

WAPA News

Wisconsin Chapter
American Planning Association

Summer 2004

Volume 2004, Number 3

LaCrosse, Wisconsin • WAPA Fall Outing September 9 - 10

Golfing or Canoeing • Learn about LaCrosse's

Redevelopment and Resource

Management Planning

Coming Events

October 13-15

Region IV Conference

Indianapolis Crowne Plaza

"Planning at the Crossroads"

For conference information go to

www.planningcrossroads.org

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Get Elected: Volunteer for the WAPA Board!

This fall's election for positions on the WAPA Board includes representatives for 3 of the 4 districts. These districts are: Southeastern, Northeastern and Southwestern. If elected you would be expected to attend 6 Board of Directors meetings each year. The January meeting is an all day session which includes the annual budget and updating the Chapter's Strategic Plan. The other five meetings are usually held every two months in Madison on Friday mornings. You would also be expected to attend our conferences and respond to emails between meetings and accomplish the following duties:

1. Act as liaison between the members of the District and the Board.
2. Plan and present Chapter programs within the district as often as you are able.
3. Serve on the Legislative Committee, which consists of the 4 district reps and the VP of Chapter Affairs who is the committee Chair.
4. Carry out other duties as assigned by the President.

The District boundaries follow county boundaries. The Southeast District is the seven counties of SEWRPC. The Northeast District

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

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

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

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

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

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

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

Deadlines:

Winter issue: submit by January 15.

Spring issue: submit by March 15

Summer issue: submit by June 15

Fall issue: submit by September 15

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includes the balance of eastern Wisconsin with Florence, Green Lake, Marinette, Marquette, Menomonee, Outagamie, Waupaca and Waushara Counties as the west boundary. The Southwest District has Buffalo, Columbia, Dodge, Jackson, Jefferson, Monroe, Pierce, Pepin, Richland, Rock, and Trempealeau Counties as its northern and eastern boundary. As you can see I would rather not list all counties, so you may need a map to guide you.

If you are interested, please send an email with a brief resume by September 15 to Nominating Committee Chairman Roland Tonn at RTONN@wppisys.org

2003-04 WAPA Survey Results

By Tim Kabat

In October and November of 2003, the Wisconsin Chapter of the American Planning Association (WAPA) distributed 783 opinion surveys to Wisconsin's planning community. The goal of the survey was to obtain feedback regarding the services that WAPA provides in order to determine areas that need improvement or change. 165 completed surveys were returned and analyzed to see how the organization fared.

The sampling frame for this survey was generated from email feedback updating Wisconsin's planning community's contact information. Two emails were sent out requesting updated contact information: the first was sent to all those who were members of WAPA at the time, while the second was sent to a number of people in the planning community who were not members. The second list included people who had attended conferences about planning issues, or who work in planning departments for municipalities in Wisconsin but are not members of WAPA.

Membership Breakdown:

- Of the 165 respondents, 90.8% were members of the American Planning Association (APA) and 90.3% were WAPA members.
- Only 44.8% of respondents were aware of the option for a "Chapter Only Membership." Of the planning commissioners who answered question number 3, about half indicated they would consider using the "Chapter Only Membership" option.
- 50.3% of respondents were members of the American Institute of Certified Planners (AICP), with 28.5% having attended WAPA's exam preparation workshop. Of those respondents who attended the workshop, about 72% indicated it was helpful.

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Congratulations New AICPs !

The first computerized AICP exam was held in May 2004. Seven Wisconsin planners passed the exam and have joined the ranks of planners certified by the American Institute of Certified planners (AICP). Congratulations to:

Dyann Benson
Daniel J. Carl
Heather Rowe
Brian J. Simmert
Michael D. Stumpf
David Tremble
Eric H. Zweber

Sixty-four percent of Wisconsin planners taking the May exam passed, compared to 63 percent nationally. In 2003, the Wisconsin pass rate was 79 percent, while the national average was 61 percent.

Next Exam Eligibility Deadline to Be in January

Prior to registering to take the AICP exam, applicants must submit for a determination of eligibility. The window for this determination has already closed for the November administration of the exam.

The deadline for submitting for the eligibility determination for the May 2005 exam has not yet been announced, but is likely to be in early January. To obtain the latest information on dates and processing, go to the AICP certification website at:

<http://www.planning.org/certification/>

A WAPA review for the November Exam is being scheduled for sometime in October. Planners who have registered for the exam will be contacted by mail regarding the day and time of the review session.

Why Does the Lake Michigan Shoreline Smell in Summer?

By Russell Knetzger, AICP Milwaukee, Wisconsin

The short answer is that the smell originates from the lake algae *Cladophora* as it washes up on shore and rots. This smell can be especially strong with the rotting flesh of the zebra mussels that are caked on the bottom of the washed-up algae plaques. The longer answer is that the smell is caused by changes in the amounts of light and nutrients in the lake water, and of-water temperature, and those combined effects on rock surfaces on the lake bottom, where zebra mussels and *Cladophora* compete for attachment points.

