine how a privately-owned office development is a "public use."

The *Kelo* decision rests heavily on a decision made by the Supreme Court of Michigan in *Poletown Neighbor-*

*hood Council v. City of Detroit*, 304 N.W.2d 455 (1981). In *Poletown*, the Michigan Supreme Court upheld Detroit's condemnation of an entire neighborhood in order to accommodate the construction of a new Cadillac plant under the "public benefit" theory. However, if *Kelo* had been decided five months later, the Connecticut court would have had to struggle a lot more with its reasoning because on July 30, 2004, the Michigan Supreme Court reversed *Poletown* in its decision in *County of Wayne v. Hathcock*.

The reasoning of the Michigan court can best be summarized as follows:

*Poletown's* economic benefit rationale would validate practically any exercise of the power of eminent domain on behalf of a private entity. After all, if one's ownership of private property is forever subject to the government's determination that another private party would put one's land to better use, then the ownership of real property is perpetually threatened by the expansion plans of any large discount retailer, megastore, or the like.

The public benefit issue is a difficult one since it raises the fundamental question of what property rights really encompasses. Does the right to own property without government interference mean something more than just the right to receive payment of just compensation? Can a landowner just say "no" when the purpose of the taking is simply to flip title to another private party who may be more favored under some asserted governmental policy? It may be that these questions will be answered by the United States Supreme Court since the property owners in the Connecticut decision have filed a Petition for Review. If the Supreme Court accepts review, it will rule based on the United States Constitution which will obviously have significant impact in Wisconsin.

## WAPA Legislative Update

BY JORDAN K. LAMB  
DEWITT ROSS & STEVENS S.C.

### A. First Meeting and Public Hearing of the Special Legislative Council Study Committee on Municipal Annexation

On October 12, 2004, the Joint Legislative Council Special Committee on Municipal Annexation held its first meeting and public hearing. The Committee received a Staff Brief, prepared by the Joint Legislative Council staff, which provides background information on annexation law to committee members. In addition, the Committee heard public testimony.

Annexation is the process by which unincorporated territory (such as town territory) becomes part of an existing incorporated municipality (such as a city or village). Under



Wisconsin law, there are several mechanisms or procedures through which territory can be annexed. The Staff Brief prepared by the Joint Legislative Council staff summarizes these procedures, as well as outlines key judicial opinions related to annexation and recent legislation related to annexation. The full text of the Staff Brief and written comments submitted by several individuals and organizations are available online at

[http://www.legis.state.wi.us/lc/2004studies/ANNEX/sb04\\_6.pdf](http://www.legis.state.wi.us/lc/2004studies/ANNEX/sb04_6.pdf).

Brian Ohm (WAPA Vice President for Chapter Affairs), Chair, State-Local Government-Private Sector Working Group & Associate Professor, Department of Urban & Regional Planning, University of Wisconsin-Madison/Extension, told the Committee that his Working Group supports (1) improving the technical mapping standards for annexations so that they meet the minimum standards for property surveys and (2) linking and adding references in the annexation statute to Wisconsin's mediation statute. He explained that the first change would "help reduce costs for local governments, property owners, and developers association with the confusion when the property descriptions for annexed land are not accurate." The second change "would help promote alternative dispute resolution as a way to reduce costs associated with legal challenges to annexation battles."

Rick Stadelman, Executive Director of the Wisconsin Towns Association, presented suggested changes to annexation law in Wisconsin. First, Mr. Stadelman offered some general comments about the conflict that towns and cities/villages face when involved in annexation disputes. He explained that these conflicts not only may lead to expensive litigation, but may also result in "perceived barriers to cooperation on other intergovernmental services that could result in cost savings and improved delivery of services." He stated that one of the reasons for this conflict, is that annexation laws are weighted too heavily toward cities and villages at the expense of the towns. Accordingly, he suggested that the Legislature introduce and pass legislation to: (1) create "charter towns"; (2) requires cities/villages have town agreement in order to exercise extraterritorial plat review; (3) require official town maps be incorporated into county development plans; (4) limit the annexation of city/village owned land necessary only for public service or recreational use; (5) provide that the Department of Administration's review of annexation is binding and applicable to all counties (not just those with populations over 50,000); (6) require that annexation lines follow more defined boundaries; (7) modify the current Cooperative Boundary Procedures to shorten the timeline required for state approval of cooperative boundary agreements by town, villages and cities; etc.

