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American Planning Association **Wisconsin Chapter**

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Winter-Spring 2019 Newsletter

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- **Legislative Advocacy:** Reinstate eminent domain to extend or create bike paths, trails, lanes, sidewalks--use new APA tool to contact your state legislators
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The Lismore Hotel
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Chapter Elections

The Chapter is now seeking candidates for the fall 2019 State Board elections for terms beginning on January 1, 2020. Serving on the State Board is a way to not only give back to your profession, but also enables you to advance planning in the State of Wisconsin. The following positions are up for election this year:

- President- Elect – 2 yr. position followed by 2 yrs. as President and 2 yrs. as Past-President
- VP Membership – 3 yr. position
- NE District Representative – 3 year position, must reside in the district
- SW District Representative – 3 year position, must reside in the district

The Board meets in Madison four times annually. While board members are encouraged to attend in person, teleconferencing is possible.

Please consider joining the board!

To see current Board Members [click here](#)

To see Chapter Governance Documents and to read about the responsibilities of each positions, [follow this link](#).

University of Wisconsin - Extension's 2019 Teleconference Series



Join us for a series of informative teleconferences put on by the University of Wisconsin - Extension. These timely audio programs for Wisconsin local government officials, attorneys, land use planners and interested citizens begin on January 9, 2019. American Institute of Certified Planners (AICP) Continuing Maintenance (CM), and Continuing Legal Education (CLE) accreditation applied for. Participation in live program qualifies for credit. Each 90-minute teleconference is \$20 and includes a digital copy of written materials. Visit their [website](#) to register and APA to [register your AICP CM credits](#).

APA Chapters and Divisions Planning Webcast Series

Earn over 50 CM credits every year on your computer – at no cost to members of participating APA chapters and divisions that support the Planning Webcast Consortium. The Wisconsin Chapter is a participating member.

Sessions take place live on Fridays from 1:00 PM - 2:30 PM ET.

To see the upcoming AND prior webcast to earn your CM credits, [visit their website](#).

Note: only one Law and one Ethics session are available for on demand. All the others must be viewed live to count toward CM requirements. Select the Distance Education tab on the Ohio Chapter website.

APA-WI and the City of Madison:



Madison Municipal Building Tour Thursday, April 4, 2019

The Madison Municipal Building's years-in-the-making refurbishment was completed in September 2018 at a cost of about \$21 million. The building,

which originally began construction in 1926 as a post office and federal courthouse, is now listed on the National Register of Historic Places. The tour will show how the historic building was remodeled to accommodate workplaces and meeting areas for approximately ten different City departments / divisions and public meeting spaces for residents of the City of Madison. The tour will provide an overview of rehabilitation and restoration of key historic spaces inside the building, including the restoration of the original 1920s Courtroom and adaption for departmental and public (non-judiciary) use. Finally, cutting-edge environmentally friendly features that were included in the reconstruction will be covered as well.

For more details and to register, visit [Eventbrite](#) to register for the event and APA to [register your CM credits](#).



EcoAdapt National Adaptation Forum Conference Madison - April 23-25, 2019

This biennial conference gathering of the climate adaptation community exists so that every community or sector, which are developing and implementing climate adaptation, can learn from each other. The Forum's mission is to gather the adaptation minded to foster knowledge exchange, innovation and mutual support for a better tomorrow. The biennial event started in 2013, has already facilitated connections between more than 2,300 managers, planners, researchers and engaged citizens, so they can all improve their ability to develop and implement equitable climate adaptation strategies. The Forum Program Committee, representing a cross section of adaptation professionals, works to create a program that provides guidance, training resources, lessons learned and tools on climate adaptation.

For more details and to register, visit their [website](#) and APA to [register your CM credits](#).

ECWRPC and APA-WI: Preparing for Autonomous & Connected Vehicles Mini- conference Fond du Lac - Friday, April 26, 2019

Save the dates! The East Central Wisconsin Regional Planning Commission, along with APA-Wisconsin will be co-hosting a mini-conference on the topic of autonomous vehicles. The event will be held on April 26 from 8-12 at Hotel Retlaw in Fond du Lac, WI. Keep checking the APA-WI website ([Events](#)) for more information. AICP CM credits will be provided.

Good Health Grows on Trees

The influence of nearby nature on public health

Wisconsin Department of Natural Resources: Good Health Grows on Trees Conference Janesville - Thursday, May 30, 2019

"We invite you to join us for the first ever Good Health Grows on Trees Conference, hosted by the Wisconsin Department of Natural Resources Urban Forestry program, funded in part by the USDA Forest Service. This one-day event will include presentations from dynamic speakers exploring the science behind the impacts of urban and community forests on our physical and mental health, and applications of these findings on the ground. We will hear from a variety of professional perspectives including social science, public health, landscape architecture, city planning and urban forestry. This conference includes a facilitated interactive session where you will be invited to discuss and collaborate with your fellow attendees. Bring your questions, ideas and enthusiasm. Hope to see you there."

Visit their [website](#) to register and APA to [register your CM credits](#).

NPC 2019 San Francisco: Wisconsin Get Together

WHEN: Sunday, April 14, starting around 6 pm.

WHERE: The Thirsty Bear

The link below includes a map to find it and the address.

<http://thirstybear.com/contact/>

WHO: Members of APA Wisconsin, students in planning in Wisconsin, alumni of planning schools or planning work in Wisconsin, people who wish they were planners in Wisconsin, . . .

When you arrive, look around for people you recognize or people who look like Wisconsin planners. Of course, those APA NPC name badges will be a dead giveaway that you are in the right place.

