

# WAPA News

Wisconsin Chapter  
American Planning Association

Winter 2004

Volume 2004, Number 1



## Call for Session Proposals: 2004 Regional Conference

Session proposals will be accepted until **June 15, 2004**. Regional or multi-state proposals are especially encouraged.

### Possible session topics include:

- Environment (water quality, natural features and constraints, etc)
- Economic Development (tourism, gaming, etc)
- Rural and Small Town (farmland preservation, historic preservation, new urbanism principles, innovative zoning, etc)
- Suburban (zoning, growth management, re-development, etc)
- Urban and Cities (re-development, brownfields, urban design, etc)
- Transportation (alternatives, context sensitive design, etc)
- Housing (affordable housing, manufactured homes, etc)
- Ethics (professional practice, board and commissioner ethics, etc)
- Technology (GIS, web development, interactive ordinances, etc)
- Research and Outreach (university research, public involvement, etc)

All proposals should include: session organizer contact name and information, name and contact information of all presenters, proposed title of session, learning objectives, 50 word description of session to be used in program, maximum 300 word description of the proposed session, brief description of the session format (moderated discussion, traditional panel, debate or workshop), brief biographies of the presenters, and audio/visual equipment needs (data projector, slide projector, VCR, internet access, overhead projector, other). Check [www.planningcrossroads.com](http://www.planningcrossroads.com) for proposal forms and additional information about the Regional Conference

Please forward all proposals by 6/15/04 to:  
Robert S. Cowell, Jr., AICP  
Monroe County Planning Department  
Courthouse Room 306  
Bloomington, IN 47404  
[rcowell@co.monroe.in.us](mailto:rcowell@co.monroe.in.us)

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

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

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

**Professional Services Directory:** Put your business in the newsletter. Advertising rates are \$40.00 per issue or \$150.00 per year. Send business card or camera-ready copy (2 inches 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](mailto: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](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.

**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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WAPA News is printed on recycled paper.

## WAPA video collection collects dust....Just kidding

### WAPA Video Library Available for Members' Use

WAPA maintains a modest collection of professional development videos that members may borrow for a \$5 mailing fee. The library currently includes six titles:

- The Role and Responsibility of the Planning Commissioner (1988), Details the powers and responsibilities of the planning commissioner (in California). 40 minutes.
- The Challenge of Change, Natural Resource Preservation in Oakland County, Michigan; Environmental planning and water supply in Austin, Texas; Light rail in San Diego, California; Affordable housing in Boston, Massachusetts, AICP, 15 minutes.
- Greendale, Wisconsin -- 50 Years, Local Production, 6 hours.
- Planning Education -- Kid Style, Teaching the "Box City" planning program to third grade students, Tennessee APA, 18 minutes.
- Meeting Management: A Mock Commission Hearing (1994), APA, 90 minutes.
- Back to the Future: Designs for Walkable Neighborhoods (1996), Citizens for a Better Environment, prepared with a grant from the Wisconsin Department of Transportation. Looks at pedestrian-friendly land uses and design, 20 minutes.

Planners interested in borrowing any of these videos or suggesting additions to the library should contact:

Roland O. Tonn, AICP  
Phone: 262-569-2166  
FAX: 262-569-3238  
E-mail: [rtonn@wppisys.org](mailto:rtonn@wppisys.org)

## WAPA Conference

**June 9-10, 2004  
Monona Terrace, Madison**

Look for future information in the mail, in the WAPA Newsletter and on our website at [www.wisconsinplanner.org](http://www.wisconsinplanner.org).

# Preparing for the A.I.C.P. Exam

**Compiled by Thomas P. Thatcher AICP/PP  
January, 2004**

The national AICP exam will be held May and November of 2004. Candidates who do not effectively prepare for these exams greatly increase their chances of failure. Generally speaking, about 70% of the people taking the AICP exam will pass. Many of the 30% who do not pass could have if they were better prepared. Experience has shown that MANY persons fail by just one or two points. This article is designed to provide AICP exam candidates with timely advice about study and preparation.

The AICP exam is a remarkably broad 150 question, 3 hour, multiple-choice test which tests a candidates knowledge on general and technical subjects and skills of direct significance to practicing planners.

