WAPA NEWSLETTER

American Planning Association Wisconsin Chapter
Making Great Communities Happen

A Publication of the Wisconsin Chapter of the American Planning Association

New Energy Law Block Grant Program

BY CAROLYN BERNDT, NATIONAL LEAGUE OF CITIES

On Dec. 19, President Bush signed into law a historic comprehensive energy bill aimed at moving the United States toward greater energy independence and security. The Energy Independence and Security Act (H.R. 6) passed the Senate on Dec. 13 and passed the House on Dec. 18.

Among the provisions important to cities and towns is a new $10 billion Energy Efficiency and Conservation Block Grant program. Modeled after the Community Development Block Grant program, the Energy Efficiency and Conservation Block Grant program would provide grants to cities, counties and states for innovative practices to achieve greater energy efficiency and lower energy usage.

These grants would fund local initiatives, including building and home energy conservation programs, energy audits, fuel conservation programs, building retrofits to increase energy efficiency, "smart growth" planning and zoning, and alternative energy programs.

As outlined in the bill, cities with a population of at least 35,000 or one of the 10 most populous cities in the state would be eligible for the block grant. H.R. 6 authorizes appropriation of $2 billion for each fiscal year 2008 through 2012. Of the appropriated amount, 68 percent would be designated for local governments (cities and counties), 28 percent for states, 2 percent for Indian tribes and 2 percent for competitive grants to local governments that were not eligible based

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Breaking News:

www.wisconsinplanners.org

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

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

Submit articles by email attachment. Graphics are encouraged

Deadlines:

Winter issue: submit by January 15.
Spring issue: submit by March 15
Summer issue: submit by June 15
Fall issue: submit by September 15

WAPA Executirve Committee

Visit the WAPA webpage for up-to-date news and information between issues of the WAPA Newsletter.

Monthly legal and legislative updates are now posted throughout the month. Look on the Events page for information about professional development programs sponsored by WAPA, APA, and other organizations with programming related to planning.

on population or to a consortia of local governments.

House Speaker Nancy Pelosi (D-Calif.), who made energy policy a priority of her "New Direction Congress," said the measure was "ground-breaking in terms of what it will do in savings to the consumer, protecting the environment and providing a new direction."

Upcoming Conferences

WAPA Annual Conference
Madison, March 27, 2008

APA National Conference
Las Vegas, April 27-29, 2008

Upper Midwest APA Conference,
hosted by WAPA
Madison, September 18-19, 2008

WAPA Annual Conference
Sheboygan, March 26-27, 2009.

Study Finds Transportation Energy Use to Buildings a Significant Factor

By Nancy Frank, WAPA Editor

Environmental Building News reported in August that the energy required to drive to buildings is a significant component of the energy attributable to the building. This fact came home especially in the world's first LEED

	U.S. UNITS	METRIC UNITS
Average U.S. commute distance – one way[1]	12.2 mi	19.6 km
U.S. average vehicle fuel economy – 2006[2]	21.0 mi/gal	8.9 km/liter
Work days	235 days/yr	
Annual fuel consumption	273 gal/year	1,030 liters/yr
Annual fuel consumption per automobile commuter[3]	33,900 kBtu/yr	9,890 kWh/yr
Transportation energy use per employee[4]	27,700 kBtu/yr	8,100 kWh/yr
Average office building occupancy[5]	230 ft^2/person	21.3 m^2/person
Transportation energy use for average office building	121 kBtu/ft^2	381 kWh/m^2
Operating energy use for average office building[6]	92.9 kBtu/ft^2-yr	293 kWh/m^2-yr
Operating energy use for code-compliant office building[7]	51.0 kBtu/ft^2-yr	161 kWh/m^2-yr
Percent transportation energy use exceeds operation energy use for an average office building	30.2%	
Percent transportation energy use exceeds operation energy use for an office building built to ASHRAE 90.1-2004 code	137%	

Platinum building, the Chesepeake Bay Foundation Phillip Merrill Environmental Center. The Foundation had sought for a downtown site, but finally settled for a location 10 miles from downtown. Researchers are finding now that the added energy use from the additional commuting of the Foundation's 100 employees may exceed the energy savings in this greenest of green buildings.

As the calculations on the table (page 3) show, an average employees in the U.S. uses 30 percent more energy getting to work than they use as a proportion of the energy used in operating the building. For greener buildings, like those that meet the ASHRAE 90.1-2004 code, energy used in commuting can exceed building operating energy by over 130 percent.

So while architects—to their credit—have been touting the potential carbon savings from green building, planners have yet to grasp the equally, if not greater, impact for stemming global climate change of smart growth policies like those that planners have advocated for the last decade and more.

Environmental Building News suggests measuring the "transportation energy intensity" of buildings based on their location. "The transportation energy intensity of a building is the amount of energy associated with getting people to and from that building, whether they are commuters, shoppers, vendors, or homeowners." (August 2007, www.greenbuilding.com). While the general strategies discussed in the article will be entirely familiar to planners, the notion of using the transportation energy intensity of buildings is probably new. One

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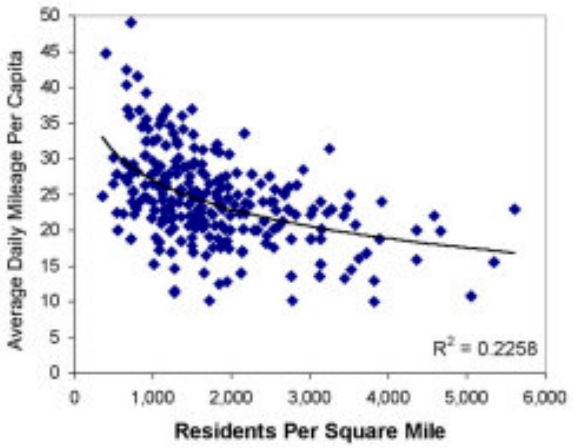
can imagine using this as a performance measure for awarding a variety of incentives to developers, such as density bonuses or TIF funding. The EBN article concludes with this challenge to its core audience of architects and builders:

> The green building movement is making tremendous strides at improving the environmental performance of buildings. Pushed by building codes and pulled by voluntary programs like LEED, buildings are getting better and better. But, as this article shows, if we want to continue reducing the ecological footprint of buildings, we need to focus much more actively on the transportation impacts that are associated with our buildings. With average new code-compliant office buildings "using" twice as much energy getting occupants to and from the buildings as the buildings themselves use for heating, cooling, lighting, and other energy needs, the green building community needs to focus greater attention on the transportation dependency of our buildings.

Planners, too, need to focus more explicitly on the energy impacts of buildings. While the LEED movement focuses primarily on signature office buildings,



planners have an opportunity to influence the energy intensity of run-of-the-mill residential and commercial develops that might never pursue LEED certification, but might achieve real energy and carbon saving through their locations in places where the energy required to travel to and from the building are significantly lower.

Milwaukee M7 Progress Report

By Russell Knetzger, ACIP, Milwaukee, Wis.

UWM Professor Sammis B. White, who teaches in the School of Architecture & Urban Planning, on Nov. 13, 2007 as part of the UWM "Smart Growth Series" gave a talk on the Progress of the Milwaukee "M7" efforts to coordinate economic development activity within its region. That region includes Milwaukee and its surrounding six counties—Keno-

sha, Racine, Walworth, Wauke-sha, Washington & Ozaukee counties.

The effort echoes those of two decades ago by WEPCO, the Wisconsin Electric Power Company, now We Energies, in what was then called "The I-94 Corridor," stretching along the I-94 freeway from the Illinois state line to Milwaukee and to Madison via Waukesha County.