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Ruralism Initiative

The New Ruralism Initiative, a partnership between the Northern New England Chapter of the APA and the APA Small Town and Rural Planning Division, is developing an online collection of case studies from around the country highlighting ingredients that have made for successful innovation in rural communities. The initiative started as a pilot project with funding from the APA Chapter Presidents Council and compiled a set of case studies in Northern New England. We are now expanding the project to create an online library of examples from other communities across the country.

Is your community engaging in innovative planning work related to:

- accessing local food,
- providing for the needs of children and seniors,
- cultivating job opportunities,
- tackling climate change and energy conservation,
- protecting your working landscape,
- addressing transportation needs and alternatives,
- ensuring adequate healthcare,
- adding resiliency to your community toolbox, or
- being creative in other ways to better community life

WE'D LOVE TO HEAR FROM YOU – Please tell the New Ruralism Initiative team about it!

Click here to share a few sentences about your story:

<https://www.surveymonkey.com/r/NewRuralism>

Then we will be back in touch to get more details.

To learn more about the New Ruralism Initiative see the Northern New England Chapter of the American Planning Association (NNECAPA) website at <https://nnecapa.org/resources/newruralism/>



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AICP Exam Information and Review

SAVE the date, April 13 in the morning.

Place and time are TBA. We will provide both an in-person and remote access opportunity.

Watch your email for more information!

If you need help paying for the AICP Exam, please contact Nancy Frank, frankn@uwm.edu, as soon as possible.

Feature Article

Resurrecting the Ghostboxes

Vacant big box developments are an increasingly pernicious problem for communities across the country. This article explores how practitioners around Wisconsin are grappling with the issue and what can be done to reduce the blighting effects.

Forrest Elliott – Student Editor

“For these are not as they might seem to be, the ruins of our civilization, but are the temporary encampments and outposts of the civilization that we – you and I – shall build.” --John Cheever

An aerial view of any metro area in the US reveals the remarkable sameness of suburbia. Networks of freeways and arterial streets wind between squares of gray and green in a repeating visual pattern.

To a keen eye, the ubiquity of “big boxes” is immediately apparent. Home to America’s retail giants, the angular buildings and the sea of parking surrounding them are everywhere – gray constants that hug busy arterials. On the ground, the structures are foreboding: windowless, hulking, drab. To their corporate tenants, they are perfect: cheap to construct, big, utilitarian.

Big boxes are a drastically different land use from any previous development pattern, and thus the question must be asked: what happens when they lose their utility? What does a community do when retailers shed them like a hermit crab in search of bigger shell? Even worse, what if their progenitors fail to stay profitable in a chaotic market and abandon them altogether? Worse still, this appears to be the current state of retail in the internet age.

What do you do with a 150,000 square foot building that nobody wants?

The End of the Big Box?

Since the “birth” of the big box in 1962, the impact of mega-retailers on the American economic and physical landscape is enormous. Their unfettered growth was not a symptom or cause of suburbanization, rather a mirror phenomenon. Successful chains exploded across the country during the late 20th century. Walmart, the industry leader, is still number one on the Fortune 500

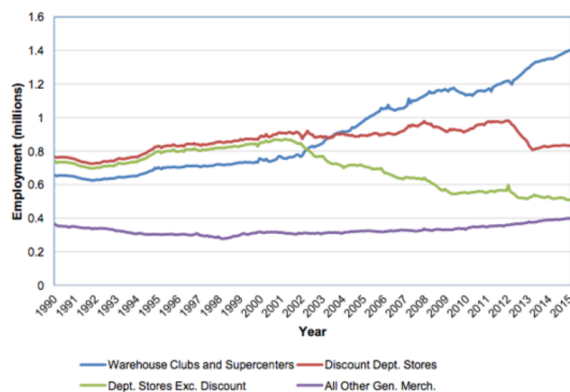
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Image at left: *Early Target Store* (Source: [NPR](#))
Click image for larger version.

There are signs, however, that the party is coming to an end. Though any claims of a brick-and-mortar “retail apocalypse” may be overstated, recent evidence suggests that retail closures are accelerating. According to some estimates, 2018 set the record for retail closures by square footage.

Image at right: *Retail Employment by Store Type* (Source: [The Atlantic](#))
Click image for larger version.

“You’re seeing the bifurcation of retail,” says Nate Piotrowski, Brown Deer’s Community Development Director. As he explains it, just as the middle class in America is shrinking, so has the middle bracket of retail. A 2017 study from the IHL group validates Piotrowski’s assessment. Stores targeting both the high and low ends of the income spectrum have seen success. Warehouse clubs and supercenters that incorporate groceries have come to capture more and more of the market. Their main victims? The department stores that anchored the mall building boom of the 70’s, 80’s and 90’s. Stores such as JC Penney’s, Kmart, and Macy’s have been unable to weather the great recession and the rise of e-commerce, leaving dead malls in their wake and a whole lot of vacant space.



Whatever the reason, the effect is the same. Vacant big box developments are an increasingly pernicious problem for communities across the country.

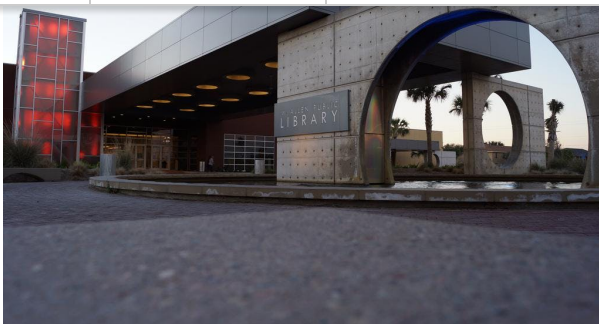
Beyond the litany of issues related to crime, overparking, community health, and lower overall employment, planners are now faced with an abundance of airplane-hangar-like structures with no obvious alternative use. “The big box as it currently exists is kind of an inherently flawed land use design,” says Piotrowski. “These boxes are going to prove to be ongoing challenges.”