Candidates for the AICP exam should do the following:

- Take a formal exam review/prep course. WAPA presents an AICP review/prep course. The national APA also offers AICP review resources. Go to [www.wisconsinplanners.org](http://www.wisconsinplanners.org) and/or [www.planning.org](http://www.planning.org) for more information.
- Start your exam preparation months, not weeks, in advance. Study on a regular schedule and do something every day. These are challenging and competitive exams; doing long hours of “cramming” shortly before either exam is a poor preparation strategy.
- Don’t be complacent. Working as a full time planner does not relieve you of the need for focused exam preparation. Complacency is probably the single biggest cause of good and competent people failing these exams.
- Practice to increase proficiency at answering multiple-choice format “SAT-style” exam questions. Honing your multiple-choice test taking skills will significantly improve your likelihood of doing well on these exams.
- Join or form a test study and preparation group to share resources and to help motivate. We have observed that persons in study groups consistently do better than persons flying solo.
- Talk to persons who have recently taken the exam(s). Their insights will be helpful.
- Learn as much as you can about AICP exam procedures and general contents by studying the exam information at the State and national APA websites, [www.wisconsinplanners.org](http://www.wisconsinplanners.org) and [www.planning.org](http://www.planning.org).
- There is an excellent 11 chapter set of free AICP exam study outline notes on the web by Mr. Lee Slusser of the PA Chapter of the APA; goto [www.planningpa.org/career.html](http://www.planningpa.org/career.html).
- The Orange County Chapter of the California APA

has excellent free AICP exam study notes available online; goto [www.oc-apa.org/aicp.html](http://www.oc-apa.org/aicp.html).

- The Ohio State University offers “Planning Education @ a Distance”. The website is [www.knowlton.osu.edu/ped/aicp.htm](http://www.knowlton.osu.edu/ped/aicp.htm).
- [www.planningprep.com](http://www.planningprep.com) offers an on-line AICP prep course for \$75.
- Mike Waiczis from the CA APA Chapter sells what some feel is the best AICP exam self-study package. For about \$100 you can get 5 study manuals: the AICP Examination Preparation Guidebook, Practice and Teaching Exams, Legal and Regulatory Study Guide for AICP Candidates, Commentary to the AICP List of Subject Matter, and Glossary of Planning Terms for AICP Candidates. Google “Mike Waiczis” for information on how to get these materials.

*WAPA thanks Tom Thatcher and the New Jersey chapter of the APA for sharing these tips.*

## From APA National

In the November 2003 issue of *Land Use Law & Zoning Digest*, Rufus Young and Dwight Merriam present a comprehensive outline of Homeland Security factors that merit consideration in the land use review and approval process, as well as numerous references for further information. The events of 9/11 made real the threat of terrorist attacks in the U.S. Whether that threat is large or small, it potentially increases the liability of those who approve, build, or manage potential terrorist targets. This outline serves as a preliminary checklist of factors and actions local governments, developers, and property owners and managers should consider to avoid or reduce such threats and liability risks. To read or download the outline, go to [www.planning.org/PEL/articleIndex.htm](http://www.planning.org/PEL/articleIndex.htm).

## Retiree Recognition



*Gary Peterson, AICP, WAPA President, presenting the 2003 Retiree Recognition plaque to Paul Milewski, AICP.*

## Words of Wisdom:

“If you use the expectations of the community combined with accepted planning principles, the social, economic and physical conditions of the community can be shaped into a desirable living and working environment for its property owners and residents.” – Paul Milewski, AICP

# Law Update

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

The following Updates are summarized due to limited space. Full Updates can be found on the WAPA website at [www.wisconsinplanners.org/law/](http://www.wisconsinplanners.org/law/)

## WAPA Legal Update

November 17, 2003

### Property Tax Exemption *University of Wisconsin Medical Foundation, Inc. v. City of Madison*

Under Wisconsin law, real and personal property are presumed to be taxable. This presumption in favor of taxability is motivated by the public interest in strictly limiting the erosion of the municipal tax base. From a policy perspective, the more property tax exemptions are allowed, the more inequitable becomes the apportionment of the tax burden. However, the Legislature has recognized that some organizations serve the public as opposed to a private purpose and should therefore be relieved of their tax burden. These competing policies had to be balanced in a case decided by the Wisconsin Court of Appeals on September 25, 2003 in *University of Wisconsin Medical Foundation, Inc. ("the Foundation") v. City of Madison*.

