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American Planning Association  
**Wisconsin Chapter**

*Making Great Communities Happen*



## Fall-Winter 2018 Newsletter

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## Sheboygan Recognized by AARP for Livability

*Excerpted from the Sheboygan Press, by permission.*

According to a new study, Sheboygan is the second most livable city of its size in the United States.

The AARP Livability Index ranks cities for livability based on housing, neighborhood, transportation, environment, health, engagement and opportunity.

The index is divided into three main categories according to population, and Sheboygan is No. 2 on the national list for small communities with populations of 25,000 to 99,000.

“We always knew Sheboygan was something special and we invite others to join us,” said Sheboygan County Economic Development Corporation Chairman of the Board Gary Dulmes. “Sheboygan County as a whole is made up of many communities that offer wonderful living conditions starting with our caring people.”

The index lists transportation as one of the biggest areas of achievement thanks to local biking trails and walkable neighborhoods as well as an ADA-compliant transportation system. Sheboygan also got high marks for civic engagement for its voting record: 71.8 percent voted, compared with the national median of 55.6 percent.

Read the [full story in the Sheboygan Press](#).

## Professional Certificate in Municipal Finance University of Chicago and the Lincoln Institute of Land Policy Chicago, Illinois **March 13-15, 2019**

This course has been approved for 15 certification maintenance (CM) credits for planners maintaining their AICP credentials.

The Professional Certificate in Municipal Finance, offered by the Center for Municipal Finance at the University of Chicago Harris School of Public Policy and the Lincoln Institute of Land Policy, is a three-day program geared towards urban planners and related professions, providing them with an understanding of public finance, an overview of how finance instruments are implemented, and a framework for how to evaluate them. Participants will learn the general and prevailing models that local governments use to meet their finance needs. They will also learn about the benefits and challenges of different financing approaches, economic considerations, cost-of-capital analysis, the typology of options within each model, and other core principles. For more information, please visit the program's webpage. The course has been approved for 15 certification maintenance (CM) credits for planners maintaining their AICP credentials.

Dates: March 13-15, 2019

Location: Gleacher Center at University of Chicago

Program Fee: Public Sector Employees - \$1,200; Private and Non-Profit Sector Employees - \$2,250

More Information about the program; Scholarships and group discounts are available. Please contact Shilin Liu, [shilin@uchicago.edu](mailto:shilin@uchicago.edu), with specific questions.



## Seeking Applicants for AICP Exam Scholarship

Through the generosity of AICP national, Wisconsin is able to offer one scholarship each year to offset the costs of registering for the AICP exam. **To apply**, simply send an email to APA - WI Professional Development Officer, Nancy Frank at [frankn@uwm.edu](mailto:frankn@uwm.edu) with the following:

Your contact information, including your preferred email.

A brief description of the reasons you would benefit from the scholarship

**Send your application email by February 1 to be considered for the May exam. If no scholarship is awarded for the May exam date, November exam takers are welcome to apply.**

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## Wisconsin Healthy Communities: More than 40 Communities Participate in 2018

The Wisconsin Healthy Communities Designation Program had its inaugural year in 2018. This September, more than 30 communities across the state received a Gold, Silver, or Bronze, recognizing them for their work to address issues of health and health equity.

The program is a new initiative of the Mobilization Action Toward Community Health (MATCH) group, an organization within the University of Wisconsin Population Health Institute, whose mission is to empower communities in Wisconsin to take meaningful steps towards improving public health. The designation program was designed to play a crucial part in that mission by celebrating those places who have had success and holding them up as examples to others.

According to Paula Tran Inzeo, MATCH director, they set out to design a program that wasn't about ranking communities, but about recognizing communities for their hard work. "The purpose of the designation program was not solely about the outcomes," said Inzeo, "but instead to shine a light on communities that are focusing on a broad view of health and structuring their health improvement efforts accordingly."