Reimagining Grayfields

Image below: McAllen, Texas. Former Walmart now a public library
(Source: [Evensi](#)) Click image for larger version.

Examples abound of creative big box adaptive reuses around the country. Some communities have managed to transform them into libraries, children’s hospitals, and high schools. Despite their inhospitable aesthetic, they do afford redevelopers some advantages. They are gargantuan, have adjacent parking lots, and are often located near major arterials. Most importantly, they are already there, making it less expensive than new construction.

Replacing a revenue-generating big box retail with a tax-exempt public-use is bound to make any

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whereby corporations have lowered the tax burden of still active stores by arguing that there is no resale market for the buildings due to all the vacancies. Private alternative uses such as churches, museums, indoor go-kart tracks, and call-centers have all been proven viable, though they tend to generate far less property tax than retail, if any at all.

Organizations such as the Congress for New Urbanism espouse the potential of suburban retail corridors for dense and mixed-use infill development. Some struggling enclosed malls and strip malls have been turned into walkable “town centers” that have been successful economic and design experiments. As Ellen Dunham-Jones, author of *Retrofitting Suburbia* describes it: “urbanism is the new amenity.”

The Wisconsin Experience

Major redevelopments are obviously not an option for every municipality in a world where suburban big box retail is so overbuilt. Realistically, what should a planner do when a tenant leaves a big-box? What can a planner do?

Often, the answer is: not much. If the retail market is strong and a broker moves aggressively, a vacant big box might soon be re-tenanted. In this scenario, a local government may have little control. Without a mechanism for municipal approval or control, the municipality may have no opportunity to address site plan improvements or aesthetic changes to buildings.

Under Piotrowski, Brown Deer did get just such an opportunity from an incoming Walmart that was replacing a Lowe's. Walmart needed a conditional use permit, and through that process the Village successfully negotiated site improvements and guarantees from the company.

When Brown Deer's American TV retail store declared bankruptcy in 2014, it left ten acres in its wake. Sensing an opportunity, the Village purchased the property, eventually turning one acre into a regional stormwater facility, selling two acres to a new Aldi, and reselling the large primary building to the manufacturer PAK Technologies. By the end of the process, the combined value of the land had increased. In Piotrowski's experience, however, that doesn't mean the Village's work is done: “We wouldn't be sound planners if we didn't expect some of these vacancies to crop back up.”

Just down Brown Deer Road, Milwaukee's Granville neighborhood faces a different set of challenges. Retail in the northwest Milwaukee neighborhood has been in a state of decline since the shuttering of Northridge Mall in 2003; some of Brown Deer's newest retail arrivals—including Walmart and an Aldi—relocated from Granville, moving in some instances less than a mile across the border into the Village.

With a different set of market realities comes a different set of potential solutions. No national chain is coming to snap up the vacant big boxes on Milwaukee's northwest side. Instead, Granville has looked toward re-use.

Mary Hoehne, Director of the Granville Business Improvement District (BID), understands the

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investment,” Hoehne explains. Knowing this, the City of Milwaukee rezoned large swaths of empty retail to Light Industrial in the hope that Granville will become a regional job center for manufacturing. In 2017, the City of Milwaukee and several local partners convened to hold a charette at the University of Wisconsin – Milwaukee to spur conversations around doing exactly that.

Image below: Plans from the Granville charrette (Source: UWM CDS) Click image for larger version.



According to Hoehne, the results are mixed. In some instances, she sees the pivot as a rousing success. In others, missed opportunities.

In 2013, automotive transmission manufacturer ETE Reman purchased the former Walmart that skipped town to Brown Deer. As an active user and large employer, the fit has been ideal. “They are the perfect example of what you want when you take a big box and rezone it to industrial,”

said Hoehne. “There is parking for 400 cars and they fill it with their employees.”

Since the inception of the BID, Granville has had moderate success filling its empty big boxes. A former Target became the home of a refrigeration company, a Menard’s was turned into fiber-optics storage, and a Sam’s Club became a distribution center.

The problem? “To regular people they appear empty,” said Hoehne. “You drive past [ETE Reman] and can see a lot of activity, the nice signage, and that there are things happening in the building.” She laments that the other lower-activity reuse tenants do little to shift the perception of the neighborhood, despite the reduction in vacancy. “The average person doesn’t necessarily know ‘oh, there’s five employees in there.’”

Lessons Learned: Your Ordinance (and the Market) Matter

Hoehne wishes some elements of the shift had been handled differently. She points specifically to Milwaukee’s zoning code and a lack of differentiation between storage and manufacturing. Despite the employment and tax benefits of reuses such as storage or distribution, Hoehne decries the lack of visible activity and the empty, windswept parking lots. In her eyes, the experience of Brown Deer reemphasizes the importance of re-landscaping, de-paving, and attractive signage to reduce the blighting effects of the big-boxes that persist after reuse.

Both Piotrowski and Hoehne preach the benefits of patience. By their accounts, rushing to fill a vacant big box can lead to undesired consequences. Remaining patient, however, is easier said than done. A vacant property can be a drain on the tax base and pressure can mount from legislators to take some sort of public action. Piotrowski cautions: “You’re going to take a big hit in value and you have to be prepared for that,” he states.

“Your zoning ordinance is your friend,” says Amy Connolly, the Director of Racine’s Department of City Development. “You have to have your zoning tools in place to allow you to protect the property and get the type of development you want.” Thanks to just such use protections, Racine has been able to turn down proposals for low tax-generating, low-activity uses such as cold

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"It all starts and stops with the market," says Connolly, acknowledging that different places face drastically different market realities. In 2015, a JC Penney's bookending Racine's Regency Mall fell empty as the retailer shuttered stores around the country. Despite the mall's underperformance, the building was purchased and retrofitted with three smaller outward-facing "junior boxes" – smaller-format retail stores that have proven successful where larger retailers falter. A similar strategy has worked for a former Walmart in Mukwonago.