The Foundation is a corporation formed by the UW in 1995 to help improve the administration of the University's medical school. The Foundation is a non-stock, non-profit corporation whose articles of incorporation require it to operate exclusively for charitable, educational and scientific purposes and prohibit it from conducting business for a profit. If the Foundation had strictly adhered to this mission statement, it would have probably been allowed to maintain its tax exempt status. However, in 1998, the Foundation made a decision that was factually quite important to the Court.

The Foundation purchased the Physicians Plus Medical Group, a for-profit group practice which included seven clinics located in Madison, over which the Foundation assumed control. Approximately 98% of the patients treated by the Foundation at the Madison clinics, paid for their treatment at prevailing market rates. The Foundation requested that the City of Madison grant property tax exemptions beginning in 1998 for these clinics. The City did not grant the requested exemptions and levied property taxes of approximately \$900,000 per year on these properties which the Foundation paid but then appealed on two grounds.

First, the Foundation argued that Wisconsin law allows property tax exemption for properties "owned and used exclusively by benevolent associations." Wis. Stat. § 70.11(4). Second, the Foundation argued that property tax exemption was justified because the properties were "used exclusively" by a non-profit organization for medical research, education of physicians or treatment of indigent individuals. Wis. Stat. § 70.11(25). The Dane County Circuit Court decided that the Foundation did not use the properties "exclusively" for exempt purposes and the Court of Appeals agreed with Judge Calloway's decision.

### Open Records Law

Gary Peterson requested that I address an important legislative change which will affect how municipalities treat requests made pursuant to Wisconsin's Open Records Law. The new law recently signed by Governor Doyle overturns a series of cases which followed the 1996 decision made in *Woznicki v. Erickson*. Essentially, the Woznicki line of cases determined that a records custodian was required to give notice to a person whose privacy and reputational interests were raised in the record sought to be obtained before releasing the information.

The new law, which took effect on August 25, 2003, narrowly defines the kinds of records which a municipality can release without first notifying the record's subject. However, the law also contains provisions that go in the opposite direction. It provides that a municipality must prohibit access to its records which contain the contact information of an employee, information relating to investigation of a criminal offense or possible misconduct of an employee prior to disposition of the investigation and information pertaining to an employee's employment examination. Thus, the

### *new law attempts to achieve a better balance*

new law attempts to achieve a better balance in releasing potentially sensitive employment information based on what the Legislature

perceived as procedures in the Woznicki line of cases that it considered to be contrary to the public interest.

### Land Use Cases

It is somewhat unusual for the Wisconsin Supreme Court to schedule oral arguments in three land use cases for the same date. On December 4, 2003, arguments will be heard in *Ziervogel v. Washington County Board of Adjustment*, *State v. Waushara County Board of Adjustment* and *Town of Delafield v. Winkelman*. I have previously identified to WAPA members the significance of these decisions when they were made at the Court of Appeals level, so the fact that these cases are going to be decided by the Wisconsin Supreme Court reinforces their significance.



December 15, 2003

## Municipal Taxation of Subsidized Housing *Columbus Park Housing Corp. v. City of Kenosha*

On November 19, 2003, the Wisconsin Supreme Court reversed a Court of Appeals decision and found that property owned by a benevolent association for the purpose of rehabilitating dilapidated buildings in the City of Kenosha is taxable.

The issue in *Columbus Park Housing Corporation v. City of Kenosha* was whether the Plaintiff was entitled to a tax exemption pursuant to Wis. Stat. § 70.11(4). The City of Kenosha stipulated that Columbus Park was a benevolent association. In fact, the City granted tax exemptions to Columbus Park's properties while they were being rehabilitated. However, the City denied exempt status to the properties when they were subsequently occupied by low income individuals.

### *taxation is the rule...exemption is the exception*

exemption is the exception. Thus, he reasons that any ambiguity in the statute is resolved in favor of taxation.