The current effort also involves We Energies leadership, with a $1 Million six year sponsorship, 2005-2010, twice other top contributors, such as a half million dollars each from the Bradley Foundation and the Wisconsin Dept. of Commerce. Eight other top funders are in the $200,000-$300,000 range each, including Harley Davidson, Mar-shall & Ilsley Bank, Northwestern Mutual, Quad/Graph-ics, ATT-Wis., S.C. Johnson & Son, Inc. and Aurora Health Care. The total goal is $12 Million.

We Energies has also supplied the space for a One-Stop state of the art information center for economic prospects, modeled after the prototype in Atlanta, Georgia. Data on hand shows available sites, labor force, education data, etc. The object is to sell the region first, and then assist present companies to stay and new ones to form, and to attract new ones to locate within the region.

The frontline jobs team for M7 are Pat O'Brien and Jim Paetsch, located in the Milwaukee Association of Commerce downtown Milwaukee offices. To date they claim 2,100 new jobs and retention of 1,750 others. Prospects they lost involved 1,500 jobs, and pending prospects could add 450 jobs and retain 1,000 positions.

According to an article on their work in the *Business Journal* of Jan. 25, 2008, regional assets are the lakes, short work commutes, moderate housing prices, and world-class arts and sports activities. Negatives are a high tax image and the high dropout rate of Milwaukee Public Schools.

That newspaper also detects exasperation among big company executives who want to see faster results by M7. Actually, as an idea, M7 originates with GMC, the Greater Milwaukee Committee, which since its founding in 1948 has always been is made up of top executives from larger Milwaukee firms. In its early decades, its goals were "bricks & mortar" such as a new museum, expanded airport, new zoo, expressways, the downtown Grand Avenue Mall and river walk, and the County medical complex in Wauwatosa. Its current president, Julia Taylor, says GMC's goals are now more elusive, and harder. They include reinventing the area economy, training of a 21st Century workforce, finding new business models for the inner city, and improving schools.

Professor White takes an even broader view, citing a history of regional antagonism before and after 1960, when Henry Maier began 28 years as mayor of Milwaukee, and weak cooperation under Mayor John Norquist, 1988-2004, after which ex-congressman Tom Barrett became Mayor. White supports the M7 efforts, both coaching it and monitoring it.

The current economic climate where Milwaukee and much of the Midwest find themselves need to adjust economic activities to become sustainable—where manufacturing, once king in Milwaukee, continues to decline, and where global competition is over shadowing compe-tition within the United States.

The Milwaukee region still has important key assets. They include Fortune 500 caliber corporate anchors, ready capital and financial knowledge, area natural resources including the ability to raise much of our food, along

with freedom from earthquakes, heat waves, floods, or lack of water. The area has underutilized infrastructure, and a rich heritage and cultural diversity in its high work-ethic labor force. Milwaukee ranks 6th nationally in per capita college students, graduating 15,000 per year.

Opportunities include an ability to contribute to Clean & Green technology, an established biomedical devices industry, and an ability to do prototyping and specialized manufacturing. Our physical proximity to Chicago and the Great Lakes Basin are important, placing us near the center of the United States.

Weaknesses include a lessened sense of entreprenuership, the underutilized workforce in the central city, and an under-performing workforce development process.

The M7 program acknowledges all of these factors, and seems to be taking promising, comprehensive steps. Going forward, Professor White stresses the need to continue regional sharing, helping existing employers gain the workforce they need, such as continuing the Workforce Alliance of 2007 to coordinate the disparate groups that can influence work force strengthening, and learning from encouraging participation of 425 CEOs in the interview program originally targeted for 300.

Law Update

WAPA Legislative Update

By Steve Hiniker
1000 Friends of Wisconsin

February 23, 2008

These legislative updates and other related information are on theWAPA website's Law and Legislation page for members to access and continue to personally track the bills that they are interested in following more closely.

2007-2008 Wisconsin Legislative Session Bill Tracking

Please note that the last floorperiod begins February 19 and concludes March 13, which is the last general business floorperiod of the current legislative session. There will be a limited business floor period May 68 in which action is limited to revisor's bills, reconciliation bills, state employee contract bills and resolutions. There will also be a veto review session May 27-28.

NEW LEGISLATIVE PROPOSALS NEW ASSEMBLY BILLS

AB 718 Delaying the implementation date of the comprehensive planning statute.

Under the current law commonly known as the "Smart Growth" statute, if a city, village, town, county, or regional planning commission (local governmental unit) creates a development plan or master plan (comprehensive plan) or amends an existing comprehensive plan, the plan must contain certain planning elements.

Under current law, beginning on January 1, 2010, certain actions of a local governmental unit that affect land use must be consistent with that local governmental unit's comprehensive plan. The actions to which this requirement applies are official mapping, local subdivision regulation, and zoning ordinances, including zoning of shorelands or wetlands in shorelands. Also under current law, beginning on January 1, 2010, if a local governmental unit engages in any of these specified actions, the comprehensive plan must contain at least all of the required planning elements.

This bill delays the implementation date in current law from January 1, 2010, until January 1, 2015.

Introduced on January 23, 2008 by Representatives M. WILLIAMS, GRONEMUS, SUDER, BALLWEG, MUSSER, TOWNSEND, NERISON and ALBERS, cosponsored by Senator GROTHMAN. Referred to Committee on Property ights. Public Hearing held on 0220.

Editor's note: as of March 2, 2008, as the newsletter goes to press, a public hearing was held on AB718 on February 20. The bill passed the Assembly February 28 on a vote of 77 to 20. Please watch your email for important updates from the WAPA board about the progress of this bill in the Senate.

AB 735 Relating to petitions and management plans for the designation of managed forest land, transferrals of ownership of managed forest land, establishing stumpage values and estimating withdrawal taxes under the managed forest land program, signatures and authentication requirements for orders under the forest croplands program, granting rule-making authority, and making an appropriation.

Under current law, the Department of Natural Resources (DNR) administers the managed forest land (MFL) program and a similar program called the forest croplands program. The MFL program exempts an owner of land that is designated MFL from payment of municipal property taxes on the land in exchange for a lower payment per acre. In exchange, the owner must comply with certain forestry practices and must allow the public on the land under certain circumstances unless the landowner elects to pay an extra amount per acre to keep a limited number of acres closed. In addition, an owner of MFL must pay a withdrawal tax when the owner withdraws the land from the program before the order designating the land as MFL expires.

Orders are for 25 or 50 years. This bill makes various changes to the MFL program, including the following:

1. The bill makes a terminology change by substituting the words "applicant" and "application" for "petitioner" and "petition" in the subchapter related to the MFL program. This change is nonsubstantive.

2. The bill changes the dates before which DNR must act on applications under the MFL program and changes the deadline for owners to file applications to renew MFL orders.

3. The bill requires that a forestry management plan for the MFL accompany the application and eliminates the requirement that DNR prepare the plan upon the request of the applying landowner. Under the bill, DNR must prepare the plan only if DNR determines that the applicant is not able to have a proposed management plan prepared by a certified independent plan writer. The bill requires DNR to promulgate rules establishing the criteria for when DNR will prepare the plan.

4. The bill requires DNR to prepare an estimate of the withdrawal tax that would be due if the MFL is withdrawn upon request of DNR or an MFL landowner.

Under the bill, the Department of Revenue assists with the preparation of these estimates.

5. The bill eliminates the requirement that the stumpage value that is used to determine the amount of yield taxes and withdrawal taxes under the MFL program be established by rule.

6. The bill clarifies that when MFL is transferred to another owner, the person purchasing or otherwise receiving the land pays the transfer fee.

7. The bill allows facsimile signatures and exempts documents from register of deeds authentication requirements under the forest croplands program. These provisions exist for the MFL program under current law.

Introduced on January 29, 2008 by Representatives FRISKE, MURSAU, BIES, TOWNSEND and MUSSER, cosponsored by Senators BRESKE and HANSEN.

Status: Referred to Committee on Forestry Fiscal estimate received on 0212. Public hearing held on 0212. Executive action taken. 0212.