Image below and right: Mukwonago Junior Boxes (Source: N. Frank)



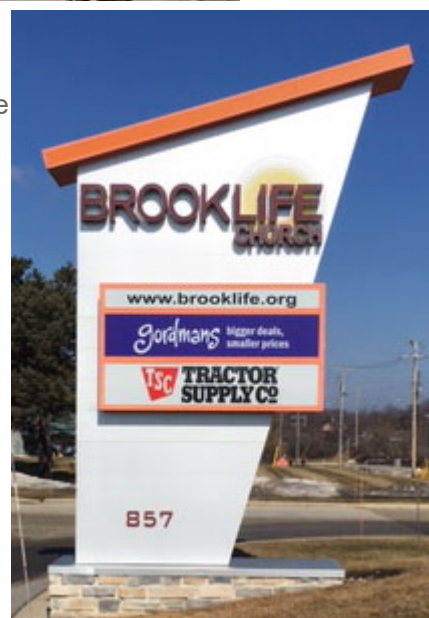
Change is in wind for the City of Racine. Plans for the redevelopment of Regency Mall shifted with the announcement of Foxconn a mere six miles away. "Being able to provide enough housing for the employees of Foxconn has become a major reality for all of our communities," said Connolly. As such, the City's Redevelopment Authority recently awarded a contract for the redevelopment of a mall-area master plan that is reportedly considering dense, mixed-use development in the mall's outlots.

Not every community will see an event as transformative as Foxconn might be for the Racine area. "We have to work with what we're given more often than not," says Piotrowski. He sees the big picture: "We're not going to be able to turn all of suburbia into urbania."

Retrofitting Suburbia calls this approach "incremental metropolitanism". Realistically, every big box is not going to turn into a New Urbanist paradise, but opportunities arise during the process of adapting them that can be beneficial in the long run. Greening the parking lot and including stormwater management infrastructure, sidewalks, and bicycle facilities where they don't already exist can go a long way towards softening and humanizing the built environment.

"I would tell you there is not a one-size-fits-all answer to the vacant big box problem," said Piotrowski. "[Sometimes] we've gone with the scorched earth philosophy," he joked, referring to Bradley Crossing, a senior living facility of approximately 100 units that replaced an old Kohl's the Village demolished. Hoehne views the scorched earth philosophy as a viable alternative in some situations. "In a perfect world you knock them [empty big boxes] down and put in more public greenspace," she said.

Despite challenges in Granville, Hoehne believes the best is still on the horizon. The BID has successfully organized popular events such as their pop up jazz series and the annual Car, Truck and Bike Spectacular, both of which have injected energy into the area and have brought



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Her next vision is the Granville Connection, a “retail hub with local entrepreneurs, designers, retailers, fitness pros, coffee and conversations, and great food” in a converted old Joann Fabrics at North 70th Street and Brown Deer Road. “The people living in this neighborhood feel like they’ve been ignored, says Hoehne. “They want retail.” Inspired partly by a similar model in Dallas, Texas, she envisions the shared spaces tapping into the entrepreneurial spirit of the northwest side.

Even in the face of an otherwise tough situation, Hoehne sees the potential. In her estimation, however, they do have one distinct advantage: “We’re not cute, but we have parking.”



Anatomy of a Teardown

Reexamining Milwaukee's Park East Redevelopment Plan

By Forrest Elliott

Responding to a long-time desire of the APA – WI board of directors, Associate Professor Nancy Frank (UW – Milwaukee) tasked her students in Fall 2018 to select an APA – WI award-winning plan and assess how the plan influenced implementation and whether we might consider the project a success in retrospect. For that next year—or longer, the Chapter newsletter will feature some of the students' essays about plans.

In this issue, Forrest Elliott looks back at the planning, and subsequent implementation, of the Park East Redevelopment Plan in downtown Milwaukee. In 2003, the City of Milwaukee received an APA – WI award for the Redevelopment Plan that guided the development of the Park East corridor in the wake of the removal of a misguided freeway spur. With the benefit of hindsight, how well was the plan implemented, and did it achieve its objectives?

Image below: The Master Plan, 2003 (Source: Milwaukee DCD)

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Addition by subtraction. That was the concept at the heart of Milwaukee's bold plan to remove a mile-long freeway stub slicing through its downtown.

The Park East Freeway represented just a short section of an original plan for a freeway system that encircled downtown Milwaukee. In 1971, amidst the great American highway construction boom, the Wisconsin Department of Transportation opened the expressway to the public. Though land to the east and west of the freeway was seized and cleared for construction, the short freeway would prove to be the only stretch completed thanks to local opposition.



Above: Original Downtown Milwaukee Freeway Plan (Source: Master Plan, Image 1.1)

A mere thirty years later, the Park East Freeway was on its deathbed. Citing underutilization and the mounting costs of repairing the aging structure, the Mayor, Common Council and Milwaukee County Board of Supervisors reached a rare consensus to remove the spur. Deconstruction began in 2002 and the city began to finally stitch together neighborhoods long divided by the ill-conceived freeway.

According to Greg Patin, a planner with the City of Milwaukee's Department of City Development (DCD) who worked on the plan, efforts to remove the Park East Freeway began much earlier than 2002. Former Mayor John Norquist, who Patin describes as "big cheerleader" of the deconstruction project, built his political career on opposition to expressways. Norquist, who eventually stepped down from his position to become the head of the Congress for New Urbanism, still considers the removal of the Park East Freeway to be one of the cornerstones of his legacy (McCormick, 2013).