The introductory section of Wis. Stat. § 70.11—the preamble—provides: Leasing a part of the property described in this section does not render it taxable.

A majority of the Court decided that Columbus Park was not entitled to a tax exemption because the individuals to whom Columbus Park rented would not have qualified under § 70.11 as tax exempt if they had owned the property. The Court concluded that there was no legal authority to support the proposition that an organization that is involved in establishing a lease on behalf of another and partially subsidizes that lease but does not occupy the property or retain any possessory interest in that property, may nonetheless be considered the lessee of that property.

Sensing that the plain meaning of the statute could be interpreted as favoring taxation, a substantial portion of Columbus Park's argument was based on the assertion that it was entitled to a tax exemption as a matter of public policy. It asked the Court to carve out an exception to the lessee identity condition cited in the preamble and argued that this condition does not apply if the lessees are the objects of the organization's benevolence.

The majority of the Court rejected this policy argument, concluding that whether the Court was of the opinion that Columbus Park should receive a tax exemption was irrelevant. Because tax exemptions exist purely by virtue of "legislative grace" the Court felt that under our tripartite system of government, it is the duty of the courts to apply the

In the majority decision, Justice Wilcox began his analysis with the proposition that the taxation of property is the rule and

policy the Legislature has codified in the statutes and not to impose its own policy choices. Thus, this decision represents a classic debate regarding the role of the judiciary.

Justice Abrahamson dissented. Abrahamson found the relationship between the Housing Authority and the low income individuals occupying Columbus Park's housing sufficiently substantial to qualify the Housing Authority as a lessee.

This important decision reinforces that there appears to be a legal trend to support making it more difficult to obtain property tax exemptions in this State.

## Legal Challenge to Wisconsin's "Right to Farm" Law

### *LaVake v. Zawitskowski*

There is currently a pending case in the United States District Court for the Western District of Wisconsin which is a constitutional challenge to Wisconsin's "right to farm" law, which is raised in *LaVake v. Zawitskowski*.

In *Zawistowski*, a group of non-resident lake property owners on Lac Court Oreilles Lake sued a cranberry grower for money damages and injunctive relief for harm allegedly caused by the use of fertilizer and insecticides on the Defendant's cranberry farm. Mr. Zawistowski raised a defense against nuisance actions pursuant to Wisconsin's right to farm statute, Wis. Stat. § 823.08(3). Plaintiffs argued that the right to farm law is unconstitutional because it constitutes a governmental taking of their properties without just compensation.

Wisconsin's "right to farm" law restricts nuisance actions against agricultural operations. It was first enacted in 1982. The 1982 law primarily attacked agricultural nuisance actions by limiting the available remedies based on whether the operation was within an agricultural land use zone. However, in 1995, the Wisconsin Legislature amended the right to farm law by limiting the scope of the cause of action allowed for nuisance actions brought against agricultural operations.

The effect of this amendment, according to the Wisconsin Legislative Council, was that this requirement of substantial threat to public health or safety is analogous to the requirement for the plaintiff in a private nuisance suit to prove that the agricultural activity is unreasonable, but sets the threshold of proof higher by requiring the plaintiff to show that the activity was a substantial threat to public health or safety. In addition, this limitation was intended to avoid the possibility of a court finding that the statute is an unconstitutional taking of private property without compensation which occurred in the Iowa Supreme Court case in 1998 referred to in the October, 2003 Legal Update.

Briefs have been filed and a decision is now pending before Judge Barbara Crabb as to whether there was an unconstitutional taking and whether the Plaintiffs have alleged damages in excess of \$75,000, which is necessary to meet federal subject matter jurisdiction.

*Continued on page 10*



## 2003 WAPA Awards Presentation – October 24, 2003

### Upper Midwest Planning Conference

### Midwest Airlines Center, Milwaukee, Wisconsin



Gary Peterson, AICP, WAPA President, presenting the 2003 WAPA Award to Amy Emery, AICP, of OMNNI Associates, and Heather Zander, Community Development Director for the City of Brillion.



Gary Peterson, AICP, WAPA President, presenting the 2003 WAPA Award to Scott Kugler, AICP, Director of Planning and Economic Development for the City of Sun Prairie.