Assembly amendment 1 offered by committee on Forestry 0215

Report Assembly Amendment 1 adoption recommended by committee on Forestry, Ayes 6, Noes 0 on 0215

Referred to committee on Rules. Fiscal estimate received.

AB 752 Authorizing a city or village to extend the life of a tax incremental district for one year to benefit housing in the city or village.

Under the current tax incremental financing program, a city or village may create a tax incremental district (TID) in part of its territory to foster development if at least 50 percent of the area to be included in the TID is blighted, in need of rehabilitation or conservation, suitable for industrial sites, or suitable for mixed-use development. Before a city or village may create a TID, several steps and plans are required. These steps and plans include public hearings on the proposed TID within specified time frames, preparation and adoption by the local planning commission of a proposed project plan for the TID, approval of the proposed project plan by the common council or village board, and adoption of a resolution by the common council or village board that creates the TID as of a date provided in the resolution. Also under current law, once a TID has been created, the Department of Revenue (DOR) calculates the "tax increment base value" of the TID, which is the equalized value of all taxable property within the TID at the time of its creation. If the development in the TID increases the value of the property in the TID above the base value, a "value increment" is created.

That portion of taxes collected on the value increment in excess of the base value is called a "tax increment." The tax increment is placed in a special fund that may be used only to pay back

the project costs of the TID. The costs of a TID, which are initially incurred by the creating city or village, include public works such as sewers, streets, and lighting systems; financing costs; site preparation costs; and professional service osts. DOR authorizes the allocation of the tax increments until the TID terminates or, generally, 20 years, 23 years, or 27 years after the TID is created, depending on the type of TID and the year in which it was created. Under certain circumstances, the life of the TID and the allocation period may be extended.

Under current law, a planning commission may adopt an amendment to a project plan, which requires the approval of the common council or village board and the same findings that current law requires for the creation of a new TID. Current law also authorizes the amendment of a project plan up to four times during a TID's existence to change the district's boundaries by adding or subtracting territory.

This bill authorizes a city or village to extend the life of a TID created by the city or village for one year after all of the TID's project costs have been paid. Under the bill, DOR is required to continue to authorize the allocation of tax increments for the TID as if its project costs had not been paid off, without regard to whether the TID would otherwise not be eligible to receive the increments, and without regard to whether the TID would otherwise be required to terminate.

The city or village may use up to 75 percent of the increments received during the TID's extended life to benefit affordable housing in the city or village. The remainder of the increments must be used to improve the quality of the city's or village's existing housing stock.

Introduced on February 4, 2008 by Representatives GRIGSBY, COLON, CULLEN, FIELDS, KESSLER, PARISI, RICHARDS, SINICKI, TOLES, TURNER, A. WILLIAMS, YOUNG, ZEPNICK and VAN ROY, cosponsored by Senators COGGS, PLALE and TAYLOR. Referred to Committee on Ways and Means.

AB 762 Income and franchise tax credit that supplements the federal historic rehabilitation tax credit.

Under current law, a person who owns an income-producing historic building may claim a federal income tax credit

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NATIONAL DUES TABLE

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that is equal to 20 percent of certain costs to rehabilitate the historic building. To claim the credit, the building must be listed, or be eligible for listing, on the national register of historic places or located in certain national, state, or local historic districts and the rehabilitation work must comply with standards established by the secretary of the interior.

Under current law, a person who may claim the federal income tax credit for rehabilitating an income-producing historic building may also claim a state income tax or franchise tax credit that is equal to 5 percent of certain costs to rehabilitate the historic building. To claim the credit, the person must include with the person's tax return evidence that the secretary of the interior approved the rehabilitation work before the rehabilitation work began.

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building, if the person includes with the person's tax return evidence that the state historic preservation officer recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began and that the rehabilitation was approved by the secretary of the interior.

Under current law, each partner in a partnership or member of a limited liability company is allocated a portion of any tax credit that the partnership or limited liability company may claim, including the credit for rehabilitating a historic building, based on each partner's ownership interest. Under this bill, a partner or member may also be allocated a portion of the tax credit for rehabilitating a historic building.

Introduced on February 4, 2008 by Representatives DAVIS, SHILLING, NYGREN, HAHN and BALLWEG, cosponsored by Senators LASSA, RISSER, ROESSLER and TAYLOR. Referred to Committee on Ways and Means.

Status: Fiscal estimate received.

Public hearing held on 0212

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- To update your email address, go to the APA website (www.planning.org). Hold the cursor over Member Services on the menu bar near the top of the page. In the dropdown menu that appears, select "My Information" and follow the on-screen instructions.
- Contact Nancy Frank at frankn@uwm.edu so that the change can be included immediately in the WAPA email list.

Fiscal estimate received.

Assembly amendment 1 offered by Representative Davis on 0215.

AB 766 Addition to the 2007-09 Authorized State Building Program.

This bill amends the 2007-09 Authorized State Building Program to add one project for the University ofWisconsin System. The project consists of a TomoTherapy addition to the School of Veterinary Medicine at the University of Wisconsin-Madison. The project is financed with $2,546,000 in gifts and grants.

Introduced on February 6, 2008 by Representatives HINES, MONTGOMERY, BALLWEG, BLACK, HAHN, HEBL, KAUFERT, MUSSER, A. OTT, OWENS, PARISI, POCAN, SHILLING, SOLETSKI and TAUCHEN, cosponsored by Senators RISSER, COWLES, HARSDORF, LEHMAN and ROESSLER. Referred to Committee on Public Health.

Status: Read first time and referred to committee on Public Health. Public Hearing held on 0213

Fiscal estimate received.

AB 781 Relating to managed forest land for which there is limited access for persons to engage in certain recreational activities.

Under current law, the Department of Natural Resources (DNR) administers the managed forest land (MFL) program. The MFL program exempts an owner of land that is designated MFL from payment of municipal property taxes on the

MFL in exchange for a lower payment per acre. In exchange, the owner must comply with certain forestry practices and must allow the public on the MFL under certain circumstances unless the landowner elects to pay an extra amount per acre to keep a limited number of acres closed. MFL must be open to hunting, fishing, hiking, sightseeing and cross-country skiing. If an owner of MFL does not want to permit this access, the owner may pay an extra amount per acre, and the MFL is designated as closed. Current law imposes restrictions on the amount of MFL that may be closed.

Current law prohibits an owner of MFL from entering into a lease or agreement to allow limited access to certain persons to engage in certain recreational activities, including those listed above. An exception is provided for agreements that are made with nonprofit organizations under which the only payment

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consists of membership fees and that are approved by DNR.

This bill repeals this provision. In its place, the bill allows limited access, but the MFL is assessed at a higher amount per acre than that which is applicable to MFL that is designated closed. The exception for agreements with nonprofit organizations remains.

Introduced on February 8, 2008 by Representatives WOOD, TOWNSEND, MURSAU and PETROWSKI, cosponsored by Senators KREITLOW, KAPANKE and OLSEN.

Referred to Committee on Forestry.

Status: Assembly substitute amendment 1 offered byRepresentativeWood on 0211

Public hearing held on 0212.

LRB correction (Assembly substitute amendment 1 on 0213.

AB 784 Relating to: authorizing the creation of local park districts, authorizing a local park district to levy a property tax, authorizing a local park district to apply for funding from certain programs administered by the Department of Natural Resources, and authorizing a local park district to impose impact fees and issue debt.