For this reason, the Bronze, Silver, and Gold designations are tiered to represent a journey towards a more proactive model of programmatic and policy solutions. "We took into consideration the fact that there may be limited resources for smaller municipalities and rural communities," said Ann McCall, project manager for the designation program. "So the designation program was designed to be accessible to communities of all shapes and sizes."

Inspired by the Robert Wood's Foundation's Culture of Health Prize, the designation program sought to expand the somewhat narrow view of health that exists in the popular imagination. According to Inzeo and McCall, creating a healthy community is not solely about health behaviors, but coming to an understanding of the myriad of factors that influence public health—health behaviors, social and economic factors, physical environment and clinical care—and addressing them strategically.

Any "self-defined, place-based" community is welcome to apply. In this first round, 22 municipalities, 13 counties, and one regional planning commission received designations. (See accompanying map.) Others were less successful in this first round, but can resubmit in the next cycle.



The East Central Wisconsin Regional Planning Commission (ECWRPC) received a silver designation. ECWRPC was one of the only applicant teams led by planners and the only region planning commission to receive a Healthy Community Designation. ECWRPC has been active in planning for health, participating in the Plan4Health grant program through APA and in collaboration with APA - WI. According to Tom Baron, a Principal Planner with ECWRPC, the recognition was "an important way to communicate what we've been working on and our achievements."

Melissa Kraemer-Badtke, another Principal Planner at ECWRPC who helped Baron assemble their application, understands the role planners must play in community health. "We know from research the built environment



plays a big role in your health,” she said, “[planners] can ensure that anyone in the

community has the opportunity to have a healthy active lifestyle and that they are not limited by it [the built environment].”

Many of the projects included in ECWRPC’s application were rooted in that philosophy. A few of the most successful parts of their application included their regional [Safe Routes to School](#) program, regional Complete Streets policy, work with the US Department of Transportation’s [Transportation and Health Tool](#), participation in the [Healthy Wisconsin Leadership Institute COACH program](#), and coordination efforts with the 30+ municipalities in their region to address issues of community health in their planning processes.

“We’re in a unique position,” says Baron. “We interact with a lot of different levels of government and a lot of different individuals and organizations in our region, so from our vantage point we can see the trends and commonalities in the communities we work in, as well as the successes they’re having.”

ECWRPC is now encouraging municipalities in their region to consider health more explicitly in their comprehensive plans. “Municipalities are doing a fairly good job of addressing health in their plans, but having it all in one element gives it a little more weight and makes people more aware of health in planning.”

Ideally, according to Baron, health is imbedded from the onset in all the work planners do. “When you design something and it gets built, these things have very long-term consequences,” he said. “Those consequences can be good, or they can be bad.”

ECWRPC staff realized that putting together the application was beneficial in itself. “We hadn’t exactly documented all of the work that we had done in health and planning,” said Kraemer-Badtke “I had knowledge of Safe Routes to School and the bike/ped [bicycle and pedestrian] work and Tom had other pieces of it, and as the application came together we were able to assemble our work into a single new document.”

Baron agrees. “You get caught up in the doing the work and then you start to make the list and you realize, wow, we’ve accomplished quite a bit here!”

McCall stressed how the program wasn’t just about what communities did, but also how they did it. “Applicants had to demonstrate how their efforts included the voices and expertise of multi-sector partners and focused on equity and sustainable solutions,” she said.

For the planners at ECWRPC, this strategy underpins their work as well. While working on their College Avenue Corridor Study in Appleton, Kraemer-Badtke described how they benefited from including public health officials in the planning process. “At the onset, we weren’t completely aware there was this free health clinic on the outskirts of town,” she said. “By having that conversation with the staff at Outagamie County, it became clear that we needed a bike/ped facility out there.”

“That was one of the first times we had public health and public works working together on a project and it provided a catalyst for communities to start talking with public health professionals and across departments. Those conversations have now started to happen without us there, which is awesome.”

“With health and planning work, you just cannot do this work alone” says Baron.

The Wisconsin Healthy Community Designation program is funded by the Wisconsin Partnership Program of the University of Wisconsin School of Medicine and Public Health.