Gary Peterson, AICP, WAPA President, presenting the 2003 WAPA Award to Peter Park, AICP, former Planning Director for the City of Milwaukee.

#### Small Jurisdiction – City and Town of Brillion Coordinated Comprehensive Plan

*The City and Town of Brillion Coordinated Comprehensive Plan* is the result of two communities working together to create a common vision for the future. “Because of the planning process, the visioning, [and] the open dialogue between the municipalities, there seems to be a renewed interest in not only preserving farmland but in preserving open space and the rural character that has become a point of pride for many residents of our Township and now, City of Brillion residents as well.” – Leonard Vaness, Assistant Planning and Code Administrator/Town of Brillion Planning Commission Interim Chairman.



#### Large Jurisdiction – Sun Prairie Westside Neighborhood Plan

*The Sun Prairie Westside Neighborhood Plan* was developed in response to the record-setting growth that the City has experienced over the past decade. “The strong visioning approach will assist the City in creating the type of environment desired by community residents, while allowing the City and area landowners to capitalize on the opportunities presented on the Westside.” – Scott Kugler, AICP, Director of Planning and Economic Development.



#### Large Jurisdiction – Park East Redevelopment Plan, City of Milwaukee

*The Park East Redevelopment Plan* identifies the means for replacing an elevated freeway spur with a six-lane at-grade boulevard. “The Park East plan goes beyond normal and customary zoning to elicit and ultimately enforce planning and design excellence within the planning area. In that regard, the plan becomes a catalyst, rather than an impediment, toward realizing the goals for a comprehensive redevelopment of the highest quality.” – Robert Monnat, Chief Operating Officer, Mandel Group, Inc.



## Planning Document



## 2003 WAPA Awards Presentation – October 24, 2003

### Upper Midwest Planning Conference

### Midwest Airlines Center, Milwaukee, Wisconsin



Gary Peterson, AICP, WAPA President, presenting the 2003 WAPA Award to Jason Gilman, AICP, Land Use and Development Director for the City of Onalaska, Bert Stitt of Stitt Facilitations, Brian Fukuda, Assistant Planner/Zoning Inspector for the City of Onalaska, and Ed Freer of SmithGroup JJR.



Gary Peterson, AICP, WAPA President, presenting the 2003 WAPA Award to the following City of Brookfield Representatives: Daniel Ertl, AICP, Director of Community Development, Carrie Johnson, AICP, Neighborhood Planner/Designer, Kathryn Bloomberg, former Mayor, and Jack Shaw, Karl Schulz, and Gary Mahkorn, Aldermen.



Gary Peterson, AICP, WAPA President, presenting the 2003 WAPA Award to Peter Park, AICP, former Planning Director for the City of Milwaukee.

#### Medium Jurisdiction – Downtown Onalaska Redevelopment Plan

*The Downtown Onalaska Redevelopment Plan* is being implemented through the revitalization of older buildings and the installation of streetscape elements in Downtown Onalaska. “We worked closely with the city planners, Centering Onalaska, and the Historical Society to remodel the building to look like a 1920’s theater, which was ... the first function of the building. It turned out beautifully and that set the standard for all future remodels that have been completed or are planned.” – Michael Colvin, DDS.



#### Large Jurisdiction – Brookfield Year 2020 Master Plan

*The Brookfield Year 2020 Master Plan* is being implemented through working with the community on establishing neighborhood-specific plans and realizing development and reinvestment in these neighborhood areas. “The City’s farsighted approach to planning and community development issues created development strategies that were more creative than typical suburban developments.” – Paris Rutherford, AICP, Vice President, RTKL Associates Inc.



#### Large Jurisdiction – Beer Line B Master Plan and Neighborhood Code, City of Milwaukee

*The Beer Line B Master Plan and Neighborhood Code* is being implemented in a former industrial and commercial corridor along the Milwaukee River that overlooks downtown Milwaukee. “We applaud the creative energy and the City’s request for input from community and civic arenas that have contributed to the successful planning and implementation of this project.” – Kelly Denk, AIA, Principal, Vetter Denk Architects.