Curt Witynski, Assistant Director of the Wisconsin League of Municipalities, suggested changes in state law that will encourage more boundary agreements and also outlined annexation law changes that the League supports and opposes. First, Mr. Witynski suggested changes to state law

that would (1) make it easier for municipalities and towns to enter into cooperative boundary agreements; (2) provide financial incentives to communities that enter cooperative boundary agreements; (3) require that a cooperative boundary agreement be consistent with each community's comprehensive plan; and (4) modify the intergovernmental cooperation statute to expressly allow communities to enter into long-term enforceable cooperative boundary agreements of reasonable duration. In addition, Mr. Witynski stated that the League recommends authorizing municipalities to unilaterally annex town peninsulas and authorizing municipalities to condition the approval of extraterritorial subdivisions on annexation, but "will strongly oppose any legislative proposals recommended by the Wisconsin Towns Association that further erode municipal annexation powers."

The next meeting of the Joint Legislative Council Special Committee on Municipal Annexation was scheduled for November 18, 2004. Information about this meeting is on the website shown above.

## **B. Report on State-Local Government Relations**

On October 8, 2004, the Senate Committee on State-Local Government Relations, chaired by Senator Ron Brown (R-Eau Claire), received a report prepared by the Legislative Council that identifies 110 items that were discussed by individuals and organizations at two hearings held by the Committee in August and September. The Committee will be reviewing the report and proposals and will meet later this year to prepare a piece of legislation aimed at improving state and local relations. The legislation will be considered by the 2005 Legislature.

## **Sarah Johnson Joins R.A. Smith & Associates as Community Planner**

R.A. Smith & Associates, Inc., has added Sarah Johnson as community planner, expanding the number of experienced planning staff to six.

Johnson will be responsible for comprehensive planning, Smart Growth planning, site planning and design review, park planning and design, and planning/GIS integration. She was previously employed at the city of Franklin as senior planner. Johnson was responsible for reviewing all commercial, industrial and residential development plans in the city; providing input on future planning projects; and facilitating public involvement in citywide planning efforts. Johnson has a bachelor's degree in political science from Central Michigan University and a master's degree in geography with an emphasis on urban and regional planning from Eastern Michigan University.

**Comprehensive Planning:** *Continued from page 5*

ing the comprehensive plan or amendment.<sup>1</sup> Since regional planning commissions do not typically take action by ordinance, the procedures were amended in 2004 to clarify that the regional planning commissions adopt a regional comprehensive plan by resolution.<sup>2</sup>

The ordinance (or regional planning commission resolution) must be enacted by a majority vote of the elected members of the governing body.<sup>3</sup> Once adopted, a copy of the ordinance (or regional planning commission resolution), along with the final version of the comprehensive plan must be filed with all of the entities that received a copy of the plan following the action by the plan commission, as outlined in the section above.<sup>4</sup>

The requirement to adopt the comprehensive plan by ordinance has raised some concerns that it somehow makes the plan a “regulation.” This is not the case.<sup>5</sup> When local governments in Wisconsin take some type of action or make a decision, there are generally three ways the local government might take the action: by ordinance, resolution, or motion. In some cases, the Wisconsin Statutes specify which form of action local governments need to follow when they act. In other cases they do not. Specifying the form of action in the statutes removes uncertainty about which procedure local governments should follow.

The legal differences between adopting a plan by resolution versus adopting a plan by ordinance are relatively minor. For example, an ordinance needs to be published after it has been passed by the governing body while a resolution does not need to be published. An ordinance is also often used for more formal action by a local government than a resolution. Adopting a comprehensive plan is an important undertaking by a local government and adopting the plan by ordinance helps signify the importance of the plan.