As early as 1999, the City was publicly expressing interest in the demolition of the highway. The 1999 Milwaukee Downtown Area Plan acknowledged that the highway "presents psychological barriers to pedestrian travel" and that the "disconnection diminishes the value and vibrancy of the severed neighborhoods, especially to the northwest" (Milwaukee Downtown Plan, Page 127).



Above: 2000 aerial photograph of the Park East Freeway (Source: wisconsinhighways.org)

By 2001, with the demolition imminent, the City of Milwaukee entered into an agreement with the State and County to begin drafting a redevelopment plan for the area. As with any major metropolitan urban renewal plan, the Park East Redevelopment Plan was ambitious. Patin said this was well understood at the time: “plans of this scale are usually for greenfield suburban sites.”

The plan encompasses 64 acres of developable land. Sixteen acres beneath the freeway reverted to the ownership of the County, 3.7 acres belonged to the Redevelopment Authority of the City of Milwaukee (RACM), and 37.3 acres were privately owned but deemed by the plan “vacant and underutilized” (Renewal Plan, Page 5).

The Park East Redevelopment Plan ultimately consisted of three parts: a Master Plan, Renewal Plan, and a form-based Development Code developed under the direction of then DCD Planning Manager and University of Milwaukee – Wisconsin adjunct professor, Peter Park.

Assessing the Plan

Has the redevelopment plan stood the test of time? Fifteen years later, the freeway has been removed, new surface streets have been built, and redevelopment is underway. Few debate the benefits of removing the freeway. The traffic impacts were negligible, development along Water Street took off immediately, and the organic continuity of downtown and the Lower East Side has slowly been reestablished. Even so, the redevelopment has been more challenging than proponents of the plan ever imagined.

“The success of the plan,” according to Whitney Gould, long-time architecture critic and landscape writer for the Milwaukee Journal Sentinel, “lay in its integrated vision for healing the devastating effects of urban renewal and freeway construction.” Gould considered it a visionary idea at the time. “In my column I cheered it on as a way to knit back together a section of the city that had been torn apart.”

The plan has achieved many of its objectives. The RiverWalk was extended, mixed-use development around the river has been built, and pedestrian connectivity is markedly improved. Larri Jacquart, who recently retired from the Milwaukee City Plan Commission, believes that “reconnecting neighborhoods has given new life to streets like MLK Jr. Drive.”

Despite this resuturing, development has occurred at a much slower pace west of the river. For

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Gould, who also sits on Milwaukee's City Plan Commission, blames the "inhospitable environment" of building on the land formerly occupied by a freeway that is "still oriented toward the automobile instead of people." A 2014 Urban Milwaukee article posited that the vacancies were due to "over-optimism in the pre-recession housing market" and inactivity on the part of the economic development team under then County Executive Scott Walker (Jannene, 2014). For Patin, however, the issue is one of size. "The county's approach was to sell whole blocks," says Patin "while the plan actually broke blocks down into smaller units."

His dimensional concerns also extend to the design of McKinley Avenue. According to Patin, "how we are looking at the design of streets has advanced." At six lanes wide, McKinley is uncomfortable for pedestrians. The opposition to deconstruction of the freeway expressed concerns that traffic would be terrible without the freeway stub, and assuaging these concerns undoubtedly influenced the width chosen for McKinley Avenue.

The plan conceived of this wide avenue as a location for grand developments. The plan places great emphasis on the avenue as a "gateway to downtown," and a "primary location for landmark buildings with unique features that serve as visual entry points," but this vision has not actualized (Master Plan, Page 21). New recent development on the adjacent blocks may begin to change the character of the street if first floor activation is achieved, but it is not there yet.

Gould echo's Patin's sentiments. "McKinley is much too wide and unfriendly to pedestrians. A broader and more imaginatively landscaped median and better marked crosswalks and more stoplights would have been a better alternative."



Image: Photo looking west on McKinley Avenue (Source: Carl Baehr, Urban Milwaukee)

Assessing the success of the plan's implementation is difficult given the nature of the plan. Larri Jacquart cast a vote in 2002 to approve the plan but laments the complex web of ownership in

One aspect of the plan's implementation that can be judged is the Development Code. "I think the form-based plan developed by the city is generally thoughtful and humanly scaled," says Gould. In fact, the City scrapped the "Downtown" base zoning in 2005 in favor of a new Redevelopment District Zoning which made the Park East Plan the document that governed over all aspects of site design

While the change was well intentioned, Patin wishes the plan contained more specificity for plan reviewers. "As a planning document, it is really good. As a zoning regulation tool, it's a little light," says Patin.

Jacquart and Gould also see places for improvement. "I wish that more green space would have been incorporated into the plan," says Jacquart, "I think there is more awareness in 2018 of the benefits of green space for city dwellers." Gould agrees. "It would have been more farsighted to design a necklace of interconnected green spaces from the outset." According to her, the city could have pushed for more green space by folding them into the TID. "Here was a classic lost opportunity," Gould said.

Not all the plan's flaws are related to design, says Patin. "There should have been a real study of underground infrastructure." A stormwater pipe running directly underneath the freeway between McKinley and Juneau has been the source of many problems unforeseen by the plan. The deep-water tunnel closer to the river has similarly complicated development. As a result, some sites have been slow to develop due to the massive costs of the moving the pipes and developers' insistence that the city use TID money to do so.

No explicit efforts have been made to revisit the Park East Redevelopment Plan specifically. In fact, in the past few years the city has shrunk the area that the plan governs.