## Plan Implementation





## Purpose

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

## Eligibility

A WAPA or an APA member must submit the application. Planning Document and Plan Implementation nominations must be for projects located in Wisconsin and must have included a WAPA or an APA member throughout the planning process. Elected Official of the Year and Citizen Planner of the Year nominees must live and work in Wisconsin. Outstanding Journalism nominations must have a reporter from – and a story about – a Wisconsin community. No project may be considered if a member of the Jury – or his/her organization – had a role in planning or implementing a project.

## Questions

For more information on the 2004 WAPA Awards program, please visit the WAPA web site at <http://www.wisconsinplanners.org> or contact Carolyn Esswein. Submittals should be sent to:

Carolyn Esswein, AICP, At-Large Representative  
c/o Planning and Design Institute, Inc.

241 N. Broadway, Suite 300  
Milwaukee, Wisconsin 53202

Phone: 414.271.2545 Email: [carolyn@pdisite.com](mailto:carolyn@pdisite.com) (Subject Line: “2004 WAPA Awards”)

## Categories (check one)

### Planning

#### Planning Document

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

#### Plan Implementation

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

#### Planning Tool

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

#### Urban Design

- ☐ Large Project (more than 10 acres)
- ☐ Small Project (less than 10 acres)

### Individual

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

### Media

- ☐ Outstanding Journalism

## Judging Criteria

### Planning

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

### Urban Design

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

### Individual and Media

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





## 2004 Wisconsin Chapter of the American Planning Association Awards Application Form

Entries for the 2004 WAPA Awards are due by 5:00 p.m. on **Friday, May 28, 2004**.  
Materials received after this date will be discarded.

I nominate \_\_\_\_\_  
for a 2004 WAPA Award in the category of \_\_\_\_\_.

### Nominator

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

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
APA Membership Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone/Fax

\_\_\_\_\_  
Email

\_\_\_\_\_  
How Associated with the Nomination

### Nomination

\_\_\_\_\_  
Project Address/Location

\_\_\_\_\_  
or

\_\_\_\_\_  
Address of Individual Nominee or Media Contact

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone/Fax

\_\_\_\_\_  
Email

### Submission Requirements

The following attachments are mandatory. If any attachment is omitted, the application will not be considered. **Five (5) collated sets** of the following are required in order for the application to be considered for an award. **One (1) Poster Board** is required per submittal.

1. 2004 WAPA Awards Application Form.
2. A three-ring binder up to one (1) inch in thickness containing all the required attachments – including a “CD-ROM Page” to hold CD-ROM media within the binder and a press release with a contact person and phone number, fax number and/or email addresses for local newspapers and television and radio stations.
3. An Executive Summary of the nomination (one-page maximum). List all consultants and municipalities that worked on the project.
4. A two-page explanation of how the nomination meets the judging criteria for the designated category.
5. One (1) to five (5) one-page letters in support of the nomination.
6. For the **Planning** categories: The adopted Planning Document or Plan Implementation Document, ten (10) slides in 8.5 x 11 format – highlighting the project with a brief caption for each image. A five (5) page summary of the document provided digitally on CD-ROM media in .pdf, .ppt and .jpg formats. One Poster Board (24”x 36”) with highlights from the Document.
7. For **Urban Design** categories: The approved Plan, five (5) slides in 8.5 x 11 format – highlighting the Plan with a brief caption for each image. The Plan on CD-ROM media in .pdf, .ppt and .jpg formats. One Poster Board (24”x36”) of key elements of the Plan.
8. For the **Individual** categories: One (1) portrait of the individual nominee and up to five (5) slides in 8.5 x 11 format – highlighting the work of the individual with a brief caption for each image. Also, the portrait and slides must be provided digitally on CD-ROM media in .jpg and .ppt formats. One Poster Board (18”x 24”) highlighting the nominee.
9. For the **Media** category: One (1) essay, document, article, article series, or transcript that best represents the nomination. The text and any associated images must be provided digitally on CD-ROM media in .doc and .jpg formats. One Poster Board (18”x 24”) highlighting the submittal.

## Annexation

### *City of LaCrosse and Town of Campbell*

The latest chapter was a decision rendered by the Court of Appeals on November 13, 2003 between the two municipalities. The decision turned on the question of whether the three components to the Rule of Reason were met in various proposed annexations to the City of LaCrosse.