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Southeast District News

Planning for Your New Development: Involve All the Right Parties

By Debra Jensen, MMSD

Urban and suburban municipalities often face decisions concerning new and re-development. Many factors need to be considered, such as:

- How does the development fit into the municipal plan;
- What are the infrastructure costs; and
- Are there revenue and tax implications.

Often, these development opportunities present themselves without warning and the municipality needs to decide *quickly* if the opportunity should be explored or denied.

One important step in this process is to make sure there is adequate sanitary sewer capacity, both in the municipal sewers and the regional sewers. The municipal sewers may be expanded, with the new development bearing the cost of the new infrastructure. The regional system does not typically have this same opportunity.

The Milwaukee Metropolitan Sewerage District (MMSD) undertakes facilities planning on a periodic basis, assuring its conveyance and treatment systems will support the needs of the region through the planning process. As part of this process, the municipalities provide information concerning land use plans, development plans and population projections to the Southeastern Wisconsin Regional Planning Commission (SEWRPC). SEWRPC provides this information to MMSD, where it is used in the development of the facilities plan to meet the municipalities' regional conveyance, storage and treatment needs through the planning period.

The currently approved facilities plan for MMSD was developed to meet the region's needs through 2010. At the present time, the region is collaborating on a plan for the year 2020. The municipalities have already provided land use, population and household data to SEWRPC, and this information has been provided to MMSD to be used in the 2020 plan development.

In gathering information from the municipalities, SEWRPC met with municipal engineering and planning staffs. From the perspective of providing an adequate public infrastructure, it is critical for municipal planning staffs to work closely with the municipal engineering staff as future development and redevelopment plans are formulated by the municipality through the planning period horizon.

One of the challenges facing municipalities is that the vision out to the plan year horizon is not always clear, and opportunities arise that were not in the plan. So the dilemma of ensuring the vitality of the region without compromising

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Law Update

BY MICHAEL R. CHRISTOPHER, WAPA LEGAL COUNSEL
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Madison, Wisconsin

July 2004

The conventional wisdom in many situations is to avoid the topics of religion, and sex if the intent is to avoid divisive controversy. However, since planners are quite used to controversy, I want to share with you some recent legal developments regarding these two subjects. Finally, in the spirit of discussing controversial subjects, I would like to gently editorialize on WAPA's role in involving the private sector in the planning process.

The Role of Religion in Land Use Decisions

Since Congress adopted the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), there have been numerous constitutional challenges to the law, most of which have been rejected. The land use provisions of RLUIPA establish four basic parameters which interpret the otherwise broad power of state and local governments to regulate religious land uses.

First, RLUIPA prohibits religious discrimination, both between religious uses and comparable non-religious uses, and among religious uses of different denominations. Second, it prohibits the total exclusion of religious uses from a jurisdiction. Third, it prohibits unreasonable limits on religious uses. Finally, it prohibits "substantial burdens" on religious land uses. It is this last principle of RLUIPA which has engendered the most litigation, including a decision made by the 7th Circuit Federal Appeals Court in Chicago.

Before I address the details of that case, it would be helpful to summarize the trend of judicial interpretations of what constitutes a "substantial burden." Planners need to be aware that if the municipality can show that the burden serves a "compelling government interest" by the means that is "least restrictive" of a land use used for religious purposes, the presumption of "substantial burden" is overcome and is thereby permitted.

There are two other limitations limiting the applicability of RLUIPA that planners should be aware of. First, the "substantial burden" test only applies when the facts of a particular case bring it within the sweep of an enumerated power of Congress. That is, when a particular burden is imposed pursuant to a "system of individualized assessments," Congress has the power to apply the "substantial burden" test under the Enforcement Clause. Second, the burden in question needs to be imposed in a way that disrupts interstate commercial transactions which then allows the courts to apply the test under the Commerce Clause.

Despite these limitations, critics of RLUIPA argue that this law is fundamentally unfair and violates the separation of church and state. In a nutshell, the argument made is that this Federal statute takes over local land use law and creates two classes of citizens: (1) religious landowners who can avoid the application of general, neutral land use laws; and (2) all other landowners.

In light of these contrary positions, the court in *Civil Liberties for Urban Believers v. City of Chicago* had to decide whether the special use provisions in Chicago's zoning ordinance constituted a "substantial burden" under RLUIPA.

Under the Chicago ordinance, churches were permitted as a right in residential zones but were required to obtain special use approval in business and commercial zones. The churches argued, among other things, that the ordinance imposed a substantial burden on their religious exercise and was, therefore, a violation of RLUIPA. A Federal District Court rejected the claim and granted summary judgment in favor of the City of Chicago and the 7th Circuit Court of Appeals affirmed that decision.

The court held that in order to qualify as a "substantial burden" on religious exercise, the requirement must bear a direct, primary and fundamental impact which makes religious exercise effectively impracticable. The court found that the burdens enumerated by the churches (e.g., the scarcity of affordable land in residential zones in Chicago and the costs of the approval process) were ordinary difficulties associated with the approval process in a large city for any property owner, and thus did not discourage churches from attempting to locate in Chicago. The Court reasoned that if it had found that the "substantial burden" test had been met, then RLUIPA would have required municipal governments not merely to treat religious land uses on an equal footing with non-religious land uses, but rather to favor them in the form of an outright exemption from land use regulations.