Creation And Dissolution of District

This bill authorizes one or more municipalities (cities, villages, or towns), one or more counties, or any combination of political subdivisions (municipalities or counties) to create a local park district (district). A district is a local unit of government that is a body corporate and politic and that is separate and distinct from, and independent of, the state and the sponsoring political subdivisions which created it and that are within its jurisdiction. Subject to a number of conditions, a district may be created by one of two methods. Under both methods, an election of the district's commissioners must take place. Under the first method, the governing bodies of one or more political subdivisions may adopt an enabling resolution that declares the need for establishing the district and contains a description of the boundaries of the proposed district. The participating counties or municipalities need not be contiguous. Each political subdivision that adopts a substantially similar enabling resolution within 90 days, beginning with the date of adoption of the first enabling resolution, may be part of the initial jurisdiction of a district. Under the second method, a district consisting of one or more political subdivisions may be created by a petition and referendum. The petition may be circulated on or after January 1 of any year and may be filed no later than 5 p.m. on the third Tuesday in February. The petition must be filed in every political subdivision whose park facilities are proposed to be included in the district. If it is signed by at least 100 qualified electors residing in each political subdivision whose park facilities are proposed to be included in the district, a referendum is held at the next succeeding spring election. A district is then created with a jurisdiction that consists of each of the political subdivisions in which the referendum question is approved, except that no district may be created unless the referendum question is approved in at least one political subdivision.

Before a district may be created, the governing bodies of each of the involved political subdivisions must reach an agreement that includes a number of components, including a method to transfer title of the municipal or county park facilities to the district, a description of any encumbrances or restrictions

that run with the land or facilities that are transferred, and a method to select an arbitrator who will decide certain issues that the relevant political subdivisions are unable to resolve.

On the date that a district is created, which is always on a January 1 following the initially elected commissioners taking office, all assets and liabilities of the political subdivisions with respect to park and recreational functions become assets and liabilities of the district (except for certain pre-existing political subdivision debt related to park facilities and except for any political subdivision liabilities related to former employees who performed park and recreational functions and whose employment terminated before the district's creation), all tangible personal property of the political subdivisions related to park and recreational functions is transferred to the district, and all incumbent employees of the political subdivisions having functions related to parks and recreation become employees of the district. To the extent allowed by law, transferred employees would retain their rights under their existing collective bargaining agreement. Upon the expiration of the agreement, the district and the employees would negotiate a new collective bargaining agreement.

In connection with park facilities, the powers of a district include the authority to: acquire, develop, maintain, improve, operate, and manage the park facilities; operate recreational facilities or programs; enter into contracts; employ personnel; impose an impact fee on developers for park facilities; issue debt for capital improvements to park facilities; and levy a property tax to carry out its functions.

The bill authorizes a district to acquire land by purchase, exchange, or donation, but does not authorize a district to sell land. The bill also grants these districts eligibility for various local aid programs that are administered by the Department of Natural Resources. These programs include the local park aids program, the urban green space program, and funding for county snowmobile trails.

A district is governed by a commission consisting of members who are elected on a nonpartisan ballot at the spring election, except that, in an even-numbered year, if the governing bodies of the political subdivisions whose park facilities are included in a district can agree upon the organizing arrangements by June 1 following the adoption of resolutions or referenda questions approving the creation of a district, the initial commissioners are elected on a nonpartisan ballot at a special election that is held concurrently with the general (November) election in that year.

In districts having a population of 500,000 or more, there must be nine commissioners who must be elected from election districts of equal population, insofar as practicable. In other districts, the enabling resolution or petition must specify the number of commissioners and whether the commissioners are to be elected from election districts, at large, or by a combination of methods. The boundaries of election districts are initially prescribed by the Government

Accountability Board and thereafter decennially by the commission. Vacancies are filled by appointment of the remaining members of the commission. Each commissioner must, at the time of taking office, reside within the park district and within the election district, if any, from which he or she is elected or for which he or she is appointed to fill a vacancy. The terms of commissioners are three years, except that the initial terms are staggered such that the terms of approximately one-third of the initial members of the commission expire in each year, and except that the terms of any initial commissioners who are elected at the general election extend for five months longer than the terms of other initial commissioners.

Under the bill, if a city or village whose territory is in one district annexes territory that contains park facilities that

are located in a different district, that district is required to transfer ownership of the park facilities that are located in the annexed territory to the district whose territory includes the annexing city or village.

The bill requires the districts to negotiate a settlement to compensate the district from which the territory was annexed for the park facilities that were transferred.

If the districts are unable to negotiate a settlement within 60 days after the annexation, the districts must agree on the selection of an arbitrator who will decide the settlement amount within 30 days after his or her appointment. With the commission's approval, the initial jurisdiction of a district may be expanded to include any other political subdivision under procedures adopted by the commission. Any procedures for expansion must allow the governing body of a political subdivision to request inclusion in the district by resolution or at the request of electors through a petition and referendum procedure.

The bill also provides two methods for a political subdivision to withdraw from the district. Under the first method, if the governing body of a political subdivision adopts a resolution declaring its intention to withdraw from the district and the electors of the political subdivision approve the resolution in a referendum called for that purpose, the political subdivision may withdraw from the district. Under the second method, the electors of a political subdivision may petition the commission to submit the question of withdrawal of the political subdivision from a district, and the commission must then call a referendum in the political subdivision for the electors to vote on whether to approve the question. If the question submitted at the referendum is approved, the political subdivision must withdraw from the district.

Under either method, however, the political subdivision and the district must negotiate a settlement to compensate the district for the park facilities that are located in the political subdivision. If the district and the political subdivision are unable to negotiate a settlement within 60 days after the political subdivision's resolution is either approved by the commission or approved in a referendum, the district and the political subdivision must agree on the selection of an arbitrator who must decide the settlement amount within 30 days after his or her appointment.

A district may dissolve by action of the commission, subject to payment of the district's debts and fulfillment of its other contractual obligations. If after withdrawal of a political subdivision, the territory that remains in the district does not consist of at least one political subdivision, the district must dissolve. If a district is dissolved, its assets, liabilities, employees, pending matters, and property must be apportioned to, and become the responsibility of, the sponsoring political subdivisions and any other political subdivisions that joined the district. The commission is empowered to apportion these items among the responsible political subdivisions. If a question arises as to the the commission's actions during dissolution, the question must be resolved by an arbitrator who is selected under the previously agreed to procedure.

Under the bill, a political subdivision may make loans or lease or transfer property to a district. Generally, however, a political subdivision may not create a park or expend any funds to support park or recreational facilities, or impose an impact fee on a developer for park facilities, after a district levies a property tax.

TAXATION

When a district is created, the initial property tax levy of the district must be imposed by the commission in an amount that equals the total perating levy, of all participating political subdivisions, that is attributable to expenditures for park and recreational purposes in the year in which the district is authorized, or in the prior year — whichever is greater.

Also in the year in which the district's initial levy is imposed, each sponsoring political subdivision must reduce its operating levy in an amount equal to its previous year's levy for park and recreational purposes, to the extent that those functions have been assumed by the district.

The district's property tax levy rate may not exceed one mill on each dollar of the full value of taxable property in the district unless a higher rate is approved by the electors of a district at a referendum. The district must hold such a referendum at the first spring primary, spring election, September primary, general election, or special election held throughout the district that is held at least 45 days after the date on which the commission adopts a resolution to increase the levy rate in excess of one mill. The district may use the tax revenue only for park and recreational purposes.

Under the bill, a district's income is exempt from the income tax, a district's property is exempt from the property tax, property transferred to a district is exempt from the real estate transfer fee, and sales of tangible personal property or services to the district are exempt from all state and local sales taxes and use taxes. Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

Introduced on February 8, 2008 by Representatives TOWNSEND, J. OTT, SINICKI, JESKEWITZ and A. OTT, cosponsored by Senators DARLING, WIRCH and ERPENBACH. Referred to Committee on Tourism, Recreation and State Properties.

Status: Fiscal estimate received on 0212.

AB 794 Changes to economic development tax benefit programs, providing an exemption from emergency rule procedures, and requiring the exercise of rule-making authority.

The value of tax benefits for which a person is eligible under the new tax credit program depends on the number of jobs created by the person, the amount of the capital investment made by the person, the amount of training or reeducation provided to the employees of a person, or the number of jobs retained by the person having its corporate headquarters located in Wisconsin.

