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**Wisconsin Chapter**

*Making Great Communities Happen*



## Spring-Summer 2019 Newsletter

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## INNOVATION: Planning on the Edge

### 2019 APA Upper Midwest Planning Conference

The Lismore Hotel  
EAU CLAIRE, WISCONSIN

October 2-4, 2019  
Hosted by APA-Wisconsin Chapter

For more information:  
[nemethplanning@gmail.com](mailto:nemethplanning@gmail.com)

Watch for updates at  
[wisconsin.planning.org](http://wisconsin.planning.org)



*The article below is the second in our series on APA-WI Chapter award-winning plans. 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.*

*In this issue, Belle Otte (a first-year Master of Urban Planning student at UW - Milwaukee) digs into the ten-year old Stoughton Road Revitalization Project Plan. The City of Madison received an APA-WI award for this plan to guide redevelopment along this major arterial road on the east side of the city during a major highway renovation. With the benefit of hindsight, how well was the plan implemented, and did it achieve its objectives?*

## HOPES FOR STOUGHTON ROAD ON HOLD



*Industrial use on Stoughton Road, Madison (Image: B. Otte)*

If you have ever driven into Madison, you have likely driven past Stoughton Road, also known as Highway 51. Driving west on Highway 30, you pass over it and get a glimpse of its naturalized office parks. Coming in from the south, you will see the signs for it as you turn onto Highway 12-18 to circle around Lake Monona. For any trips on the east side of Madison, it is likely the main road you use to get from one side of the city to the other. Despite its importance to the communities on the eastern shore of Lake Monona, Stoughton Road is about as forgettable as roads come.

In 2009, the Stoughton Road Revitalization Project Plan (SSRP) developed by the City of Madison and a project group of interested individuals won APA-Wisconsin's Urban Design Award. *See map of project area, below.* However, a drive down Stoughton Road today feels much the same as it did ten years ago. Despite extensive plans for redeveloping Stoughton Road, the implementation of these plans relied heavily on the Wisconsin Department of Transportation (WisDOT) plan for Highway 51. Due to delays in the WisDOT schedule, communities along Stoughton Road have only seen minor improvements in the last ten years.

“(The Highway 51) project by the state has been put on hold indefinitely, so the only implementation that the City has been able to do is with regard to land use approvals along the corridor,” says Rebecca Cnare, City of Madison Planning Division Staff Liaison for the SSRP.

When WisDOT announced its plans in 2005 to redevelop Highway 51, Rebecca Cnare and Madison's other planners realized the need for a plan for Stoughton Road. Most of Highway 51 is paired with Highway 39, a major North-South freeway for Wisconsin. However, at the outskirts of Madison, Highway 39 and Highway 51 part ways. Highway 39 joins Highway 90 in continuing South, while Highway 51 slips into Madison as Stoughton Road and acts more as a regional road for East Madison. The usual hands-off approach for development along a major highway would not work for Stoughton Road.

The drafters of the plan understood this, writing in the plan that “the SSRP Group recognized the need to have a community vision and dialog to coincide with the larger WisDOT plan.”

Bringing together a board of stakeholders of both neighborhood and city representatives, the planners set about finding the strengths, weaknesses, and opportunities within Stoughton Road. Between April and December of 2007, they held public meetings, gathered focus groups, and measured the development potential of Stoughton Road and its surrounding community values. Out of these studies came the plans for the Garden, the Grid, and the Gateway.

## The Garden



*The Garden, as visualized by Cuningham Group*

The Garden is a concept for the turn off from Highway 30 onto the north end of Stoughton Road. This area contains both wetlands and a conserved woodland, with large corporate campuses bracketing them. Future development was recommended that would accentuate those natural environments. Specifically, the plan called for sustainable businesses and forested lots that would draw the attention of regional traffic to the natural resources of these neighborhoods.



*The Garden, as shown on Google Map, July 2018.*

The businesses within the Garden appear to have had little redevelopment in the passing years. A screen of trees between the road and the businesses is the only visible improvement in this area. If one wishes to see the natural resources of this area, the bike path remains the best vehicle for the job.

## The Grid



*The Frontage Road, as visualized by Cuningham Group*

The Grid plan is closely allied with the WisDOT redevelopment of Highway 51. Bridges were envisioned to link the local roads over Stoughton Road between the congested intersections of Phlaum Road and Buckeye Road, aiming to create a more unified East Madison and speed up regional traffic along Highway 51. The plan suggests the redevelopment of the frontage road for a more

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Frontage Road, 2018 (Image B. Otte)

This is where the lack of implementation is most prevalent. While the land-use restrictions put in place by the SRRP have had some effect upon what businesses have moved in and out of the area, both public and private development have been limited. Traffic continues to back up at the lights on Phlaum Road and Buckeye Road, with the worn and outdated road striping making the frontage roads a dangerous trip, especially for pedestrians.