In 2014, the City and County reconvened to "rebrand" Park East (Jannene, 2014). The main components of renewed efforts were to streamline the approval process and develop a rolling request-for-proposal for the vacant sites. In 2016, most of the land the west of the river was rezoned and included in a planned development created as the Milwaukee Bucks crystalized plans to build their new arena, the Fiserv Forum.

Many would argue that the construction of the Fiserv Forum and other projects only came about thanks to the terrific decision to remove the Park East Freeway. According to Jacquart, "The Park East Plan set the stage for the expansion of the street-car into near north side neighborhoods which will create even stronger connections and opportunities for growth." Though the process is still incomplete, the blighted parcels on both sides of the river are slowly filling in. Patin sees the big picture: "The project was meant to heal the gash created by the freeway, and though the neighborhood has been slowly reconnected, there is still room to grow. We're almost there."

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Photo looking south-west over the new Fiserv Forum; McKinley Avenue (running lower left to upper right) in foreground (Source: Corrinne Hess, BizTimes)

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Legislative Affairs

By Drew Pennington, Vice President for Chapter Affairs

NEW: APA Advocacy Tool

Reinstate eminent domain power to extend or create bike paths, trails, lanes, and sidewalks

The last biennial budget included an ill-advised and discriminatory provision that prohibits the use of eminent domain to extend or create bike paths, trails, lanes, sidewalks, etc. APA-WI is actively advocating to reverse this ill-advised provision, and thanks to our Policy & Advocacy partners at APA, we have a new tool to use. As part of his proposed budget, Governor Evers has proposed repealing this prohibition on eminent domain, thereby restoring local control and transportation equity. Please check-out the following link to learn more about APA-WI's position statement and to quickly and easily send a letter to your legislators asking for their support on this issue:

<http://cqrcengage.com/amplan/app/write-a-letter?2&engagementId=497996>

Please consider this quick and easy way to advocate for stronger communities in WI.

Finally, the Wisconsin Active Communities Alliance is collecting examples of the negative impacts of the eminent domain prohibition. **Please consider sharing your stories here:** [google spreadsheet](#)

If you'd like to learn more about this group advocating for healthy and equitable communities, feel free to reach out to coordinator Jen Walker (jen.walker@wisc.edu) or join their next networking call from 1-2PM on March 27th. The phone number is 855-947-8255 and passcode is 8434 841#.

Planners' Day at the Capitol: Success!

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Above left: Wisconsin Planners head to the Capitol to meet with legislators for the Chapter's first-ever Planners' Day at the Capitol. Above right: VP of Chapter Affairs Drew Pennington and City of Evansville, WI Community Development Director Jason Sergeant met with Wisconsin State Senator Janis Ringhand to discuss our 2019 Legislative Priorities and how best to strengthen communities around the state.

Our inaugural Planners' Day at the Capitol in Madison got postponed because of inclement weather, but turned out very successfully on February 26. Nine planners participated. The day began with training, provided by the Wisconsin League of Municipalities on how to have an effective meeting with a legislator or legislative staff. Later, planners met with 20 legislators, sharing the Chapter's 2019 legislative priorities and talking points discussed during the training.

Based on this successful turnout and feedback from legislators (e.g., "we have not seen you here before"), the Chapter will work to make this an annual event. Thanks to Drew for his great work putting this event together.

2019 Legislative Priorities

Drew Pennington and the Legislative Committee put together this set of legislative priorities for 2019, which the board approved at its December meeting.

You can review the full one-page document with details about the provisions that need to be address on the Chapter website under [Policy and Advocacy--Policy Proposals](#).

- Support for and restoration of local zoning authority.
- Support for property tax fairness and transparency at the local level.
- Opposition to unnecessary and unfunded bureaucratic state-imposed reports.
- Support for multi-modal transportation options and long-term funding solutions.

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Law Update

By Brian W. Ohm, JD
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For questions or comments about these cases, please contact:

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Visit the [Law and Legislation](#) page any time to access the current and past issues of the Case Law Update.

January and February 2019 Case Law Updates

United States Supreme Court Opinions

8th Amendment Protection Against Unreasonable Fees Applies to States

In *Timbs v. Indiana*, the United States Supreme Court held that the Excessive Fines Clause of the Eighth Amendment to the United States Constitution applies to the States. The U.S. Constitution did not apply to the States until the passage of the 13th, 14th, and 15th Amendments following the Civil War. The U.S. Supreme Court began to primarily use the 14th Amendment to incorporate the Bill of Rights (the first ten amendments) and make them applicable to state and local governments. (For example in 1897 the U.S. Supreme Court made the “takings” clause of the 5th Amendment applicable to the states.) The *Timbs* case is the most recent effort to expand the protections afforded in the Bill of Rights to actions by the State.

Timbs involved a civil forfeiture action. The 8th Amendment includes the prohibition against cruel and unusual punishment in criminal matters and the State of Indiana made the argument that it did not apply to civil (non-criminal) actions but lost that argument. While the case did not explicitly make the Excessive Fines Clause applicable to local government action, if a case involving local government fines makes its way to the U.S. Supreme Court, the Court will make it applicable to local government as it has with other protections guaranteed by the Bill of Rights. Wisconsin law prior to this case required that fines must be reasonable. While the case did not change Wisconsin law, the *Timbs* case opens the door to challenges to the reasonableness of civil fines in federal courts based on the 8th Amendment.

Wisconsin Supreme Court Opinions

Cities Bound by Wisconsin's Fence Law

White v. City of Watertown, 2019 WI 9, involved a long-standing dispute over the statutorily-prescribed procedure for resolving fence-related disputes between adjoining landowners in Wisconsin. The Whites own property in the City of Watertown that has been continuously farmed or grazed since 1839. Section 90.03 of the Wisconsin Statutes requires that land used for farming or grazing purposes must maintain a partition fence between adjoining properties. The partition fences dividing the White's farm from the adjoining properties is in need of repair. The statute requires that the adjoining property owners must bear maintenance expenses in equal shares. The Whites and their neighbors disagree over their financial obligations for the partition fence between their properties.