This decision is typical of how most courts have interpreted RLUIPA. On one hand, Courts have determined that this law is constitutional but at the same time, they have not been prepared to equate the legitimate protections that RLUIPA affords with a "free pass" for religious-based property owners.

Municipal Licensing of Adult Businesses

The amount of case law both on the state and federal levels regarding how far municipalities can control adult businesses could fill volumes. Consistent with many court decisions in this area, the U.S. Supreme Court decision of June 7, 2004, in *City of Littleton v. Z.J. Gifts* represented a mixed bag for the parties involved.

The City of Littleton, Colorado, had an adult business ordinance that required that such businesses obtain an "adult business license." The ordinance enumerated eight factors that required denial of a license, including failing to obtain a sales tax license which, in turn, required compliance with

zoning laws. The zoning ordinance prohibited adult businesses within 500 feet of a church or daycare center, among other proximity limitations. In 1999, Z.J. Gifts opened an adult bookstore in a location that violated the 500 foot rule. It did not apply for an adult business license, opting instead to challenge the ordinance as unconstitutional on its face.

The trial court dismissed Z.J. Gift's claim but the 10th U.S. Circuit Court of Appeals reversed. It held that Colorado law did not assure that the city's licensing decisions would receive prompt judicial review and thus violated the "due process" rights of the appellant.

Before the Supreme Court, the City contended that the cases only required that a licensing scheme provide an applicant with prompt access to judicial review and not prompt judicial determination of a claim. The City pointed out that previous decisions made by the U.S. Supreme Court required only "the possibility of prompt judicial review in the event that the license was erroneously denied."

The Court determined that the licensing scheme applied reasonably objective, non-discretionary criteria unrelated to the content of material an adult bookstore might sell. The criteria were simple enough to apply and their application simple enough to review that their use was unlikely in practice to totally suppress any specific item of adult material. The court concluded that Colorado's ordinary judicial review procedures would suffice to protect an adult business owner's rights "as long as the courts remain sensitive to the need to prevent First Amendment harms and administer those procedures accordingly."

Comparing the court's language with the practicalities of the Wisconsin judicial system, the ordinary tools of judicial review in Wisconsin both at the trial court level and at the appellate level, are adequate to determine a constitutional challenge to an adult business ordinance. It is not necessary to have incorporated into the ordinance itself a requirement of prompt judicial review. It will be interesting to see whether the prompt review the high court says is due in the context of speech regulation will, in fact, be the norm in Wisconsin.

WAPA and the Private Sector

As many of you might know, although I do represent municipalities in my law practice, most of my legal work involves the representation of property owners and other private sector companies in land use disputes. In light of my professional background, I have noticed that there are relatively few private sector companies or individuals who are WAPA members. It is also revealing to note that of the private sector members, there are almost no developers.

On one hand, this is quite understandable in that there is a natural tension between planning regulation and private property rights. That tension is often at the heart of the court decisions that I share with you each month.

However, if one were to focus on Smart Growth Law principles, there is considerable common ground between

the goals of comprehensive planning and the goals of private development. The common objectives include the following:

- **Promoting Economic Development.** Planning helps communities retain existing businesses, attract new ones, revitalize downtowns, develop housing for workers, and improving infrastructure capacity.
- **Protecting Natural Resources.** Planners and developers have a common interest in helping to protect the things a community treasures most, including historic buildings, forests, farmland, bluff areas, wetlands, scenic vistas, downtown main streets, and water resources.
- **Promoting Property Rights.** The Comprehensive Planning Law makes planning much more transparent and open to the public, including property owners, as opposed to the pre-1999 law.
- **Saving Money.** A plan identifies functions within a municipality or between jurisdictions that are duplicated or could be strengthened through coordination.
- **Establishing A Road Map For The Future.** A plan puts down on paper a community's goals, values and aspirations, and the steps needed to achieve them. It is important for everyone to know "what the rules of the game are."

In light of the common interests that planners and developers often have, it is very important for WAPA to aggressively expand its membership to include more private developers. By including the private sector in planning issues, the benefits of comprehensive planning will be greatly increased while the divisiveness will be reduced.

August 2004

Although there has been at least one significant appellate decision that is worth noting, the focus of this month's Legal Update is on an important "big picture" issues regarding zoning and planning in Wisconsin.

Overcoming Impediments to Implementation of New Urbanism

In some respects, converting a PUD or infill project into a New Urbanism ("NU") Project represents an additional challenge. However, it also creates new tools to address public concerns. In order to achieve successful NU projects, a developer or a municipality desiring such projects need to understand the desired design, recognize the nature of the impediments and to implement a plan to overcome those road blocks. This includes recognizing the compromises that can be made without undermining the NU principles.

The reality is that something stands in the way of almost every aspect of New Urbanism. Some of the project elements that have encountered problems in the governmental approval process are as follows:

Mixed Use

Uses can be mixed in a number of different ways. Horizontally mixed use involves commercial, office, residential, civic and transportation uses within walking distance of each other. Vertical integration places commercial, office and residential uses on top of one another. A third dimension of mixed use is based permeability – allowing live/work buildings throughout residential neighborhoods. Finally, mixed use involves the mixing of densities, lots sizes and product types and a change of uses in the same locality over time.