To learn more about the program and learn how to apply for your community during the next round, please visit <https://www.wihealthycommunities.org/>.

APA-Wisconsin is a supporting organization of the inaugural year of the Wisconsin Healthy Communities Designation Program.

For more resource on planning and health please visit the APA-Wisconsin website.

*At the APA – Wisconsin state conference this fall, UW - Madison planning faculty member, Revel Sims offered some comments on two urgent problems facing Wisconsin communities: increasingly severe weather, bringing unprecedented risks for Wisconsin residents, and housing inequality. His talk brought together climate information about the changes we are seeing all about us. He also raised a further complication. The inequality we already see in access to safe and affordable housing will only become more pronounced as the risks of climate change materialize.*

*Dr. Sims places the mirror before our faces, making plain the pain and inequality facing an increasing share of our neighbors. Taken together, Dr. Sims' observations pose an urgent call to action for every one of us.*

*Below, we offer an abridged version. We encourage you to read the entire plenary address; go to the APA - WI website, conference presentations:*

*<https://wisconsin.planning.org/conferences-and-meetings/past-conferences/2018-conference-program-and-presentations/>*

*Citations to Dr. Sims abundant sources are available in the full address as well.*

*[\* \* \* identify where material has been abridged.]*

## **"Housing Inequality and the Future of Neighborhoods"**

**Plenary given at the 2018 APA - WI annual conference**

**October 9, 2018**

**By J. Revel Sims, PhD**

**Department of Planning and Landscape Architecture**

**Chican@ and Latin@ Studies Program**

**University of Wisconsin - Madison**

\* \* \*

To begin, for roughly the last two months, my neighborhood in Madison has been in a constant state of emergency flood preparation. One exceptional storm in August that brought upwards of 12 inches of rain to the area, sent our local lakes over their 100-year flood levels, and brought the limits of our existing infrastructures into question. Storm water was coming up out of street drains and filling roads, forcing city crews to plug them and close a number of major streets--which, for a southern California native like myself, used to droughts and earthquakes, was absolutely frightening. So, by the time we were told to start sandbagging our homes I took it super seriously. I hit the local sandbagging site at Tenney Park and worked with neighbors and volunteers to fill bags, load them onto cars, and carry them back to fortify our houses against the rising flood waters.

As I worked with folks from the neighborhood throughout the series of storms that hit our area, causing new rounds of fear and preparation, word eventually began circulating that the Tenney Dam might break due to the stress of extreme water levels. Eventually the news was confirmed by city engineers who warned that if the dam failed, the consequences would be devastating, inundating areas all along the Yahara River, the Isthmus, and the lands surrounding Lake Monona.

Throughout it all, I heard two refrains from my neighbors. Old timers in the neighborhood would tell me something to the effect of: "I've been here 40 years and I've never seen anything like this." As a precedent beyond the experience of those around us, we imagined the possible situations and evaluated our different systems for managing water damage. At one point, one neighbor even made a run out to

Janesville to stockpile the remaining sump pumps in the southern part of the state which he then distributed to people around the block using handwritten notes on the back of an envelope. In many ways it was a heartwarming experience.

\* \* \*

The flooding we experienced in August and September can no longer realistically be considered an aberration. Heavy downpours are increasing nationally, especially over the last three to five decades. And while the largest increases in very heavy downpours are concentrated here in the Midwest (37%) and Northeast (71%), increases in the frequency and intensity of extreme precipitation events are projected to increase for every region in the country—“even in regions where total precipitation is projected to decrease.”

As documented in the 2014 National Climate Assessment, from 1958 to 2012, the amount of precipitation occurring in very heavy rain events—the top 1%, or what we might consider extreme rainfall—has increased by 37% in the US Midwest. Wisconsin, in short, is becoming a lot wetter and will likely continue to experience heavy precipitation increases looking toward the future so there must be something to this new normal thing.