## The Gateway



*The Gateway, as visualized by Cunningham Group*

The crossing at Highway 12-18 and Highway 51 was designated the Gateway. As an entry way to the city, this crossing was planned to

plan calls for a mixed-use development that presents its most inviting side to incoming traffic, creating a welcoming place for the current park-and-ride to flourish in.



*The Monona Clinic (2018), in the vicinity of the Gateway feature visualized in the plan (Image: B. Otte)*

While the patchwork of uses the planners wanted to avoid remains in this area, one new development shows that someone was listening. The Monona Clinic presents its open façade to the intersection, creating half of an entry that is unsupported by the tree enshrouded development on the other side of the road.

## A Patient Process

When the Stoughton Road Redevelopment Plan was accepted by the City of Madison, it cemented the values and the character of the surrounding neighborhoods. The current finalization date for the Highway 51 Corridor Study by the Wisconsin Department of Transportation is set for 2020. Many of the original stakeholders who participated in the planning are no longer involved, and the plan has passed out of the surrounding community's memory. However, the Stoughton Road Redevelopment Plan continues to bring their dreams to fruition.

"I have lived (along Stoughton Road) all my life, and had never heard of a Stoughton Road Redevelopment," stated Hannah Bechtold, a current undergrad at UW-Madison. "This would be awesome for the area."

A bridge built here, a new business established there; each is a small victory for these neighborhoods, whose hopes have been placed on hold.

## Resources

Berens, Jeff. (n.d.) "US 51, Stoughton Rd. Corridor Study". Retrieved from <https://wisconsindot.gov/Pages/projects/by-region/sw/51/default.aspx>

Cunningham Group Architecture. (2008) "Stoughton Road Revitalization Project Plan" [pdf document] Retrieved from

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Elvehjem Neighborhood Association. (2005) "Elvehjem Echo" [pdf document] Retrieved from [www.elvehjemneighborhood.org/echo/200512echo.pdf](http://www.elvehjemneighborhood.org/echo/200512echo.pdf)

City of Madison DPCED Planning. (2018) "Development" [web database] Retrieved from <https://www.cityofmadison.com/dpced/planning/development/437/>



## Center for Land Use Education UW - Stevens Point Summer 2019 Whitewater, Wisconsin

### Workshop for Local Planning and Zoning Officials

Thursday, July 18, 2019 - Whitewater University Technology Park, Whitewater, WI

This workshop will focus on local planning, zoning, and subdivision responsibilities. We will cover legal standards and processes, impartial decision-making, and recording decisions. Members of your plan commission, governing body, and staff who support these positions are encouraged to attend.

[Workshop Brochure](#)

[Online Registration](#)



## June Posting of Job Announcements

Due to summer vacations for most of June, the procedures for posting jobs to the APA-WI jobs page will use a different email address.

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## Viewing Jobs Posted during our webmaster's vacation

To view job postings submitted during our vacation, please open the email archive at this location. Click on any of the links in the "View by" column.

<https://listserv.uwm.edu/pipermail/upjobs-list/>



## Chapter Awards Program 2019

The deadlines and submission information for the 2019 Chapter Awards Program have been posted to the website at <https://wisconsin.planning.org/in-the-community/2019-chapter-awards-call-nominations/>

**Great Places in Wisconsin submissions are due June 28**

**Planning Excellence Award submissions are due July 12**

**See also information about Retiree Recognition.**

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## Law Update

**By Brian W. Ohm, JD  
Dept. of Urban & Regional Planning  
UW-Madison**

For questions or comments about these cases, please contact: [bwohm@wisc.edu](mailto:bwohm@wisc.edu).

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# Wisconsin Supreme Court Opinions



## Business Purpose Not Required to Qualify for Agricultural Use Value Taxation

Wisconsin's agricultural use value assessment law was enacted in 1995 and become fully implemented in 2000. The law taxes agricultural land at the value of its use as agricultural land as opposed to its development value for other uses. In [State ex rel. Peter Ogden Family Trust of 2008 v. Board of Review for the Town of Delafield](#), 2019 WI 23, the Wisconsin Supreme Court addressed the issue of whether the land needed to be part of a farming business to qualify for the assessment.