Developers and communities seeking NU design understand the importance of mixed use, but each manifestation of mixed use runs into impediments. Because zoning codes were often intended to separate uses, it should not be surprising to find that resistance. Even within PUDs, many codes make eliminating barriers such as berms and collector roads impossible. Other impediments to a mixed use development include:

- Parking standards and the impact of parking issues.
- The difficulty of designing property owner associations that can deal with issues of mixed use.
- Standards for utilities that require a permanent use to assure that capacities are not exceeded.
- Resistance of neighbors to mixed use as infill.
- The difficulty of predicting traffic counts to satisfy highway officials that roads are sized appropriately.

One of the most effective techniques is to focus on the design and construction details found in existing towns, both old and new. Existing towns show the value of the social interactions in mixed use and they point to the desirability of these places.

Where codes are already in force, PUD ordinances can be used to encourage NU projects. This band aid approach allows specific projects to go forward but it does not encourage the comprehensive plans and ordinances that would ultimately create a better climate for well designed projects.

New ordinances can deal comprehensively with collateral issues such as credit for on-street parking and shared parking, the scale of commercial use and its variation from the town center to the neighborhood and utility problems.

Streets

Many NU projects are forced to compromise some aspect of their street plans. The typical NU street is narrower, has lower design speeds and has tighter turning radii than comparable suburban streets. The NU street is designed without collectors and arterials. It is connected to adjoining streets and neighborhoods at multiple points. It has on-street parking, street trees and alleys meeting the streets at mid-block. It may have odd shaped intersections and use other techniques for traffic calming.

This kind of design raises concerns among various groups who control portions of the governmental approval

process. The first group is traffic officials. Some of their concerns are quite predictable:

- *If the streets are narrow, large vehicles may have difficulty navigating them.*
- *Narrow streets may cause traffic to move too slowly.*
- *If cars park along streets, snow plows and street sweepers may hit them, car doors may open into traffic, and children may dart from between cars.*
- *Cars may exceed a low posted speed.*
- *Multiple intersections slow the traffic and increase the opportunity for conflicts. Traffic-calming devices may be ignored, resulting in injuries or vehicular damage.*

Streets have been made private in some projects in an effort to avoid these concerns. This raises the cost for the NU projects' residents who shoulder future maintenance and road replacement expenses. However, many jurisdictions do not allow private streets for large-scale projects as an option because of fears that the property owners will later exert political pressure and cause the streets to be taken into the public systems. However, this could be addressed by each property purchaser being required to sign a document acknowledging that he or she understands the roads are private and must remain private. Another option is to require that a restrictive covenant be signed, the beneficiary of which is the local jurisdiction.

Each practical concern raised above has an answer. For example, safety issues for vehicles have to be balanced he increased safety of pedestrians. Some national traffic engineers who have a deep understanding of NU and who have statistics documenting how traffic behaves in old towns and new urban communities can be quite helpful. Such a list is available from the Congress for the New Urbanism at www.cnu.org.

Other ways of convincing local officials that NU development can successfully address street issues is to have developers use videos of large fire trucks navigating narrow streets and to have officials participate in tours of towns with new urban street standards. Finally, NU development should address street issues in the comprehensive plans, zoning ordinances, subdivision ordinances and public works standards of that municipality.

Alleys

Alleys are vital to many NU projects. They allow garages to be de-emphasized. They increase safety on the sidewalks and they improve the design of the streetscape.

Often, Wisconsin municipalities have no standards for alleys. While there are fewer local concerns about private alleys than about streets, concerns still exist, particularly because the alleys are often the only legal access to the lots. Typically, localities are willing to adopt alley standards from other jurisdictions. Local officials may become comfortable with alleys when maintenance is provided by a homeowners' association. In fact, one of the biggest impediments to alleys is their name. In residential areas, alleys may be better

received if they are referred to in plans as “lanes” rather than “alleys.”

While local officials may understand why density increases would be a positive response to sprawl, the public may need to be shown why this is so. Local officials who want to use their codes to encourage NU projects have an advantage in being able to easily make the necessary changes. However, in order to truly stimulate NU projects, new urbanism must not only be free of impediments but it must also be by-right.

Other techniques that I have seen to be effective in overcoming impediments to NU development can be summarized as follows:

- To seek variance from interfering regulations.
- To develop new TND ordinances.
- To identify the benefits of the project rather than

focusing on the negatives.

- To speak the same language as stakeholder groups.
- To involve decision makers early in the process.
- To educate the press.
- To use recognized experts.
- To use extensive visualization tools.
- To know the codes that form the context of the project.

All impediments can be overcome. The appropriate tools for the specific task vary. Sometimes the tool is primarily legal. In other instances, it may be mainly informational. New Urban design and a responsible environmental approach sometimes can address public concerns that would stop a conventional development. What is needed is a willingness to work through the pertinent issues.