## Megafires

But as some of you may guess from listening to me, Wisconsin isn't my only home. I am native son to Los Angeles and so in addition to dealing with the threat of rising flood waters here locally, I have been dialed in to climate related events that seem a world away, both literally, and figuratively, from the particular set of dangers we are facing here.

\* \* \*

Throughout this last summer as heat waves hit southern California, my family and friends in LA were posting photos on social media of ridiculous temperatures from their car dashboards—in some cases reaching to 120 degrees. And when the so-called “heat dome”<sup>iii</sup> descended on southern California in early July for several days, heat records were broken all over the region. The temperature at UCLA's campus in Westwood by the ocean which usually calms temperatures soared to 111 degrees, Burbank Airport reached 114 degrees. Van Nuys Airport, 117 degrees. Santa Ana, 114 degrees. And Riverside tied its previous heat record of 118 degrees.

\* \* \*

According to NOAA, 2018 has already seen 75 heat records set across the United States (but zero record minimums). And importantly, this year has also seen 104 all-time record breaking minimum highs.<sup>vii</sup>

The disproportionate increase in these minimum highs that usually occur at nighttime is especially troubling. Night time lows, bring critical respite from the heat. But the intensifying and unrelenting heat has not only made firefighting more difficult due to the loss of fire suppressing humidity, but it is challenging even the tolerance of the entire biota of the Southwest—acclimated as it is to dry heat.

Back in California, the increasing heat facing the region is not unrelated to concern over the state's more notorious wildfires.

\* \* \*

Megafires like the Mendocino Complex fire and those that have occurred throughout the western United States recently from Oklahoma to Washington used to happen every few centuries, but now seem to happen every few years. The product of drought and human mismanagement, these so-called megafires are threatening to dramatically change western ecology in what the Ecological Society of America has termed a “habitat regime change”—or, a permanent shift from forests to brush or grassland. [Dr. Sims address, delivered in early October, could not anticipate the even more devastating fire that obliterated Paradise, California, and other communities in about a month after his address.]

\* \* \*

## Stationarity

. . . For skeptics, the uncertainties in scientific calculations and modeling techniques make it impossible to determine with any confidence how bad the future is really going to be for us.

And yet despite their disruptive and ultimately paralyzing intentions, these critics are actually right about something. The problem that modeling presents is indeed found within the level of uncertainty which itself depends on data collected from the past. Scientists refer to assumptions based in past evidence as “stationarity”—or “the idea that extremes of natural systems fluctuate within an envelope of variability” based on prior constraints. It is a “foundational concept that permeates training and practice in water-resource engineering” and has since spread to modeling rainfall, river levels, hurricane strength, wildfire damage, etc.

Stationarity works of course, as long as the past can be considered a prologue that we can base reasonable projections about the future on. And what is so troubling about all of these recent climate-based events is that their extremities are threatening the usefulness of the past as predictive mechanism all together. The fires burning across the western United States, the heatwaves ravaging the globe, the tropical storms in the gulf and Atlantic, and extreme rainfall in regions like the Midwest suggest that—as some authors claimed recently—“stationarity is dead.” The past is no longer the guide it once was and we are sliding into a possible new geological era of Earth’s time scale, the Anthropocene, where human actions dictate global processes, ending the previous era that began almost 12 thousand years ago.

This proposition should give us pause.

## Climate gentrification

But my concern here today is actually not to provide a depressing tally of increasing natural extremities however that may seem at this point. I will leave this task to the natural scientists. Those of you who are familiar with my work know that I study neighborhoods through a lens of gentrification and displacement. My field is mostly concerned with neighborhood-level transitions reflected in demographic shifts and changes to built environments and property values. However, I believe that the field of gentrification has two valuable insights to offer urban planners who are concerned over the future of human civilization in cities. These are: (1) the arguments about how to make sense of urban displacement and (2) provocative insights regarding the urban imagination.