The requirement that a comprehensive plan must be adopted by an ordinance should not be confused with a zoning ordinance. The fact a comprehensive plan is adopted by an ordinance does not make it a zoning ordinance. A community may choose to adopt a zoning ordinance as one of many mechanisms available to implement its comprehensive plan. Separate laws and procedures govern the adopting of zoning ordinances. These laws have been part of the statutes for decades.

There are many different matters where Wisconsin law specifies that if a local government wants to take the action, it must do so by ordinance. For example, the Wisconsin Statutes state that villages must change the salaries of the village president and village trustees by ordinance.<sup>6</sup> Villages may also change the number of village trustees by ordinance.<sup>7</sup> Cities need to enact an ordinance to provide for a fire department.<sup>8</sup> A city, village, or town may adopt a salary schedule for its employees by ordinance.<sup>9</sup> A town board may enact an ordinance that provides a procedure for approving certain financial claims against the town.<sup>10</sup> Towns may enact ordinances providing for the appointment of the town clerk and town treasurer.<sup>11</sup> Counties may also enact an ordinance

to act as a self-organized county.<sup>12</sup> These examples are only a few of a very wide variety of actions that need to be done by ordinance.

A model comprehensive plan adoption ordinance is available from the League of Municipalities at: [www.lwm-info.org/legal/ordinance/ord171.html](http://www.lwm-info.org/legal/ordinance/ord171.html).

Visit the WAPA “Smart Growth” pages on the website for links to examples of comprehensive plan adoption by ordinances from around the nation.

**Footnotes**

<sup>1</sup> Wis. Stat. § 66.1001(4)(c).

<sup>2</sup> 2003 Wisconsin Act 233.

<sup>3</sup> When enacting the comprehensive plan as an ordinance, local governments should be able to use Wis. Stat. § 66.0103 to prepare a simple adopting ordinance that refers to the comprehensive plan document. Since ordinances must be published in the official newspaper of the local government, this approach can avoid the need to publish the entire plan verbatim, with maps, charts, etc., in the newspaper.

<sup>4</sup> Pre-1999 law for counties required that once adopted, certified copies of the county plan need to be sent to the clerks of all cities, villages, and towns affected by the plan. Wis. Stat. §§ 59.69(3)(d) and 59.69(2)(f).

<sup>5</sup> Many states require that comprehensive plans be adopted by ordinance. See Alaska State Statute 29.49.030(b); Local Government Comprehensive Planning and Land Development Regulation Act, Sections 163.3161 through 163.3217 and Chapter 166, *Florida Statutes*, as amended; K.S.A. 12-747; MCL 125.31 et seq. (Michigan); Minn. Stat. § 394.23; and South Carolina Code of Laws Section 6-29-510, 1976, as amended.

<sup>6</sup> Wis. Stat. § 61.32.

<sup>7</sup> Wis. Stat. § 61.20(4).

<sup>8</sup> Wis. Stat. § 62.13(8).

<sup>9</sup> Wis. Stat. § 66.0507.

<sup>10</sup> Wis. Stat. § 60.44(2).

<sup>11</sup> Wis. Stat. § 60.30(1e).

<sup>12</sup> Wis. Stat. § 59.10(1).

**Ron Lee:** *Continued from page 3*

of our communities over time; something we need to keep focused on in our work.

Ron loved sports, but his family and spiritual development was of greater importance to him. He leaves behind his wife Lisa and three children as well as many other friends and family members in Naples and elsewhere.

I recently visited some of our old haunts in the Keys on vacation and drank a rumrunner to his memory. It just didn't taste as good.