Applicability of The Attorney/Client Privilege

In my January 2004 Legal Update, I indicated that the Wisconsin Supreme Court was going to decide the hotly contested case *GPS, Inc. v. Town of St. Germain*, which presented the conflict between the application of the attorney-client privilege in advising public bodies and the apparently conflicting policy contained in Wisconsin's Open Records Law. Amicus Curiae briefs were filed on behalf of the Wisconsin Newspaper Association supporting the plaintiff's by position and the Wisconsin Counties Association and the State Bar of Wisconsin supporting the defendant's position.

On June 22, 2004, the Wisconsin Supreme Court deadlocked 3-3 which had the effect of affirming the decision of the Court of Appeals which held for the Town of St. Germain. Unfortunately, the Supreme Court's equally divided “decision” gives little guidance not only because of the tie vote, but because the decision did not address the merits and had the effect of affirming an unpublished decision which had no precedential value.

Obviously, the Court struggled with this issue and was unable to balance the attorney-client privilege in the municipal context with the possible undermining of the strongest

open records law in the country. Hopefully, a future appellate decision will address this key issue.

Footnotes

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WAPA LEGISLATIVE UPDATE

By Jordan K. Lamb

DEWITT ROSS & STEVENS S.C.

WAPA members please note that the Legislature is out of session until January 2005. Accordingly, the next few Legislative Updates will not focus on introduced legislation, but rather will report on other legislative items, information about the upcoming Fall 2004 elections and information about relevant current events.

July 2004

A. Joint Legislative Council 2004 Study Committees

The Joint Legislative Council has finished forming its study committees for 2004, which will examine major issues and problems identified by the Wisconsin Legislature. The study committees are made up of Legislators and citizens who are interested in or knowledgeable about the study topic. The final membership rosters for the 2004 committees are expected to be completed by the end of July.

Although the Council has selected 12 topics for study, two of these topics are likely of particular interest to WAPA members.

First, the **Municipal Annexation** study committee, chaired by Senator Alan Lasee (R-De Pere), is directed to review conflicts that arise under current annexation law and practice; to review the consequences of those conflicts, including costs to taxpayers and other affected parties; to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages; and to make related recommendations.

Next, Senator Ted Kanavas (R-Brookfield) is the Chairman of **Wisconsin's Transportation Network Infrastructure** study committee. This Committee is directed to examine Wisconsin's transportation network infrastructure, especially the infrastructure for the transportation modes of railroads, seaports, and air, to determine ways to improve

these facilities; to encourage intermodal forms of transportation; and to encourage regional cooperation among Midwestern states in improving freight and passenger transportation to increase efficiency and to alleviate highway congestion.

B. Fall 2004 Election Update

Tuesday, July 13, 2004 was the deadline for filing nomination papers to run for elective office in Wisconsin. 392 of the 408 individuals who originally registered with the State Elections Board for this year's elections for the U.S. Senate, the U.S. House of Representatives, the State Senate, the State Assembly and District Attorney actually filed nomination papers by that deadline.

One state senator, Mary Panzer (R-West Bend), faces a primary challenge from current State Representative Glenn Grothman (R-West Bend). Eight incumbent Republican Representatives and four incumbent Democratic Representatives face primary challenges in September, but will not face an opponent in November if they prevail in the primary.

Former Republican State Senator Gary Drzewiecki of Pulaski and former Democratic State Senator Alice Clausung of Menomonie would like their old jobs back. Drzewiecki will have to win a Republican primary in September to face current Senator Dave Hansen (D-Green Bay) in November. Clausung will have to win in a four-way Democratic primary in order to challenge current Senator Sheila Harsdorf (R-River Falls) in the November election.

C. A Good Time to Consider Communicating with Your Legislators

As the legislature is currently out of session, the next few months are a particularly good time to meet with your legislators in your district. Most legislators are spending lots of time in their districts either campaigning (if they are up for reelection) or just meeting with constituents.

If you have particular concerns regarding issues at the state level, or if you just want to meet those who represent you in Madison, consider scheduling a brief meeting with your legislator. Suggest meeting them for coffee with one or more of your neighbors or colleagues or, if you are interested, attend a campaign event.

If you do not know who your legislators are, go to <http://www.legis.state.wi.us/waml/> on the Internet, type in your address (including your zip code) and you will be matched with your legislators. Then, you can click into their personal web sites to get their contact information.

D. Current Events Stoughton Approved "Big Box" Ordinance.

On Tuesday, July 13, the Stoughton City Council voted 9-3 to amend the city's "big-box" ordinance, raising the

city's store-size limit from 110,000 square feet to 155,000 square feet, which will allow the construction of a Wal-Mart Supercenter in the city. This issue had divided citizens in Stoughton for more than a year.

Livestock Siting Technical Panel Meets

The panel of technical experts appointed by the Secretary of the Department of Agriculture, Trade and Consumer Protection, Rod Nilsestuen, will hold its third meeting on July 21st. The panel will continue to work on recommendations for a model application, criteria for permit assessment and approval, proposed standards for manure storage, nutrient management, runoff management and odor management.