Under the first component, any irregularities in boundary lines of annexations could not be the result of arbitrariness. An exception to this general rule occurs when the municipality is the “real controlling influence” in selecting the boundaries even though the property owners are the petitioners. The annexing municipality cannot dominate the petitioners so as to have effectively selected the boundaries. It is acceptable for a city planner to provide technical assistance or recommendations to the petitioners, but the planner cannot exceed that advice. Applying this standard to the facts of this case, the Court concluded that there was no evidence to show that the enactment of the ordinance was conditioned on the petitioners following the City’s suggestion on what land to include.

As to the second component of the Rule of Reason, the City must show a need for the additional property. However, an interesting twist in determining the need in this case is whether it is sufficient for the respective property owner to demonstrate their individual need for their property to be annexed or must the annexing municipality demonstrate a public need? This Court concluded that it was sufficient to meet the second component of the Rule of Reason for the individual property owners to justify the annexation in terms of their private need for service extension from the City.

### *City must show a need for the additional property*

Under the third component of the Rule of Reason, the Court is to consider evidence that the municipality abused its discretion for reasons other than those considered under the first two components. In this case, the Court of Appeals agreed with the trial court that the Town presented no evidence that the City had abused its discretion in enacting the annexation ordinances.

Assembly Bill 85 was passed by the Legislature and sent to the Governor for his review. The legislation would allow the Town of Campbell to become a Village without State approval. Supporters of the legislation argue that allowing the Town to become a Village would protect the Town from unwanted annexation attempts by the City. It is also argued that it would help the Town of Campbell to become the Village of French Island, which would allow the Village to protect its cultural identity. Opponents argue that the Bill would set a dangerous precedent in the ongoing effort to achieve sound land use planning.

January 15, 2004

## Municipal Assessment

### *Generich v. City of Rice Lake*

On November 11, 2003, the Court of Appeals in District III decided *Generich v. City of Rice Lake*, which addresses the nature and methodology of a municipal assessment. The Generich two acre parcel was zoned for residential purposes at the time of their purchase but was subsequently rezoned commercial. In order to provide access for a public park east of the Generich’s property, the City levied special assessments against 6 properties, including the Generich parcel. Using the typical “front-foot” method for valuation, the City assessed the Generich’s property in excess of \$44,000.

The Generichs took the position on appeal that the work done constituted a general improvement as opposed to a local improvement that may be financed by a special assessment.

The Court recognized that the determination of what is a local improvement as opposed to what is a general improvement often involves a close question that requires a careful evaluation of the facts and circumstances in the particular situation. However, the parties disagreed as to how this factual determination should be decided. The Generichs argued that the City’s purpose for initiating the improvements should determine whether the improvements were general or local in character. The City took the position that its purpose was not germane. Instead, the City argued that the determination should be based upon the nature of the benefits conferred. In this case, the Court disagreed with both parties. Instead, it took the middle path, namely, that the City’s purpose for making the improvements was relevant to resolving the nature of the improvement but not determinative because a court must also consider the benefits to be derived by the property owner.

The Court remanded the matter back to the circuit court since there was conflicting evidence of what the primary purpose of the improvements was and whether the improvements provided special benefits to the Generichs. The Court went on to say that if the circuit court nevertheless concluded that the nature of the improvements was local, it had to then consider the propriety of the special assessment levied on the Generich’s property.

In order for a special assessment to be legal, it must comply with the following requirements:

1. The assessment must be levied upon property in a limited and determinable area.
2. It must be levied only for the special benefits conferred on the property.
3. The assessment must have a reasonable basis as determined by the City.

Although this Court did not determine the propriety of the special assessment, it did give direction to the circuit

court as to the applicable law to apply to the “reasonable basis” standard in (3), above. This Court agreed with the property owners’ position that “reasonableness” requires the assessment to be in proportion to the benefits conferred. While that may appear to be fairly straightforward, this Court required that the special assessment be first, uniform (it must be reasonable in relation to all affected properties); and second, it must meet the “uniqueness” test, namely that the consequences of the assessment on a specific property must be in proportion to the benefits conferred.