. . . [U]rban systems provoke an incredible amount of involuntary moves that are considered essentially

normal. These include everyday evictions--due mostly to non-payment of rent--which Matthew Desmond recently estimated are experienced by at least 1 in every 50 renter households; as well as other forms of forced relocations resulting from various pressures that provoke households to relocate to alternative neighborhoods.

All told, forced moves within urban systems may account for upwards of a 20 to 30% of all moves. Gentrification scholars, planners, and demographers understand that these "everyday" forms of displacement are themselves only the subtle variations that exist on the surface of more long-term demographic shifts that have distributed people in distinct patterns across urban space in different periods. Thus, while in a previous era, the poor tended to live in central cities, longitudinal analysis has shown that inner cities are becoming wealthier and, in many cases, whiter as nonwhite populations are pushed further and further out toward the urban periphery.

My own research on eviction in Dane County reaffirms that everyday displacement is a highly racialized process as the most nonwhite neighborhoods experience the most evictions. And in fact, all things being equal, when poverty and other factors are held constant, we see that the risk of eviction increases more than 20% the more neighborhoods become racially segregated.

\* \* \*

In this new era of climate extremity, the attention to displacement within the field of gentrification research offers a warning about how climate change will exacerbate already existing inequities from the neighborhood scale all the way to the region and back again.

Again, some recent examples may offer a critical springboard for us to think about this.

In August 2016, the almost 600 residents of Shishmaref, a village along a barrier island chain in northern Alaska voted to abandon the island altogether. The loss of Arctic sea ice had left the island vulnerable to coastal erosion. A number of houses had already been lost to storms and it became undeniable that more would soon follow as the sea began to retake the land.<sup>xix</sup>

And across the globe in Louisiana in the same year, the U.S. government agreed to resettle the people of Isle de Jean Charles as 98% of the once 22 thousand-acre island has sunk into the Gulf of Mexico. The resettlement program is the first government-funded climate relocation in the country and it's 99 remaining residents have been dubbed "America's first climate refugees."<sup>xx</sup>

These seemingly isolated events on the geographical edges of the United States should not be easily dismissed due to their relative remoteness. Indeed, one recent study in Nature<sup>xxi</sup> concluded that "unmitigated [Sea Level Rise] is expected to reshape the US population distribution" as approximately 13 million people are expected to be displaced by 2100— incidentally, this is about the same number of African-Americans who moved out of the South during the Great Migration of the early 20th century.

Using dynamic modeling techniques that incorporate wealth-based adaptation scenarios, the author of this study found that 86% of US Core Based Statistical Areas (CBSAs) (791 out of 915), and 56% of counties (1,735 out of 3,113) could be affected in some way by net migration associated with sea level rise. Some places will be noticeably more affected than others. Nine states could see net losses in their populations and places like Florida could potentially lose more than 2.5 million residents while Texas might see nearly 1.5 million additional residents under these scenarios.

Thus, while we might debate what infrastructure improvements are needed to deal with rising sea levels to keep human settlements in place—like the almost 2-mile long, \$1.3 billion Lake Borgne Surge Barrier constructed in New Orleans after hurricane Katrina—there is little conversation amongst planners today about the infrastructure challenges needed to accommodate millions of climate migrants in largely unprepared inland municipalities.

And in some respects, the first climate-based migrations are already occurring right before us. For example, after Hurricane Maria hit, 300 thousand Puerto Ricans are said to have fled to Florida. And all told, after a string of climate disasters in 2017—including six big hurricanes in the Atlantic, wildfires in the West, horrific mudslides, high-temperature records, etc.—disasters in 2017 not only caused \$306 billion worth in damage and killed more than 300 people, but experts estimate that these climate- and weather-based events also displaced more than one-and-a-half million people (1,686,000)—a slight contribution to 18.8 million people displaced by natural disasters across the globe<sup>xii</sup> and the 200 million to 1 billion people that are expected to move either within their countries or across borders, on a permanent or temporary basis by 2050 due to climate change.<sup>xiii</sup>

Many of these folks will certainly attempt to return to their neighborhoods. And some will undoubtedly search for higher ground within their affected towns and cities. Yet, regardless of which path individual households choose, this unfolding scenario threatens to dramatically reshape previous lines of segregation in coastal cities across the country as investors shift capital to higher ground and shoreline properties become costlier in terms of insurance and repairs. In this changing climate-based property market, low- to middle-income people will inevitably end up being squeezed out from both areas.