August 2004

A. Legislative Council Municipal Annexation Committee

On July 21, 2004, the following members were appointed to the Wisconsin Legislative Council Special Committee on Municipal Annexation:

Senator Alan Lasee, *Chair*, De Pere
 Senator Ronald Brown, Eau Claire
 Senator Spencer Coggs, Milwaukee
 Representative Mark Gottlieb, Port Washington
 Representative Dean Kaufert, Neenah
 Representative Samantha Kerkman, Burlington
 Representative Josh Zepnick, Milwaukee
 Roger W. Clark of Herring, Clark, Hartzheim, Sidall, Ltd, Appleton
 Gerald Derr, Town of Bristol, Columbus
 Pat Kaster, River City Realtors, Green Bay
 Warren P. Kraft, City of Oshkosh, Oshkosh
 Mike Parmentier, Brown County Planning Commission, Green Bay

This committee is directed to review conflicts that arise under current annexation law and practice; to review the consequences of those conflicts, including costs to taxpayers and other affected parties; to determine if there is consensus on means to reduce annexation disputes and encourage more boundary cooperation between towns and cities or villages; and to make related recommendations. The first meeting of this committee has not yet been scheduled.

B. Dane County Addresses Development Rights Issues

Dane County Executive, Kathleen Falk, has named a 15-member workgroup to advise her and Dane County about

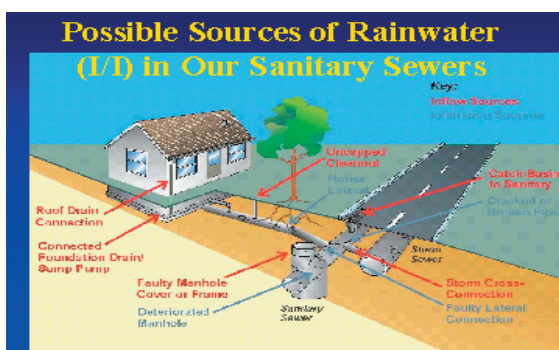
Continued on page 11

MMSD: *Continued from page 3*

the sanitary sewage conveyance and treatment systems must be addressed.

Even though facilities plans historically are developed using residential population and commercial and industrial acreage to establish sewage flows, the critical factor to ensuring the integrity of the regional system is to insure the flows delivered from the municipal system to the MMSD do not exceed those approved in the facilities plan. This means that municipalities may be able to proceed with those unplanned development opportunities if they manage and maintain their local systems to minimize infiltration and inflow (I/I)

So what is I/I? It is the flow, other than the sanitary flow, that gets into the sanitary system through defects (see graphic). Simply put, I/I is what causes overflows.



Proper planning allows municipalities to deliver flows to the regional system in the volumes developed and approved in the facilities plan. Base sanitary flow (during dry weather) is accounted for in facilities planning through the collection of population and land use data. Excess flows generated during wet weather as a result of I/I into municipal systems are more difficult to predict and must be effectively managed. For MMSD to approve plans for new development or redevelopment that was not anticipated during the planning period but adds flow to the sewer system, the municipality must demonstrate flows are at or below the facilities plan approved levels.

To allow the regional system to operate as planned, it is *critical* that flows do not exceed those that were provided for in the facilities plan. Exceeding the agreed-upon flows could result in basement back-ups or increased overflows into the region's waterways.

To obtain plan approval for the new development or redevelopment where future flow allocation has been used up or does not exist, the municipality may:

- Eliminate or reduce I/I
- Store peak flow
- Eliminate or reduce peak flow from new development

If the flows are not below the approved levels, the municipality has a few other options that may allow the development to proceed:

- Balance flow allocation among areas of the municipality that share the same regional conveyance facility
- Receive "credit" for sewers, structures or other facilities that are removed that contributed I/I to the system
- Negotiate with other communities tributary to the same Metropolitan Interceptor Sewer (MIS), if the new flows are input into the MIS

Once the municipality has confirmed with MMSD that there is available flow capacity for the development, the municipal engineering staff will assure that the required submittals are made for both the sanitary sewer plans and storm-water management plans. Submittal requirements are contained in MMSD Rules Chapter 2, 3, and 13, copies of which are available on the MMSD website (www.mmsd.com). The sanitary sewer plans require review and approval by MMSD, as well as the State.

With the continued emphasis on sanitary sewer issues and the public's desire to minimize overflows and improve water quality, it is critical that capacity issues are addressed. Municipal planning staff, as well as engineering staffs, need to coordinate this effort as they work with MMSD to assure the region's goals for development and improved water quality do not conflict.

Smell: *Continued from page 3*

These intertwined factors are of great interest to the UW-M Great Lakes WATER Institute, based here in Milwaukee. The institute is increasing its research budget on the smell issue. Funding to study this issue is coming from Coastal Management grants with the blessings of other states bounding the Great Lakes, because the smell problem is not limited to Lake Michigan. UW-M's WATER Institute is the only significant scientific research group on the Great Lakes studying this matter.

There was a worse odor problem in the 1970's, especially in Lakes Erie and Ontario. But when that problem abated (presumably by better sewage treatment plants and reduction in the amount of phosphorous that is discharged into the lake, research was ended.