The Wisconsin Statutes include a procedure for quantifying maintenance costs and allocating them among the adjoining property owners. Section 90.10 of the Wisconsin Statutes provides that if there is a dispute, the aggrieved party may "complain to 2 or more fence viewers of the town, who . . . shall examine the fence." Section 90.07(2) of the Wisconsin Statutes requires that the fence viewers assign responsibility to the respective owners and "shall file such decision in the town clerk's office." The clerk then issues "a warrant for the amount of the listed expenses and fees upon the town treasurer payable to the person to whom the certificate was executed and delivered." Wis. Stat. § 90.11(2)(a). In light of these and other references in Chapter 90 to "towns," the City of Watertown interpreted Chapter 90 to apply only in towns leaving the City without authority to administer the enforcement procedures. The Whites then sued the City. The City moved to dismiss the case arguing that Chapter 90 did not give the City authority to act. The Circuit court, denied the motion holding that Chapter 90 applied to cities. The Wisconsin Court of Appeals affirmed the circuit court's decision. The City petitioned the Wisconsin Supreme Court to review the case and the Supreme Court granted the petition.

The Wisconsin Supreme Court's decision focused on the one reference to cities and villages in Chapter 90. Section 90.01 defines "fence viewers as "[t]he supervisors of their respective towns, the alderpersons of cities in their respective aldermanic districts, and the trustees of villages in their respective villages. . . ." In addition, the Court notes that section 90.01(42) of the Wisconsin Statutes states that "'Town' may be construed to include cities, villages, wards or districts." (Chapter 990 of the Wisconsin Statutes provides the rules for interpreting words and phrases in the Statutes.) In a unanimous decision written by Justice Daniel Kelly, the Supreme Court concluded that Chapter 90 "unambiguously authorizes the City to administer" the dispute resolution procedures in Chapter 90. (In footnote 14 in the decision, the Supreme Court states that "it is possible" that villages do not have the authority to administer Chapter 90 and left resolution of the matter to a future case.)

Note concerning formatting below: A technical difficulty is making the text style in the next three sections inconsistent. Apologies.

DNR Lacked Authority to Unilaterally Amend Pier Permit

Myers v. Wisconsin Department of Natural Resources, 2019 WI 5, involved a challenge to DNR's attempt to amend a pier permit issued by DNR under Chapter 30 of the Wisconsin Statutes. The Myers completed construction of their pier in 2001 in accordance with the specifications set forth in a pier permit issued by DNR. In 2012 and 2013 the DNR received complaints from a neighboring riparian property owner alleging that the pier was causing shoreline erosion to the neighboring property. DNR investigated the matter and initiated proceedings to amend the permit. In a decision written by Justice Rebecca Dallet, the Wisconsin Supreme Court held that DNR did not have the authority under Chapter 30 to amend the permit. While the permit included a condition that DNR could amend or rescind the permit, the permit also stated that it was for the construction of a structure and would expire three years after issuance if the structure is not completed before then. The Supreme Court interpreted permits issued under section 30.12 of the Wisconsin Statutes as akin to a building permit. The permit allows for construction within a certain period of time and after the expiration of that period, the DNR no longer had the authority to amend the permit.

Alleged Nuisance Not Timely Filed

The Yacht Club at Sister Bay Condominium Assoc. v. Village of Sister Bay, 2019 WI 4, involved an alleged nuisance caused by live music late at night at a newly constructed pavilion in a park. In 2013, the Village of Sister Bay received an anonymous donation to construct a performance pavilion in the Village's Waterfront Park. The Village accepted the donation and constructed the pavilion. Upon completion in August 2014, the Village began hosting performances at the pavilion. The nearby Yacht Club Condominium Association sued the Village on the basis that the pavilion concerts interfered with the quiet enjoyment of their property and therefore constituted a nuisance. The condominium association alleged that the performances create very loud noise aimed directly at its condominiums and the performances continue after official park hours, sometimes as late as midnight. In a unanimous decision of the Wisconsin Supreme Court written by Justice Ann Walsh Bradley, the Court concluded that the Yacht Club's lawsuit was not timely filed

Court, the Yacht Club failed to serve its written notice of injury within 120 days after the date of the last concert alleged to be a nuisance. The Court remanded the case to circuit court to determine whether the Village had actual notice of the Yacht Club's claim and was not prejudiced by the late filing of the notice of injury.

City Not Immune in Lawsuit Arising From Drowning During City-led Activity

Engelhardt v. City of New Berlin, 2019 WI 2, involved a lawsuit against the City of New Berlin and several other defendants alleging negligence in the tragic death of an 8 year old girl who drowned at a swimming pool during field trip organized and run by the City's Parks and Recreation Department. The person in charge of the field trip was informed that the girl could not swim. The girl drowned while staff and other children were changing in the locker room. In response to the lawsuit the City moved for summary judgment arguing it was immune from suit pursuant to the governmental immunity statute (Wis. Stat. § 893.80(4).) The circuit court denied the motion but the Court of Appeals reversed the circuit court's denial. The Wisconsin Supreme Court accepted review of the case and reversed the Court of Appeals holding that the City is not entitled to the defense of governmental immunity. In the majority opinion written by Justice Shirley Abrahamson, the Court decided that the facts of the case fell within the "known danger" exception to governmental immunity. The known danger exception "applies when an obviously hazardous situation known to the public officer or employee is of such force that a ministerial duty to correct the situation is created."