\* \* \*

It is no wonder then that Moody's Investor's Service, the influential credit-rating agency, also recently announced that it will begin weighing climate risks when analyzing ratings for states and cities, thus making borrowing money more expensive for places that ignore such climate risks.

\* \* \*

For planners, because of our generally informed and special mediating role in the process of urban development, we can and should play an important role in shaping the future of cities and neighborhoods. Part of our unique responsibility vis-à-vis other disciplines comes from an awareness of evidence-based forecasting and the ability to contextualize and, importantly, intervene in and change the existing institutional parameters that define both the vulnerability and exposure of sensitive populations.

In this present case, understanding the existing institutional and economic mechanisms of property markets is arguably critical for long-term planning in the face climate change. It should also remind us that, just as Jared Diamond warned in his book *Collapse*, it is not because people were ignorant of the changes taking place around them, complex societies collapsed because they were unable to make the necessary changes needed to reduce risk and mediate the consequences of change.

\* \* \*

## Deportation

A couple weekends ago, the Latinx community in southern Wisconsin was in a literal state of panic as

word began circulating through networks linked through Facebook accounts and instant messaging services that federal ICE agents—Immigration Customs and Enforcement—were active in the area conducting what ICE referred to as an “enforcement surge.” The surge was designed to specifically target communities such as Madison that have refused to cooperate with ICE and was soundly criticized by Madison’s mayor, police chief, and common council. The surge however was not unusual. Using an expanded border enforcement region, it is now common for border patrol officers to work without permission on private property or set up checkpoints up to 100 miles away from the border under a little-known federal law, the Title VIII of the Code of Federal Regulations, that is being used more widely in the Trump administration’s aggressive crackdown on undocumented immigrants. All across the country in places as far apart as California, Florida, New York and Washington State, ICE officers are boarding buses and trains to question and search riders — mostly American citizens — about their immigration status—a tactic that the ACLU claims potentially violates 4th Amendment protections against illegal searches.<sup>xxxi</sup> ICE data itself shows that rather than catching undocumented immigrants, most searches turn up small amounts marijuana and other illegal drugs from citizens. An estimated 200 million Americans live within 100 miles of the border and at least 11 states are either entirely or almost entirely within the 100-mile zone.

\* \* \*

What these episodes tell me is that any serious attempt to deal with the real threats that face cities and neighborhoods requires that we deal directly and explicitly with the question of power and the structural issues that underlie the creation and exercise of power in social relationships.

\* \* \*

If we are going to deal with the dire projections of the future, planners must strengthen the normative claims of urban planning. We should seek not only efficiency, but also a distributional equity that supports the full development of human capabilities for all.

\* \* \*

Thus, today more than ever, planners must take seriously the urban social movements that are arising around us from #occupy to #metoo to #notonemore. Failure to actively listen to and engage with these struggles allows us to become easily complicit or even tragically irrelevant to the new urban future of increasing inequality and insecurity.

\* \* \*

In sum, if we are to deal with climate change in a way that doesn’t reproduce or magnify the deep inequalities our cities already create, contemporary planners, like those from previous advocacy and equity traditions, must first confront the politics of power within our cities. Fifty or even 25 years from now, the question will not be whether we knew or not; it will be what we did.



## Legislative Affairs

### SAVE the Date: February 12 is Planners' Day at the Capitol

By Drew Pennington, Vice President for Chapter Affairs

Our inaugural Planners' Day at the Capitol in Madison is Tuesday, February 12, 2019. The day will consist of a complimentary breakfast briefing at 9 am at the Madison Concourse Hotel, followed by individual meetings with legislators and/or staff. Stay tuned for registration and meeting coordination details.