## WAPA Legislative Update

BY JORDAN K. LAMB

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The following is a partial listing of critical Updates. Full Updates can be found on the WAPA website at [www.wisconsinplanners.org/law/](http://www.wisconsinplanners.org/law/)

### Assembly Bill 608 – Changes to Smart Growth

AB 608 bill reduces the number of programs or actions with which a comprehensive plan must be consistent and also reiterates that a regional planning commission’s comprehensive plan is only advisory in its applicability to a political subdivision (a city, village, town, or county) and a political subdivision’s comprehensive plan.

On November 19, 2003, AB 608 was passed out of the Assembly Property Rights and Land Management Committee with a vote of 7-0. It is now available for scheduling for debate on the Assembly floor. To review the full text of this bill, go to <http://www.legis.state.wi.us/2003/data/AB-608.pdf>

### Changes to the TIF Program

Senate Bill 305, introduced on November 5, 2003 by Senator Cathy Stepp (R – Sturtevant) and Assembly Bill 654, introduced on November 10, 2003 by Representative Michael Lehman (R – Hartford), are companion bills that make technical and policy changes in the TIF program; authorizes certain counties to create TIF districts; modifies the environmental remediation TIF program. To review the full text of this bill, go to <http://www.legis.state.wi.us/2003/data/SB-305.pdf> and <http://www.legis.state.wi.us/2003/data/SB-306.pdf>.

### Assembly Bill 655/Senate Bill 313 – “Jobs Creation Act of 2003”

The 114 page bill popularly referred to as the “Jobs Creation Act of 2003,” was introduced by Representative Gard (R – Peshtigo), Speaker of the State Assembly, and Senator Mary Panzer (R – West Bend), Senate Majority Leader on November 11, 2003.

To review the full text of the bill, go to <http://www.legis.state.wi.us/2003/data/AB-655.pdf>

### Assembly Bill 130 – Alternative Method for Town Consolidation

Assembly Bill 130, which creates another method for certain towns to consolidate with other municipalities, was signed into law by Governor Doyle on December 3, 2003 as 2003 Wisconsin Act 93. To review a copy of the Act, go to <http://www.legis.state.wi.us/2003/data/acts03Act93.pdf>

### Senate Bill 89 – Town Referenda for Annexations

Senate Bill 89, introduced by Senator Alan Lasee (R – DePere), prohibits an annexation ordinance or annexation from taking effect unless it is approved in a referendum of all of the town electors in the town from which the town territory is proposed to be annexed.

### Assembly Bill 551 – Town Board Approval of County Development Plan

AB 551, introduced by Representative Donald Friske (R – Merrill) prohibits a county development plan, in whole or in part, or an amendment to the plan, from taking effect in a town unless that town’s board approves the county board’s action.

### Senate Bill 341 – Requiring Cities and Villages to Make Payments to Towns from Which Land Is Annexed

On December 10, 2003, Senator Alan Lasee (R – DePere), introduced Senate Bill 341, which was referred to the Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform. Under this bill, the city or village must pay to the town, for five years, an amount equal to the amount of property taxes that the town imposed on that territory in the year in which the annexation is final. To review a full text of the bill, go to <http://www.legis.state.wi.us/2003/data/SB-341.pdf>.

### Assembly Bill 437 – Granting Towns Limited Authority to Create TIF Districts

AB 437 authorizes towns to use TIF for limited purposes. Under the bill, a town may use the TIF law to expend money or incur monetary obligations as a “project cost” for all of the following: (a) Projects related to tourism; (b) Projects related to agriculture; (c) Projects related to forestry; (d) Residential development, but only to the extent that it has a necessary and incidental relationship to a project related to tourism, agriculture, or forestry; or (e) Retail development, but only to the extent that it is related to the retail sale of products that are produced due to a project related to agriculture or forestry.



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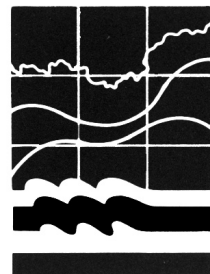


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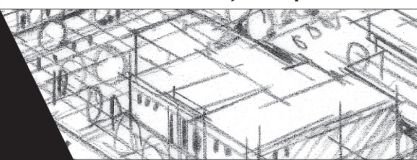
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