U.S. Court of Appeals for the 7th Circuit Opinions

"Scabby the Rat Has Returned"

This is the first sentence from the U.S. Court of Appeals for the 7th Circuit's decision in *Constr. & Gen. Laborers' Union No. 330 v. Town of Grand Chute*. Scabby the Rat is a giant, inflatable balloon used by unions to protest unfair labor practices. The Construction and General Laborers' Union No. 330 placed a Scabby the Rat balloon in the public right-of-way in a dispute against an employer in the Town Of Grand Chute, Wisconsin. The sign ordinance for the Town of Grand Chute included a blanket prohibition on all signs in the right of way. When notified that Scabby violated the Town's sign ordinance, the Union removed the balloon but sued the Town for violating

right of way did not violate the 1st Amendment the Court had questions about alleged selective enforcement of the Town's ordinance. The Court of Appeals remanded the case to the district (trial) court for further proceedings on that matter. The district court did not find the zoning administrator selectively enforced the Town's sign ordinance. The Town, however, had amended the sign ordinance to require a permit for inflatable signs on private property. The zoning administrator mentioned an unwritten holiday decoration exception (inflatable Santa Claus, giant pumpkins, etc.) to the ordinance. The Court of Appeals held that consideration of the amended ordinance (and possible content-neutrality issues under *Reed v. Town of Gilbert* distinguishing holiday inflatables from non-holiday inflatables) was not ripe for review and dismissed the case without prejudice leaving these issues "for another day."

Content-neutrality and Pro-life Advocates

In *Price v. City of Chicago*, pro-life advocates sued to enjoin Chicago's "bubble zone" ordinance, which barred them from approaching within eight feet of a person in the vicinity of an abortion clinic if their purpose is to engage in counseling, education, leafletting, handbilling, or protest. The plaintiffs contend that the floating bubble zone is a facially unconstitutional content-based restriction on the Freedom of Speech. Citing precedent from a U.S. Supreme Court case in a similar dispute in 2000, the U.S. Court of Appeals for the 7th Circuit upheld the City's ordinance but questioned the validity of the Supreme Court's 2000 case in light of more recent U.S. Supreme Court decisions involving content-neutrality such as the *Reed v. Town of Gilbert* case.

RLUIPA Claims Against City Ripe for Review

In *Church of Our Lord & Savior Jesus Christ v. City of Markham*, the United States Court of Appeals for the Seventh Circuit (which applies to Wisconsin) raises several interesting questions related to the impact of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) on local zoning. The case arose in the City of Markham, Illinois

In 1985, the pastor of the Church of Our Lord & Savior Jesus Christ purchased a home in a residential zoning district of the City as a personal residence. In 2003, the congregation began meeting regularly at the house, with ten to twenty people attending Sunday morning services. Today, average attendance for a worship service is about thirty people. In 2012, due to growing attendance and an increase in religious activities, the church began a project to renovate the garage into a chapel. The project involved installing a new roof, new windows, and pews, and cost approximately \$40,000.

The subject property is located in a single-family residential zoning district where churches are listed as a conditional use. The City does not have any zoning districts where churches are allowed as a permitted use. Other places of public assembly, such as auditoriums are permitted uses in certain zoning districts. After the project's completion, the city filed suit against the church in Illinois state court, seeking to enjoin its operation without a conditional use permit. The city did not issue any citations or formal notices to the church beforehand. In response to the lawsuit, the church applied for a conditional use permit that the City denied. The church also needed a

Following the denial of the conditional use permit, the church initiated the present lawsuit in Illinois state court. The church amended the complaint to add an RLUIPA claim and the City removed the case to federal court. The church's RLUIPA claims alleged that the City's zoning ordinance does not treat churches on "equal terms" with other similar uses, that the City's zoning ordinance imposes "unreasonable limitations" on religious uses because there are no districts where churches are permitted uses, and that the City's zoning ordinance places a "substantial burden" on the exercise of religion.

Two years into the case, the City argued the case was not ripe because the church never applied for a variance from the City's parking requirements. The City then passed an ordinance granting the variance and an ordinance granting the conditional use permit. The church refused to accept the conditions imposed by the City.

The City moved to dismiss the case. The district court granted the dismissal on the basis that it was not ripe because the church had never applied for a variance and the case was moot because the City had granted the variance and the conditional use permit.

Upon appeal to the Seventh Circuit Court of Appeals, the Court reversed the decision of the district court. According to the decision of the Court of Appeals: "The district court focused on the church not applying for parking variances before the lawsuit. But that issue is related only tangentially to the church's claims, which concern zoning use classifications, not parking. The ripeness of the church's claims does not hinge on pursuit of parking variances that will not resolve them. Nor can a conditional use permit from the city moot the church's claim that such a permit is not needed. The key question in this case is whether operating a church on the Property is a permitted or conditional use. The district court did not answer that question, but it is the necessary starting point for resolving the church's legal claims." The Court of Appeals remanded the case to the district court to answer that question and resolve the church's RLUIPA claims. Stay tuned to see what happens.

CRP Land

In *Mittelstadt v. Perdue*, Mittelstadt owned a tract of land in Richland County that was enrolled in USDA's Conservation Reserve Program (CRP) from 1987 to 2006. Participants in the CRP agree to remove environmentally sensitive land from agricultural production in return for payments from USDA. In 2006, USDA denied Mittelstadt's application to reenroll his land in the CRP due to a new definition of a "mixed hardwood" stand of trees. After exhausting his administrative appeals, he brought this action against the Secretary of the USDA. The district court affirmed the Secretary's rulings and entered judgment in favor of the Secretary. On appeal, the Court of Appeals affirmed the decision of the district court holding the USDA has broad discretion to change the definition used in the program to a more favorable pattern of hardwoods to better achieve the conservation objectives of the program.

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