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

# September, October, and November Case Law Updates

December 16, 2018

## Wisconsin Court of Appeals Opinions

### City Ordinance Prohibiting Trains From Obstructing Crossings Preempted by Federal Law

City of Weyauwega v. Wisconsin Central Ltd., involved a challenge by the Wisconsin Central railroad to numerous citations issued by the City of Weyauwega for violating a City ordinance that prohibited trains from obstructing travel at road crossings for more than 10 minutes. The City argued the ordinance was necessitated by public safety concerns. The City's police, fire and emergency services were housed south of the railroad tracks. The response time for these services increase from about 1 minute to 12 – 15 minutes when trains obstruct the crossings. Wisconsin Central argued that the 1970 Federal Railroad Safety Act (FRSA) preempted the City's ordinance.

FRSA expressly preempts state law in areas covered by the FSRA. The Court concluded that the preemption also applies to local regulations. FSRA also includes several "saving clauses" that allows states to regulate railroads. One of the clauses allows State regulations necessary to eliminate or reduce a local safety hazard. The Court of Appeals was not persuaded by the City's argument that the ordinance was needed for public safety because the Court focused on the effect of the ordinance. The Court noted the City's ordinance effected the operation and movement of trains as crossings, an area of regulation that was covered in FSRA. As a result, the Court of Appeals decided the City's ordinance was preempted by FSRA. The Court also noted that perhaps the federal government could develop national uniform standards that addressed the City's concerns.

The case is recommended for publication in the official reports.

## Neighbor Lacked Standing to Challenge Variance

The facts in [Van Handel v. Pritzl](#) are as follows. Pritzl purchased .84 acres of property in the Town of Center in Outagamie County. Pritzl knew at the time he purchased the land that the Town zoning ordinance required a minimum one acre lot to build a residence. Pritzl nevertheless applied for a permit to construct a single-family, two-story home on the property. The Town's building inspector issued the permit. Pritzl then began construction on the home. About two weeks later the building inspector informed Pritzl to stop work on the home. The next day Pritzl contacted the town chairman, who informed Pritzl that he could proceed with construction if he included a provision in the property deed specifying that only this house could be built and could never be expanded. A few weeks later the Town revoked the building permit. Pritzl then sought a variance and the Town granted the variance based on undue hardship. Van Handel, an adjacent property owner, brought this lawsuit challenging the Town's grant of the variance.

The issue before the Wisconsin Court of Appeals was whether Van Handel had standing to bring the lawsuit. The Court of Appeals concluded that Van Handel did not have standing because he was not aggrieved by the Town's granting the variance. Van Handel claimed loss of value to his property but failed to prove any diminution in the value of his property due to Pritzl building the house. Van Handel also cited the complaints of other neighbors as proof that Pritzl's planned home would affect the enjoyment of property owners who moved "to the country" for "more space" and not "a subdivision." The Court of Appeals, however, determined complaints by neighbors about Pritzl's house "do not, on their own, establish an infringement on the 'rights, duties or privileges' of adjacent property owners." The Court of Appeals dismissed the lawsuit.

The case is not recommended for publication in the official reports.

## Court Upholds Order to Remove Nonconforming Billboard

In [Lamar Central Outdoor, LLC, v. State of Wisconsin Division of Hearing & Appeals](#), the Wisconsin Court of Appeals upheld the Wisconsin Department of Transportation (WisDOT) order to remove a billboard that lost its legal nonconforming status.

In 1999, Lamar Central Outdoor acquired an outdoor advertising sign located adjacent to Interstate Highway 39 in Portage County. At that time, the sign was legal but nonconforming under Wisconsin law. Several years after acquiring the sign, Lamar put extension panels on the sign that added to the previous area of signage. In 2012, WisDOT determined that the entire sign must be removed because Lamar's enlargement of the sign caused it to lose its nonconforming status and become an illegal sign subject to removal. After a contested case hearing, the Division of Hearings and Appeals (DHA) affirmed WisDOT's order to remove the sign. The Portage County Circuit Court affirmed the DHA decision, and Lamar appealed. The Court of Appeals agreed with WisDOT that the sign is illegal under Wisconsin law and affirmed the order to remove the sign.