*This memorial was reprinted from the newsletter of the Florida Chapter of the American Planning Association.*

Colorado adopted a TABOR in 1992 and, though the desired result of limited taxing and spending has been achieved, there is considerable disagreement about the amendment's overall economic effects. Graham Billingsley, of the Boulder County Land Use Department, points out the frequently-cited "ratcheting-down" effect of the Colorado TABOR, where the previous year's CPI determines budget increases. The CPI is problematic as a measuring stick, as it does not include volatile costs such as gasoline. Only new construction adds to the budget—remodeling and new additions are not recognized. Billingsley cites a projected \$4.7 million surplus in Boulder County this year, but these funds need to be refunded unless voters approve higher spending by referendum.

Proponents of TABOR in Wisconsin argue that the Lasee-Wood proposal for TABOR would fix the ratchet problem experienced in Colorado by requiring the budget stabilization fund and allowing governments to default to the previous years spending limit even if actual spending was less than the limit.

## TABOR's Effect on Communities and Planning

Based on Colorado's experience, TABOR would have the intended result of lowering government spending. Moreover, according to Tom Clark, a planning professor and dean of the Graduate School at the University of Colorado at Denver, TABOR has had a clear and negative impact on planning in Colorado, "dampening the capacity to fund planning." With more critical needs, like funding for police and fire services, planning becomes one of the easier places to cut. In addition, because of the ratchet effect, TABOR restrains governments' ability to invest in infrastructure for economic development or pursue other programs that would implement local plans.

Because TABOR would likely base local expenditure limits on the rate of inflation and the growth in property values, local governments likely would have an incentive to accept only those developments that cost less to service than the increase in expenditures allowed because of the property value of the development. Clark notes that, theoretically, one might expect local governments to undertake fiscal impact studies to identify "winning" development proposals. That has not occurred. An alternative theory is that local governments already know the *kinds* of developments that increase the tax base without creating a proportionate increase in service demands: industrial, certain kinds of commercial, and high-value residential development. Exclusionary zoning could become even more popular, and affordable housing even more difficult to site in communities under TABOR.

## Process for Amending the Constitution

TABOR is likely to be created as an amendment to the Wisconsin constitution. According to the Legislative Reference Bureau, in order to amend the constitution, the:

amendment must be adopted by two successive legislatures and ratified by the electorate before taking effect. A proposed change is introduced in the legislature for "first consideration" in the form of a joint resolution that must pass both houses but does not have to be submitted to the governor for approval. It must be published for three months before the next election. If the resolution is adopted on first consideration, a new joint resolution embodying the identical constitutional text must be approved on "second consideration" by the next legislature. The second joint resolution specifies the wording of the ballot question and sets the referendum date. The third and final step involves submitting the question to a statewide referendum vote where a majority of those casting ballots must ratify the amendment. (Source: Wisconsin Legislative Reference Bureau).

The vote in the legislature on the joint resolution at both first and second consideration requires only a simply majority to pass.

## Learning More About Tabor: Pro and Con

The following websites offer additional information about TABOR, both Colorado's experience and what we might expect in Wisconsin.

- **The Bell Policy Center**, [www.thebell.org/tabor.html](http://www.thebell.org/tabor.html)
- **Wisconsin Counties Association**, [www.wicounties.org](http://www.wicounties.org), see link at bottom right "Examining TABOR"
- **United Wisconsin for a Taxpayers Bill of Rights**, [www.witabor.org](http://www.witabor.org)
- **The Wheeler Report**, TABOR Archives, [www.thewheelerreport.com/TABOR/archivedtabor.htm](http://www.thewheelerreport.com/TABOR/archivedtabor.htm)
- **Wisconsin Education Association Council**, [www.weac.org/Capitol/2003-04/april04/coalition.htm](http://www.weac.org/Capitol/2003-04/april04/coalition.htm)
- **Wisconsin Budget Project**, [www.wccf.org/pdf/TABOR.pdf](http://www.wccf.org/pdf/TABOR.pdf)

## Source Water Protection: Continued from page 3

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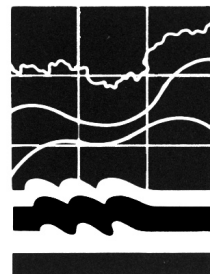
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