Under the bill, Commerce may award additional tax benefits to a person that conducts eligible activities in an economically distressed area or if the eligible activities benefit members of a target group. The department is required by the bill to define "economically distressed area." The bill defines "member of a target group" as a person who resides in an area designated by the federal government as an economic revitalization area, a person who is employed in an unsubsidized job but meets certain eligibility requirements for a Wisconsin Works employment position, a person who is employed in a trial job or in a real work real pay project position, a person who is eligible for child care assistance, a person who is a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income recipient, a general assistance recipient, an economically disadvantaged ex-convict, a dislocated worker, as defined under federal law, or a food stamp recipient, if the person has been certified by a designated local agency.

Changes to reporting requirements

Under current law, Commerce must submit a biennial report to the legislature on the performance and operations of Commerce in the preceding biennium. The bill requires Commerce to annually submit a comprehensive report assessing economic development programs administered by Commerce to the Joint

Legislative Audit Committee and to the appropriate standing committees of the assembly and the senate.

The comprehensive annual report must include information about the number of grants and loans made by Commerce in each year; the amount of each grant and loan; the name of the recipient of each grant and loan; and the sum total of all grants and loans received by each recipient. Commerce must make the reported information available to the public via the Internet.

Audit
by the Legislative Audit Bureau

The bill requires the Legislative Audit Bureau to prepare a financial and program evaluation audit of the consolidated economic development tax benefit program created by the bill no later than July 1, 2012.

Introduced on February 13, 2008 by Representatives STRACHOTA, JESKEWITZ, VOS, A. OTT, TOWNSEND, KLEEFISCH, BALLWEG, HAHN and MURSAU, cosponsored by Senators LASSA, SULLIVAN, ROESSLER, VINEOUT, DARLING and KANAVAS. Referred to Committee on Jobs and The Economy.

Status: Public hearing held on0213. Fiscal estimate received on 0218.

AB 796 Requirement to build and maintain partition fences.

Current law gives the occupants of adjacent properties equal responsibility to build and maintain a partition fence between the properties if one or both of the occupants use the property for farming or grazing, unless the occupants agree to a different arrangement.

This bill narrows the applicability of the law relating to partition fences so that occupants of adjacent properties have equal responsibility to build and maintain a partition fence only if both of the adjacent properties are used for grazing or keeping livestock.

Introduced on February 13, 2008 by Representatives PETERSEN, MUSSER, MURSAU and BERCEAU, cosponsored by Senators LAZICH, GROTHMAN, OLSEN and LEHMAN. Referred to Committee on Property Rights.

AB 805 Compensation for the reduction in the fair market value of private real property.

This bill allows an owner of private real property to seek compensation from the state or a political subdivision of the state (governmental unit) if the governmental unit enacts or enforces a statute, administrative rule, ordinance, or plan (land use regulation) that restricts the use of the property and reduces its fair value. The amount of the compensation is equal to the sum of the lost fair market value, the amount of permit fees paid and not refunded, the value of any improvements ordered removed, plus the cost of removing those improvements. Under the bill, an aggrieved property owner is generally entitled to compensation if the land use regulation continues to be enforced against the property 90 days after the owner sends a written demand for compensation to the governmental unit. A demand for compensation must be made within two years after the land useregulation takes effect. Instead of paying the owner compensation, the governmental unit may modify, remove, or not apply the land use regulation to allow the owner to use the property in a manner that was permitted at the time that the owner acquired the property. If the land use regulation remains in effect 180 days after a written demand for compensation, the property owner may bring action against the governmental unit in the county in which the property is located. Finally, if court ordered compensation is not paid within two years after the order is entered or if the governmental unit has not modified or removed or not applied the land use regulation within two years after the owner has made a written demand for compensation, the owner may use or develop the property

in a manner that was permitted at the time that the owner acquired the property.

Introduced on February 13, 2008 - by Representatives M. WILLIAMS, ALBERS, MUSSER, LEMAHIEU, OWENS, TOWNSEND, MURSAU, GUNDERSON, GRONEMUS and WOOD,

Cosponsored by Senators SCHULTZ and A. LASEE. Referred to Committee on Property Rights.

Status: Public Hearing held on 0220.

SB444 Requirement to build and maintain partition fences.

Current law gives the occupants of adjacent properties equal responsibility to build and maintain a partition fence between the properties if one or both of the occupants use the property for farming or grazing, unless the occupants agree to a different arrangement.

This bill narrows the applicability of the law relating to partition fences so that occupants of adjacent properties have equal responsibility to build and maintain a partition fence only if both of the adjacent properties are used for grazing or keeping livestock.

Introduced on February 4, 2008 by Senators LAZICH, GROTHMAN, OLSEN and LEHMAN, cosponsored by Representatives PETERSEN, MUSSER, MURSAU and BERCEAU. Referred to Committee on Agriculture and Higher Education.

SB447 Income and franchise tax credit that supplements the federal historic rehabilitation tax credit.

Under current law, a person who owns an income-producing historic building may claim a federal income tax credit that is equal to 20 percent of certain costs to rehabilitate the historic building. To claim the credit, the building must be listed, or be eligible for listing, on the national register of historic places or located in certain national, state, or local historic districts and the rehabilitation work must comply with standards established by the secretary of the interior.

Under current law, a person who may claim the federal income tax credit for rehabilitating an income-producing historic building may also claim a state income tax or franchise tax credit that is equal to 5 percent of certain costs to rehabilitate the historic building. To claim the credit, the person must include with the person's tax return evidence that the secretary of the interior approved the rehabilitation work before the rehabilitation work began.

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building, if the person includes with the person's tax return evidence that the state historic preservation officer recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began and that the secretary of the interior approved the rehabilitation work.

Under current law, each partner in a partnership or member of a limited liability company is allocated a portion of any tax credit that the partnership or limited liability company may claim, including the credit for rehabilitating a historic building, based on each partner's ownership interest. Under this bill, a partner or member may also be allocated a portion of the tax credit for rehabilitating a historic building in a manner specified in an agreement with the other partners or members.

Introduced on February 4, 2008 by Senators LASSA, RISSER, ROESSLER and TAYLOR, cosponsored by Representatives DAVIS, SHILLING, NYGREN, HAHN and BALLWEG. Referred to Committee on Economic Development.

Status: Public hearing held on 0213.

SB480 Changes to economic development tax benefit programs

Under current law, the Department of Commerce (Commerce) may designate a portion of the state as a develop-

ment zone, a development opportunity zone, an enterprise development zone, an agricultural development zone, an enterprise zone, an airport development zone, or a technology zone. Commerce may also certify persons who agree to undertake certain eligible activities in one of the designated zones. Eligible activities include job creation, environmental remediation, and capital investment. Persons who obtain certification are then eligible for tax benefits.

This bill consolidates the development zones, enterprise development zones, agricultural development zones, technology zones, and airport development zones (five development zone programs) into a program that awards tax benefits to persons who enter into a contract with Commerce to undertake eligible activities anywhere in the state. Eligible activities under the bill include all of the following:

1. Job creation projects that result in the creation and maintenance of jobs paying wages and providing benefits at a level approved by Commerce.

2. Projects that involve a significant investment of capital, as determined by Commerce by rule, by the person in new equipment, machinery, real property, or depreciable personal property.

3. Projects that involve significant investments in the training or reeducation of employees for the purpose of improving the productivity or competitiveness of the business of the person. 4. Projects that will result in the location or retention of a person's corporate headquarters in Wisconsin or that will result in the retention of employees if the person's corporate headquarters are located in Wisconsin.