The Ogdens own three adjacent parcels in the Town of Delafield in Waukesha County. One parcel contains the Ogdens' residence and is not at issue in the case. The parcels at issue are a 4.6 acre parcel and a 7.76 acre parcel. The Ogdens grew apple trees on approximately one acre of the smaller parcel. On the larger parcel, the Ogdens grew hay on three acres and Christmas trees on the remainder of the parcel. A local farmer harvests the hay for cattle feed. From 2012 through 2015, the two lots were classified as "agricultural land" and "agricultural forest land." In 2015 the assessed value of the two lots was \$17,100. In 2016 the Town's tax assessor reclassified the two lots as "residential." The assessed value of the two lots jumped to \$886,000.

The Ogdens appealed the reclassification to the Town's Board of Review. The appeal resulted in a tie vote of the Board so the reclassification to "residential" was sustained. The Ogdens then petitioned the circuit court to review the Board's decision but the court dismissed the petition. The Ogdens appealed and the Wisconsin Court of Appeals reversed the Board's decision. The Town petitioned the Wisconsin Supreme Court to review the Court of Appeals decision. In a decision written by Justice Abrahamson, the Wisconsin Supreme Court affirmed the Court of Appeals decision.

The Supreme Court based its decision on the plain language of the use value taxation statute and the Wisconsin Department of Revenue's administrative rules implementing the use value taxation program. According to the Court, section 70.32(2)(c)1g of the Wisconsin Statutes defines "agricultural land" as land that is "devoted primarily to agricultural use." The Department of Revenue rules define "agricultural use" to include "growing Christmas trees," "growing apples," and "growing hay." The Court notes that the rules refer to "growing" and not "selling" or "profiting" so the Court concludes that a business use is not required in order for land to be classified as "agricultural land" for property tax purposes.

## Court Allows Challenge to Annexation

In [Town of Lincoln v. City of Whitehall](#), 2019 WI 37, the Wisconsin Supreme Court held that the annexation petition for the City of Whitehall's annexation of land for a sand mine operation was not a petition for direct annexation by unanimous approval and therefore subject to challenge in the courts. Wisconsin law allows property owners in a town to petition a city or village to annex their land. If all the property owners of the land to be annexed agree to the annexation, a "direct annexation by unanimous approval," Wisconsin law limits the ability of towns to bring a lawsuit challenging the annexation.

In this case, the annexation was to occur in four phases. Phase one consisted of approximately 277 acres and shared a border with the City of approximately 3/4th of a mile. Phase 2 consisted of 292 acres along a ribbon of land approximately 1/4 mile wide. Phase three consisted of approximately 380 acres connected to phase two at its southern edge for about 1/4 mile. Phase four consisted of approximately 300 acres located to the west of phase three and shared a 1/2 mile border with phase three. The Town of Lincoln in Trempealeau County sought review of the annexation from the Wisconsin Department of Administration. The Department concluded the annexation violated the contiguity because the territory was an impermissible "balloon-on-a-string" configuration.

The Town then brought a lawsuit challenging the annexation. Both the trial court and the Wisconsin Court of Appeals dismissed the challenge based on the Wisconsin law limiting town challenges to direct annexation by unanimous approval. The Wisconsin Supreme Court accepted the case for review and reversed the decision of the Court of Appeals. According to the unanimous decision of the

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approval. The Supreme Court remanded the case back to the circuit court to allow the Town to challenge the contiguity of the "balloon-on-a-string" annexation.

## Notice of Claim is an Affirmative Defense the Must Be Set Forth In Responsive Pleading

Maple Grove Country Club, Inc. v. Maple Grove Estates Sanitary District, 2019 WI 43, involved an inverse condemnation action brought by Maple Grove Country Club, a private country club in the Town of Hamilton in La Crosse County, to seek compensation for a wastewater treatment facility it built but was operated by the Town Sanitary District rent-free for 8 years. The Wisconsin Court of Appeals upheld the circuit court's dismissal of the case because the Country Club failed to file a notice of claim with the Sanitary District before bringing a lawsuit as required by Section 893.80(1d). The notice of claim requirement is intended to provide information to a local government that gives the local government an opportunity to compromise and settle a claim in order to avoid the burdens of litigation. In its Answer to the Complaint filed to initiate the lawsuit, the Sanitary District failed to set forth the noncompliance with the notice of claim statute.