Arrival of the Zebra Mussel in the Great Lakes from 1990 onward seems to be a new factor for the current smell problem. The mussel, while quite small individually, forms large colonies that have an amazing ability to filter phytoplankton from the lake water. That filtering makes the lake water much clearer. Before the mussels arrived, typical lake visibility was 3 meters (7 feet) as measured on a "secchi disk" lowered and viewed from a boat. Now the clearness of the water is triple that depth, producing secchi readings of 6 meters, or about 20 feet.

Clearer water allows more light into the water, and to greater depths. The light encourages the *Cladophora* algae to grow stronger near shore, and farther out in the water. These algae prefer to grow on rocks (i.e. the "hard bottom" factor), and as near shoreline rocks become covered, the increased

light allows rocks deeper and farther out to also support *Cladophora*.

Zebra mussels, which also prefer hard surfaces for attachment, enter the equation yet again by competing with *Cladophora* for rock attachment space. The algae have accommodated the mussels by attaching to their outer shells if the mussels get rock space first. The algae are thought to be growing well from the phosphorus nutrients in the manure being excreted by the mussels, and from nutrients flowing into Lake Michigan from rivers and storm sewers. The rivers and storm sewers bring rural and urban runoff, bearing fertilizer, into the Lake.

Higher water temperatures are being monitored as the possible fourth contributor. As water temperature increases to the 50 to 60 degrees range, *Cladophora* grow better. Increased light in the water might be raising the temperature, as might broader factors such as global warming, or localized issues such as power plant discharges.

The rotting presence of the zebra mussels and lake algae mix on sandy shoreline beaches has been attracting flocks of seagulls to cluster on such beaches. Gull excrement, as it is washed into the near shore lake water, may be the source of increased *E. coli* bacteria counts taken by nearby local health departments.

Frequent removal of washed-up algae/zebra mussel mounds by local parks or public works departments has been used as a method of reducing odor—and of reducing the gull flocks the mounds attract. However, given the magnitude of the problem below the water line in Lake Michigan, these solutions are short term, as more *Cladophora* is likely to be washed on shore after the next strong storm event.

WAPA Member Survey: *Continued from page 2*

Age and Sex Breakdown:

- 73.9% of respondents were males, with 25.5% female respondents.
- 4.2% of respondents were between 18 and 25, with 30.3% between 26 and 35 and 26.1% between 36 and 45. 27.3% of respondents were between 46 and 55, with 8.5% between 55 and 65. 3% were over the age of 65.

Membership Duration

- 51% of respondents have been APA members for 10 years or less, with 18.6% members for between 11 and 20 years. 15% have been APA members for between 21 and 30 years, with 4.2% being members for over 30 years.
- 55.9% of respondents have been WAPA members for 10 years or less, with 15.6% being members for between 11 and 20 years. 7.8% have been WAPA members for between 21 and 30 years, with 3.6% being members for over 30 years.
- 35.34% of respondents have been AICP members for 10 years or less, with 6.6% being members for between 11 and 20 years. 6.6% have been AICP members for between 21 and 30 years, with 0.6% being members for more than 30

years.

WAPA Conferences (Scale of 1 to 5 with 1=poor to 5=excellent)

- The survey asked respondents what they thought about the quality of WAPA conferences. 78.8% thought the cost for the conferences is reasonable. Only 6.1% felt conference costs were too high, with 1.8% feeling they are too low.
- 62.3% of respondents felt the conferences provide quality information, while 22.6% felt the quality of information was poor. 29.5% selected a “3” on the subject.
- 81.2% of respondents said the conferences were well organized, with 2.4% felt they were poorly organized. 16.4% selected a “3”.
- 41.2% felt the conferences met their educational needs, with 13.5% felt their education needs were not met. 45.4% selected a “3”.
- 53.5 % felt the conference social activities were very good or excellent, with 6.2% felt they were of poor quality. 40.2% selected a “3”.
- 65% of respondents felt the overall conference rating was very good or excellent, with 5% felt overall the conferences were poor. 30% selected a “3”.
- 57% of respondents thought the WAPA conferences should be held in locations other than Madison and Milwaukee, with 39.4% saying they should not be held elsewhere.

Conferences and workshops

- 70.3% agreed with the Executive Committee hosting a social outing along with the annual conference, while 19.4% didn’t agree. 47.3% of respondents plan on attending both the workshop and the conference, while 32.7% indicated they did not plan to attend both.

WAPA Newsletter

- 61.7% felt the frequency of the newsletter was adequate, while 12% felt it was not adequate. 26.2% chose a “3”.
- 59.6% of respondents felt the newsletter was interesting and informative, while 13.5% felt it was not. 27% chose a “3”.
- 66.4% felt the newsletter was well organized, while 7.1% felt it was not. 26.4% selected a “3”.
- 61.5% of respondents indicated that the newsletters provide quality information, while 6.4% felt they do not. 32.1% selected a “3”.
- Overall, 62.4% rated the newsletter very good or excellent, while 9.9% said it was poor. 27.7% selected a “3”.