Commerce may allocate tax benefits under the consolidated program up to the total amount remaining to be allocated under the five development zone programs on the effective date of this bill. Tax benefits are awarded under the bill only after the person has verified to Commerce that the person has met the performance obligations established under the contract. The value of tax benefits for which a person is eligible under the new tax credit program depends on the number of jobs created by the person, the amount of the capital investment made by the person, the amount of training or reeducation provided to the employees of a person, or the number of jobs retained by the person having its corporate headquarters located inWisconsin. Under the bill, Commerce may award additional tax benefits to a person that conducts eligible activities in an economically distressed area or if the eligible activities benefit members of a target group. The department is required by the bill to define "economically distressed area." The bill defines "member of a target group" as a person who resides in an area designated by the federal government as an economic revitalization area, a person who is employed in an unsubsidized job but meets certain eligibility requirements for a Wisconsin-Works employment position, a person who is employed in a trial job or in a real work real pay project position, a person who is eligible for child care assistance, a person who is a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income recipient, a general assistance recipient, an economically disadvantaged ex-convict, a dislocated worker, as defined under federal law, or a food stamp recipient, if the person has been certified by a designated local agency.

Changes to reporting requirements

Under current law, Commerce must submit a biennial report to the legislature on the performance and operations of commerce in the preceding biennium. The bill requires Commerce to annually submit a comprehensive report assessing economic development programs administered by Commerce to the Joint Legislative Audit Committee and to the appropriate standing committees of the assembly and the senate. The comprehensive annual report must include infor-

mation about the number of grants and loans made by Commerce in each year; the amount of each grant and loan; the name of the recipient of each grant and loan; and the sum total of all grants and loans received by each recipient.

Commerce must make the reported information available to the public via the Internet.

Audit by the Legislative Audit Bureau

The bill requires the Legislative Audit Bureau to prepare a financial and program evaluation audit of the consolidated economic development tax benefit program created by the bill no later than July 1, 2012.

Introduced on February 12, 2008 by Senators LASSA, SULLIVAN, ROESSLER, VINEHOUT, DARLING and KAPANKE, cosponsored by Representatives STRACHOTA, JESKEWITZ, VOS, A. OTT, TOWNSEND, KLEEFISCH, BALLWEG, HAHN and MURSAU. Referred to Committee on Economic Development.

Status: Public hearing held on 0213.

SB482 Requiring a license to engage in the practice of landscape architecture.

Under current law, no person may use the title "landscape architect" unless he or she holds a certificate of registration as a landscape architect issued by the examining board of architects, landscape architects, professional engineers, designers, and land surveyors (the board). In order to be granted a certificate of registration as a landscape architect, a person must hold a bachelor's or a master's degree in landscape architecture from a curriculum approved by the board and have at least two years of practical experience in landscape architecture, or have a specific record of at least seven years of training and experience in the practice of landscape architecture including at least two years of courses in landscape architecture approved by the board, and four years of practical experience in landscape architecture. Further, the person must successfully complete an examination by the board.

Under this bill, no person may practice landscape architecture unless he or she is registered as a landscape architect by the board. The registration requirements remain the same under the bill. The bill clarifies that landscape architecture does not include professional services provided by a person who is an architect, engineer, or land surveyor, if the person holds the credential required to engage in that practice.

The bill also contains exemptions from the registration requirements for a number of persons, including: 1) a person doing work on property owned by the person; 2) biologists, professional geologists, and professional soil scientists; and 3) a person making plans or drawings for the selection, placement, or use of plants or other site features, if the project scope does not adversely affect the public health, safety, or welfare.

Introduced on February 12, 2008 by Senator RISSER, cosponsored by Representatives LOTHIAN, BERCEAU, CULLEN, JESKEWITZ, A. OTT, TOWNSEND, SHILLING, DAVIS, VRUWINK, MONTGOMERY, TURNER and MASON.

Referred to Committee on Labor, Elections and UrbanAffairs.

UPDATES TO PREVIOUSLY REPORTED ASSEMBLY BILLS

I have included status updates for previously reported bills only if their status has changed since the December update. If you have been following other legislative bills addressed in previous updates, please go to the WAPA website's Law and Legislation page for links and updates or go to the Wisconsin Legislature's website at: http://www.legis.state.wi.us

[Updates in bill status since the last legislative update are reflected

in italics]

Comprehensive Planning Changes

As of the date of this report, the two proposals related to the state comprehensive planning law (Wis. Stats. §66.1001) that are being circulated for cosponsorship by Representation Mary Williams have not been introduced as bills. See the November 2007 update for more information on LRB 2863/1– A Proposal to Limit the Applicability of the Comprehensive Planning Statute to Political Subdivisions with Populations of at Least 2,500 and LRB 2199/1– A Proposal to Delay the Compliance Deadline Date of the Comprehensive Planning

Law from January 1, 2010 to January 1, 2015.

Assembly Substitute Amendment 3 to AB 79

This substitute amendment authorizes a town board that is authorized to exercise village powers to adopt a resolution, which is subject to ratification in a referendum that the town board must call, declaring that it is a "charter town." The substitute amendment allows the town board of a charter town to create a TIF district to the same extent as a city or village; it allows a charter town board to revoke its approval of certain county zoning ordinances and exercise certain zoning powers; and it exempts the town from being subject to certain city and village extraterritorial zoning powers. The substitute amendment does not allow charter towns to annex territory or to engage in extraterritorial zoning or plat approval. Under the substitute amendment, counties must recognize a charter town's official map in the same way that it recognizes city and village official maps. The powers granted to towns in this substitute amendment apply only if certain conditions are met on the date on which the board adopts the resolution. Some of the conditions that must be satisfied include the following:

1. The population of the town must be at least 2,500.

2. The town board creates a town plan commission and adopts a comprehensive land use plan.

3. The town board enacts and enforces building code ordinances.

4. The town board enacts a construction site erosion control and storm water management zoning ordinance.

Status: Fiscal estimate received 3/28/07.

It would increase state costs by $50,000 and town costs by an undetermined amount.

Assembly Substitute Amendment 1 offered by Representative Kerkman on 11/2/07.

Public hearing held on 012.

Assembly amendment 1 to Assembly substitute amendment 1 offered by Representative Kerkman. Assembly amendment 2 to Assembly substitute amendment 1 offered by Representative Kerkman. Assembly amendment 3 to Assembly substitute amendment 1 offered by Representative Kerkman on 0212.

Executive action taken on 0212.

AB 181 – Authorizing the Examining Board to establish continuing education requirements for renewal of credentials for architects, landscape architects, professional engineers, designers of engineering systems, and land surveyors.

Status: Introduced on 3/19/07 by RepresentativesWieckert, A. Ott, Mursau, Albers, Van Roy, Townsend and Bies; cosponsored by Senators Lassa and Cowles and referred to Assembly Comitee on Labor and Industry. Public hearing heldon 5/2/07. Passage recommended 90 by committee on Labor and Industry d referred to Committee on Rules on 5/31/07. Placed on calendar by Commitee on Rules and messaged to the Senate on 10/30/2007. Referred to Senate Committee on Labor, Elections and Urban Affairs on 11/2/07. Public hearing held and concurrence recomended (Ayes 3, Noes 2) by the

Senate Committee on Labor, Elections and Urban Affairs on 12/4/07. Placed on calendar 1/15/08 by committee on Senate Organization. Read a third time and concurred in, Ayes 27, Noes 5 on 01/15/08 Ordered immediately messaged on 1/15/08, Received from Senate conrred and Report correctly enrolled on 01/18/08. Presented to the Governor on 25 Report approved by the Governor on 28 2008. 2007 Wisconsin Act 47

AB 423– Extraterritorial Plat Approval on the Basis of Land Use

Current law specifies whether a county, town, city, or village has the right to approve or object to a plat (the map of a subdivision). Generally, the location of the subdivision determines which local governmental unit or units have the right to approve the plat. If a subdivision lies in the unincorporated area within three miles of the corporate limits of a first, second, or third class city, however, the governing body of the city has the right to approve the plat under its extraterritorial plat approval jurisdiction, as well as the board of the town within which the subdivision lies and the planning agency of the county within which the subdivision lies if the planning agency emloys on a fulltime basis a professional engineer, a planner, or another person charged with administering zoning or other planning legislation. Approval of a plat is conditioned on the plat's compliance with the local ordinances and comprehensive, master, or development plan of the local governmental unit or units that have the right to approve the plat.