The Country Club argued to the Supreme Court that noncompliance with the notice of claim statute is an affirmative defense that must be set forth in a responsive pleading or it will be waived by the local government and cannot be raised at a later point in the lawsuit. The Sanitary District argued that noncompliance with the notice of claim statute is a jurisdictional prerequisite to filing suit and is not waived by the failure to plead it as an affirmative defense in a responsive pleading.

The Wisconsin Supreme Court agreed with the Country Club that the Sanitary District waived the defense of noncompliance with the notice of claim statute. The Court reversed the decision of the Court of Appeals and remanded the case to the circuit court for further proceedings to determine the validity of the inverse condemnation claim.

## County Authority to Establish Rural Numbering System in Towns Upheld



Section 59.54(4) of the Wisconsin Statutes authorizes counties to "establish a rural naming or numbering system in towns for the purpose of aiding in fire protection, emergency services, and civil defense." In 2016 Marathon County passed an ordinance establishing such a system. The County applied the ordinance to all unincorporated areas (towns) of the County. The Town of Rib Mountain, a Town with "urban" development, challenged the County's authority to implement the numbering system arguing the Statutes only authorized the County to implement the system within the "rural" areas of the Town. The circuit court denied the Town's lawsuit but the Wisconsin Court of Appeals agreed with the Town and reversed the circuit court's decision. The County petitioned the Wisconsin Supreme Court to review the Court of Appeals decision and the Supreme Court granted the petition to review the case.

In Town of Rib Mountain v. Marathon County, 2019 WI 50, the Wisconsin Supreme Court reversed the Court of Appeals. The Supreme Court held that the Statutes authorized counties to establish a numbering system "in towns." After an analysis of

what is meant by the term "rural" the Court concluded that the use of the term "rural" in the Statutes "merely describes the naming or numbering system" and that and the word was not meant as a geographical limitation on counties to establishing the numbering system.

## Wisconsin Court of Appeals Opinions No Compensation for Loss of Access as a Partial Taking

James & Judith Nonn Trust v. Department of Transportation involved a challenge to a condemnation award for the partial taking of the Nonn property by the Wisconsin Department of Transportation (DOT) for a highway improvement project. The Nonns operate a restaurant on property they own at the intersection of U.S. Highway 14 and County Highway P in the Village of Cross Plains in Dane County. The DOT acquired 158 square feet of the Nonn property for a sidewalk. The DOT also installed a median on Highway 14 that

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by the median.

The circuit court held that the access damages were not compensable under the section of the Wisconsin Statutes providing for damages caused by a partial taking of property (the section of the Statutes followed by DOT to compensate for taking property for the sidewalk). On appeal, the Wisconsin Court of Appeals affirmed the circuit court's decision. The Court noted that it was not holding that damages for loss of access are not compensable under any theory, rather only the source of authority relied on by the Nonns.

## United States District Court for the Eastern District of Wisconsin

### County Short-term Housing Ordinance Did Not Violate Equal Protection

A recent decision by the United States District Court for the Eastern District of Wisconsin (the federal trial court) upheld Walworth County's Short-term Rental ordinance enacted in compliance with 2017 Wisconsin Act 59. The case, [Murphy v. Walworth County](#), involved three short-term rental properties owned by Martin Murphy and his family's rental business. The three properties all use private onsite wastewater treatment systems. The County's short-term rental ordinance limits the occupancy of short-term rentals on private wastewater systems to the lesser of either the certification for the wastewater system or the State Tourist Rooming House License required under Act 59. The state license did not limit occupancy so the two people per bedroom certification for the wastewater treatment system for the three properties applied. The sanitation permit for one of the properties was for 4 persons but the property was advertised as a 12-person rental unit. The sanitation permit for another one of the properties had was for 4 persons but the unit was advertised as a 12-person occupancy. The County sent Murphy a letter informing him of the need to comply with the County's short-term rental ordinance. Murphy was not prohibited from operating the rentals nor was he cited for any violations. Nevertheless Murphy sued the County alleging, among other things, that the County's ordinances distinguishing between short-terms rentals (30 days or less) and long-term rentals violated the Equal Protection Clause of the 14th Amendment to the United States Constitution.

Walworth County moved for summary judgment and the court granted the motion in favor of the County's ordinance. The court noted that zoning ordinances usually receive rational basis review by the courts in these types of matters. Under that standard a court will uphold the action against an Equal Protection challenge if it "can reasonably conceive of any justification" based on the evidence provided. The court found that limiting the occupancy to the capabilities of the septic systems and the "very unpleasant chain of events" that would follow if the septic systems are overloaded was reasonably conceivable justification for the regulation.

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