Listserv and Website

- 66.7% of respondents indicated they were aware of the WAPA listserv, with 32.1% said they were not. 40.6% indicated that they subscribe to the listserv, while 41.8% did not.

developing a Transfer of Development Rights and Purchase of Development Rights program to help curb urban sprawl in Dane County. The group held its first meeting on July 13, 2004.

Members of the workgroup include:

Larry Gleasman, Realtor Association of South Central Wisconsin
 John Hendrick, Dane County Board
 Gerald Jensen, Dane County Board
 Brett Hulsey, Dane County Board
 Jim Welsh, Natural Heritage Land Trust
 Jerry Derr, Dane County Towns Association
 David Boyd, MSA Professional Services
 Tom Oakley, Covance Laboratories
 Connie Anderson, Anderson and Kent Law Firm
 Mike Slavney, Vandewalle and Associates
 Brian Munson, on behalf of Veridian Homes
 Patrick O'Connor, MFS Realtors
 Brian McKee, Madison Area Builders Association
 Pat O'Brien, Dane County Farm Bureau

To review the press release regarding the appointment of this workgroup, go to <http://www.co.dane.wi.us/DaneDept/press/default.asp?frmPRID=398> on the Internet.

According to the press release, "A TDR / PDR initiative is a key part of Falk's "Attain Dane" land use plan announced earlier this year." Information regarding Ms. Falk's "Attain Dane" plan can be found online at <http://www.co.dane.wi.us/exec/exehome.htm>.

On August 13, 2004, Ms. Falk announced that Dane County had purchased the development rights for farmland located on the Highway 12 corridor. To review the press release regarding this purchase, go to

<http://www.co.dane.wi.us/DaneDept/press/default.asp?frmPRID=406> on the Internet.

C. Resources For Those Drafting Comprehensive Plans

The Wisconsin Legislative Reference Bureau has compiled a list of resources designed to assist local governmental officials who are writing comprehensive plans under Wisconsin's "smart growth" law, contained in 1999 Wisconsin Act 9.

Available titles include:

Affordable Housing and Smart Growth: Making the Connection. Danielle Arigoni, National Neighborhood Coalition, Smart Growth Network, 2001. (331.83/Sm2) Summarizes case studies demonstrating how affordable housing can be included in smart growth development plans.

Challenging Sprawl: Organizational Responses

to a National Problem. Constance E. Beaumont (Ed.), National Trust for Historic Preservation, 1999. (333.1/N215) Profiles state and regional programs to promote smart growth development. Includes recommendations from several national organizations.

A Field Guide to Sprawl. Dolores Hayden and Jim Wark, 2004. (333.1/H32) An annotated collection of aerial photographs illustrating various land use designs and concepts.

From Sprawl to Smart Growth: Successful Legal, Planning, and Environmental Systems. Robert H. Freilich, American Bar Association, 1999. (333.1/F88) A legal history of land use planning in the U.S., with emphasis on "tiered growth" strategies similar to the Ramapo system developed by the author.

Investing in a Better Future: a Review of the Fiscal and Competitive Advantages of Smarter Growth Development Patterns. Mark Muro and Robert Puentes, Brookings Institution Center on Urban and Metropolitan Policy, 2004. (333.1/B79) "This paper makes the case that more compact development patterns and investing in projects to improve urban cores could save taxpayers money and improve overall regional economic performance."-Executive Summary.

Land Use and Urban Growth. Arden Rice Sujewicz, Wisconsin Legislative Reference Bureau, 2000 (Tap the Power, March 2000) This earlier bibliography provides additional background information about "smart growth" and Wisconsin's new planning law.

Once There Were Greenfields: How Urban Sprawl is Undermining America's Environment, Economy, and Social Fabric. F. Kaid Benfield, Matthew D. Raimi, Donald D.T. Chen, Natural Resources Defense Council, 1999. (333.1/N214) This lengthy and extensively documented book analyzes the effects of urban land use and makes recommendations for improved planning.

Planning for Smart Growth: 2002 State of the States. American Planning Association, 2002. (333.1/Am311a) Describes current land use planning law for each of the fifty states beginning with a detailed overview of the nation.

Smart Growth After Five Years. Michael J. Keane, Wisconsin Legislative Reference Bureau, 2004 (Wisconsin Brief 04-7). Outlines the requirements of Wisconsin's law, how it is being implemented, and summarizes legislative attempts to revise the law.

... and many more.

This compilation of resources for comprehensive planning is available online from the Legislative Reference Bureau. Many of these titles are directly available on the internet and links to the documents are included on the LRB web page.

<http://www.legis.state.wi.us/lrb/pubs/ttp/ttp-08-2004.html>



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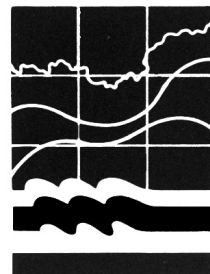
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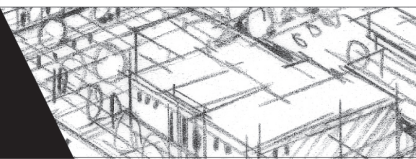
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