In Wood v. City of Madison, 2003 WI 24, 260 Wis. 2d 71, 659 N.W. 2d 31, the Supreme Court determined that a city with extraterritorial plat approval jurisdiction over a plat could object to the plat on the basis of the proposed use of land outside the city limits. Wood overruled Boucher LincolnMercury v. Madison Plan Comm., 178 Wis. 2d 74, 503 N.W. 2d 265 (Ct. App. 1993), which held that extraterritorial plat approval or denial based on the use of the land in the plat is unilateral land use control (or zoning), and that the statutes require extraterritorial zoning to be a cooperative effort between the city and the town in which the zoning ordinance is in effect.

This bill prohibits a municipality (city or village) from denying approval of a plat on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction of the municipality unless the denial is based on a plan or regulations adopted under the statute referred to in Boucher LincolnMercury that sets out the requirements for the cooperative effort between the municipality and the town for extraterritorial zoning.

Status: Introduced by Representatives Albers, Roth, Musser, Gunderson, Petrowski and Mursau; cosponsored by Senators Breske, Harsdorf, A. Lasee and Schultz on 6/21/07. Read first time and referred to Assembly Committee on Rural Affairs on 6/21/07. Assembly amendment 1 offered by Representative Albers on 7/26/07. Public hearing held in Assembly Committee on Rural Affairs on 11/28/07. Executive action taken on 12/11/07. Report Assembly Amendment 1 adoption recommended by committee on Rural Affairs, Ayes 8, Noes 0. Report passage as amended recommended by committee on 12/19/07. Referred to committee on Rules on 12/19/07. Placed on calendar for 01/23/08 by committee on Rules. Read a second time; Assembly Amendment 1 adopted; Read a third time and passed, Ayes 70, Noes 26 on 0123.Read first time and referred to committee on Campaign Finance Reform, Rural Issues and Information Technology on 0125.

AB 543 – County Determination of Ordinary High Water Mark

This bill provides that if there is a difference between the determination by a county and by the Department of Natural Resources (DNR) as to the location of an ordinary high-water mark on a lake, the county's determination will prevail. The ordinary high-water mark is the point on

the lakeshore where there is a distinive mark that shows, by certain physica characteristics such as erosion marks or change of vegetation, that the presence or action of surface water ends at that point.

The area below the ordinary high-water mark is considered to be part of the lake bed and owned by the state. The ordinary high-water mark is also used in determining the rights of lakefront property owners and in determining shorelands for the purposes of zoning ordinances enacted by counties. These zoning ordinances must meet certain standards promulgated by DNR. Current state law defines a "shoreland" for the purposes of these ordinances as being the area within 1,000 feet of the ordinary high-water mark.

Status: Introduced on 10/16/07 by Representatives Meyer, Friske, Groneus, Musser, Roth, Owens, Hahn, LeMahieu, Petrowski, Mursau, Gunderson, Kleefisch, Pridemore, Bies and Albers; cosponsored by Senators Breske, Lazich, Schultz, Olsen and Grothman. Read first time and referred to Assembly Committee on Natural Resources on 10/16/07. Public hearing held on 12/19/07. Executive action taken 01/18/08 Report passage recommended by committee on Natural Resources, Ayes 8, Noes 6 Referred to committee on Rules on 0124.

AB 599 Creating Incentives for Historic Preservation and Promoting Downtown Areas in the State (Assembly companion bill to SB 331 below)

This bill creates a number of new provisions that will facilitate the preservation and restoration of historic buildings. It also promotes redevelopment, revitalization and other investments in the state's downtown areas and downtown business districts, including areas that are part of the State Main Street Program. Finally, the bill will require the Department of Transportation to consult with the Department of Commerce and municipal downtown planning organizations regarding any proposed highway projects that could affect downtown areas and downtown business districts, including visual and aesthetic effects of such projects.

Status: Introduced on 11/29/07 by Representatives Shilling, Hintz, Sheridan, Vruwink, Richards, Gunderson, Hilgenberg, Soletski, Fields, Vos, Molepske, Zepnick, Pope Roberts, Jorgensen, Seidel, Boyle, Hixson, Sinicki and Albers.; cosponsored by Senators Lassa, Darling, Erpenbach, Harsdorf, Lehman, Plale, Risser, Roessler, Schultz, Vinehout and Taylor. Read first time and referred to Assembly Committee on Rural Affairs on 11/29/07. Fiscal estimate received on 12/14/07. Public hearing held on 0124. Assembly amendment 1 offered by Repesentative Shilling on 0211. Assemly Amendment 2 offered by Representative Wood on 0213. Assembly amendment 3 offered by Representative Shilling on 0215.

UPDATES TO PREVIOUSLY REPORTED SENATE BILLS

SB 202 Authorizing Local Governments to Issue Debt Related to Brownfields Revolving Loan Fund –

Current law authorizes the Department of Natural Resources (DNR) to enter into an agreement with the federal Environmental Protection Agency (EPA) to establish and administer a brownfields revolving loan program under which DNR makes loans or grants for the cleanup of brownfields. Local governments apply for and receive these DNR-administered funds either as a loan or as a grant, the proceeds of which are used for the cleanup of brownfields. Local governments also have general authority to issue municipal obligations in anticipation of receiving federal or state aids, which must be repaid in approximately 18 months. This bill grants specific authority to local units of government, including cities, villages, towns, coun-

ties, metropolitan sewerage districts, and town sanitary districts, to issue municipal obligations in anticipation of receiving proceeds from brownfields revolving loan program loans or grants. Such obligations must be repaid within 10 years or, if refinanced, within 20 years. The bill also specifies that local units of government may issue promissory notes, which must be repaid within 20 years, for public purposes related to the brownfields revolving loan program.

Status: Introduced by Senators Roessler, Cowles, Olsen and Schultz on 6/6/07; cosponsored by Representatives Gunderson, Hahn, A. Ott, Kaufert, Hintz, Albers, Staskunas, Petrowski and Balleg Read first time and referred to Senate Committee on Environment and Natural Resources on 6/607.Fiscal estimate received on 6/21/07. Public hearing held by Senate Committee on Environment and Natural Resources on 12/4/07. Executive action taken 0218. Report passage recommended by committee on Environent and Natural Resources, Ayes 5, Noes 0 on 1220. Available for scheduling.

SB 331 – Creating Incentives for Historic Preservation and Promoting Downtown Areas in the State

This bill creates a number of new provisions that will facilitate the preservation and restoration of historic buildings. It also promotes redevelopment, revitalization and other investments in the state's downtown areas and downtown business districts, including areas that are part of the State Main Street Program. Finally, the bill will require the Department of Transportation to consult with the Department of Commerce and municipal downtown planning organizations regarding any proposed highway projects that could affect downtown areas and downtown business districts, including visual and aesthetic effects of such projects.

Status: Introduced on 11/19/07 by Senators Lassa, Darling, Erpenbach, Harsdorf, Lehman, Plale, Risser, Roesser, Schultz, Vinehout and Taylor; cosponsored by Representatives Shilling, Hintz, Sheridan, Vruwink, Richards, Gunderson, Hilgenberg, Soletski, Fields, Vos, Molepske, Zepnick, PopeRoberts, Jorgensen, Seidel, Boyle, Hixson, Sinicki and Albers. Read first time and referred to Senate Committee on Economic Develpment on 11/19/07. Fiscal estimate received on 12/14/07. Public hearing held on 0213.