The Court held that the nonconforming sign provisions found in Wis. Stat. § 84.30 and Wis. Admin. Code § TRANS 201 apply and not the non-conformities law related to zoning. The Court also determined that the recent changes to Wis. Stat. § 84.30 made by 2017 Wisconsin Act 320 which provide new protections to legal nonconforming signs did not apply because Lamar's sign lost its legal nonconforming

status prior to the enactment of that law.

The case is not recommended for publication in the official reports.

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

### Community Gardens and Weeds

In [Tucker v. City of Chicago](#), the United States Court of Appeals for the Seventh Circuit (includes Wisconsin) addressed the question of whether a six-month delay between a property inspection and notice of a municipal ordinance citation violates procedural due process protected by the US Constitution?

The City of Chicago sells vacant City-owned lots to local residents for \$1 per lot through its "Large Lot Program." Many of the lots are of minimal value, yet are costly for the City to clean up and maintain. Nanette Tucker purchased a vacant lot under the program on her neighborhood block intending to convert it into a community garden. Approximately 3 months later, a City inspector concluded the vegetation on the lot violated the city's yard weed ordinance that prohibits weeds in excess of 10 inches in height. Six months later, Tucker received a citation for the violation. She contested the citation at a hearing before an administrative law judge but the judge ruled in favor of the City and imposed a \$640 fine. Tucker then appealed the matter to the federal district court alleging the City violated her Constitutional right to due process. The court dismissed her lawsuit finding no due process violation. Tucker then appealed to the Seventh Circuit Court of Appeals. The Court of Appeals affirmed the dismissal by the district court.

The Court of Appeals found that Tucker did not demonstrate how she had been prejudiced by the 6 month delay nor did she provide any authority that the City must initiate prosecution immediately. Tucker also challenged the inspector's interpretation of the City's ordinance but the Court held that the proper interpretation of a local ordinance is a matter for state courts to decide, not the federal courts.

### Court Upholds Wisconsin's Butter Grading Law

Continuing the food system theme this month, in [Minerva Dairy, Inc., v. Harsdorf](#), the Seventh Circuit Court of Appeals addressed the Constitutionality of Wisconsin's butter grading law. Under Wisconsin law, it is unlawful to sell any butter at retail unless it has been graded by either a Wisconsin-licensed butter grader or by the United States Department of Agriculture ("USDA"). The grading requirement applies to butter manufactured both in-state and out-of-state.

Minerva Dairy, a family-owned dairy company located in Minerva, Ohio, produces Amish-style butters in small, slow-churned batches using fresh milk supplied by pasture-raised cows. Minerva Dairy does not pay to have its butter graded under the voluntary USDA grading system and has never had its butter graded by a Wisconsin-licensed butter grader. Minerva Dairy has sells its artisanal butter in every state, including Wisconsin. In early 2017 the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) received an anonymous complaint about ungraded Minerva Dairy butter being sold at a retail store called Stinebrink's Lake Geneva Foods. After verifying the complaint, DATCP sent Minerva Dairy a warning letter. The company stopped selling its butter at retail stores in Wisconsin and sued several DATCP officials in federal court alleging that Wisconsin's butter grading statute violates the U.S. Constitution's Due Process Clause, the Equal Protection Clause, and the dormant Commerce Clause.

The United States District Court for the Western District of Wisconsin ruled in favor of DATCP. The dairy appealed the ruling to the Seventh Circuit Court of Appeals. The Court of Appeals affirmed the district court's decision finding that Wisconsin's butter grading law did not violate the Due Process Clause or the Equal Protection Clause because it is rationally related to the state's legitimate interest in consumer protection and that the statute did not violate the dormant Commerce Clause because it did not discriminate against out-of-state businesses.

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