If you see a bill of interest to you, sign up for the Wisconsin Legislative Notification Service that allows anyone to track legislative activities on proposals, committees, authors and subjects. Foro other legislative links and resources, please see the list available on the WAPA website.

Case Law Update

By Brian Ohm, University of Wisconsin – Madison, WAPA Vice President for Chapter Affairs

When is a project consistent with a comprehensive plan? A California Approach

In light of questions that many planners have about the issue of "consistency" because of the requirement in Wisconsin law that beginning January 1, 2010, zoning, official mapping, and subdivision ordinances need to be consistent with a local community's comprehensive plan, it is instructive to look at cases from other states that require consistency. California has required consistency between a variety of actions and the local comprehensive plan for decades. Despite a substantial body of case law on the issue of "consistency," the California courts still wrestle with the issue.

A recent California Court of Appeals case, Friends of Lagoon Valley v. City of Vacaville, 154 Cal. App. 4th 807; 65 Cal. Rptr. 3d 251 (2007), may present some

insights for Wisconsin planners on the issue of consistency. The facts of the case are as follows.

The City of Vacaville's 1990 comprehensive plan required that development in certain areas, including the Lower Lagoon Valley, proceed in accordance with specific policy plans. The comprehensive plan included the goal of facilitating the development of "a business park of regional significance and 'upper-end' housing" in the Lagoon Valley area and listed several guidelines for commercial and residential development. The comprehensive plan required development of the business park and highway commercial areas to be of the highest standard of quality, protecting view corridors and "the open space feel of the valley," and it limited residential development to 730 units, which were to be integrated with a golf course and a recreation complex. The comprehensive plan also stated that development should "enhance the recreational potential of the area." Several guidelines stressed the need to protect existing views of the Lagoon Valley Lake and surrounding hills and to preserve "the open space feel of the valley."

Shortly after the comprehensive plan was adopted, the City approved the Lower Lagoon Valley Policy Plan (Policy Plan). The Policy Plan translated the comprehensive plan guidelines into a detailed proposal for development of the region. Specifically, the Policy Plan proposed to reserve a total of 275 acres for creation of an office/business park and 49 acres for a medical complex, which would include a Kaiser hospital. Commercial development was also proposed along Interstate 80, with the possibility of a new hotel construction. The Policy Plan proposed to build 730 single-family residences in a community surrounding an 18-hole golf course, with other recreational facilities possibly to be combined with the golf course clubhouse. In addition to the golf course, the Policy Plan anticipated two major recreational uses of land: a 352-acre regional park, and a trails network in the extensive open space area bordering the Lagoon Valley. A total of 993 acres would be left as open space in the plan.

Almost fifteen years later, in January 2005, a development proposal for the area was presented that called for (1) construction of a business village and town center with 700,000 square feet of office space and up to 50,000 square feet allocated for retail and commercial uses; (2) development of a 338-acre residential community, with a variety of housing types integrated with a golf course and associated recreational facilities; (3) preservation of 443 acres of open space, including parks and recreational uses; and (4) creation of public uses such as a new fire station and roadways. The planned residential community would include 874 single-family homes (including 24 affordable-housing units) and 100 attached townhouses reserved for senior citizens. An additional 51 affordable-housing units would be located in the mixed-use town center.

While recognizing that some aspects of the development proposal deviated from particular planning provisions, the City approved the development after determining that the project was consistent overall with the City's comprehensive plan and the more precise development guidelines of the Policy Plan. A citizens group, Friends of Lagoon Valley, challenged the City's finding that development proposal was consistent with the comprehensive plan and the Lower Lagoon Valley Policy Plan.

The Friends of Lagoon Valley inconsistency argument centered on four particular areas: (1) increased traffic and differences in traffic circulation; (2) reduced size and scale of development for the office business park; (3) increased residential development; and (4) the overall layout of proposed uses is different from what was envisioned in the comprehensive plan map.

Increased traffic

A land use policy in the City's comprehensive plan (not specific to the

Lagoon Valley area) stated that the City will "not permit development of such intensity or density that, if built without commensurate transportation or other infrastructure improvements, the resulting water and sewer service requirements and traffic generated will create substantial problems or unacceptable levels of service, unless an acceptable mitigation program to provide these services is implemented." Elsewhere, the comprehensive plan stated that developers should be required to pay their "fair share" for improvements to public facilities, including streets, bridges and traffic signals, made necessary by the new development.

A transportation impact analysis of the development proposal indicated that the project would contribute to significant cumulative traffic impacts at several locations. To mitigate these impacts, the developer proposed to pay traffic impact fees to cover the costs of certain transportation improvements. The Friends of Lagoon Valley argued that the transportation impact fees were not a reasonable mitigation program. The Court disagreed, holding that the City did not abuse its discretion in concluding the payment of traffic impact fees was a reasonable mitigation program.

The Friends of Lagoon Valley also argued the development proposal violated certain guiding policies in the transportation element of the City's comprehensive plan. The comprehensive plan stated that development should "[s]trive to maintain [level of service] C as the minimum standard at all intersections, interchanges and road links." A related guiding policy indicated level of service D was permissible as an interim level of service while improvements are being undertaken to bring service up to level of service C or better, or alternately the City has discretion to approve level of service D as an allowable standard for the year 2020 "for infill areas or isolated situations where existing development or other practical considerations limit improvements." The comprehensive plan also gave the City authority to approve service at level of service E or F if the city council makes certain findings at a public hearing. One situation in which the comprehensive plan authorized approval of level of service E or F as a permanent condition was when (1) the affected intersection or exchange is in "an infill or isolated area"; (2) "[t]here is no practical and feasible way to mitigate the lower level of service"; and (3) "[t]he project resulting in the lower level of service is of clear, overall public benefit."

The Friends of Lagoon Valley claimed the City had no discretion to approve a project that resulted in unacceptable levels of service. The Court, however, disagreed. According to the Court, the transportation policies in the comprehensive plan gave the City flexibility to allow reduced service levels if a project is beneficial and there is no feasible way to improve the LOS with mitigation. The Court did not interpret the policies as rigid mandates on the minimum levels of service. The Court also noted that the transportation impact analysis indicated that unacceptable levels of service are expected in 2025 even without the proposed development. According to the Court, the Friends of Lagoon Valley's rigid reading of the comprehensive plan would essentially rule out development in the area—a result that was at odds with the policies expressed in the comprehensive and Policy Plans.

Reduced Office Business Park Development

The Friend of Lagoon Valley also argued that the reduced size of the office business park in the development proposal was inconsistent with the development envisioned in the Policy Plan. The Policy Plan proposed to construct an office business park and a large hospital complex totaling over 4 million square feet, whereas the project's business village will cover only 700,000 square feet. While the Court agreed that the square footage of the office business park devi-

ated from the Policy Plan, it was not inconsistent with any guideline stated in the City's comprehensive plan. According to the Court, the comprehensive plan recognized that the balancing of policies could affect the City's ability to implement certain development projects fully, and it explicitly provided: "The City has no obligation to approve projects at the maximum permitted density."

The comprehensive plan also explicitly recognized that policies such as preserving natural habitats or maintaining desirable traffic levels of service, for example, could "limit development

on particular sites in ways not apparent from the Plan diagram." Finally, the comprehensive plan did not specify any required square footage, but required only that the business park's construction be "of the highest standard of quality," preserving view corridors and the "open space feel of the valley." The Court held that it was within the City's discretion to conclude that the development proposed in the Project is based on the unique style and high quality of its design. The Project's office business park employs high quality design and will continue the architectural "village" theme of the valley's residential developments. Office and commercial areas will be extensively landscaped and connected by a network of plazas and walkways, making the area pedestrian oriented and arguably more compatible with the valley's "open space feel" than a larger scale development might have been.

Increased residential development

Friends of Lagoon Valley also argued that the increased number of residential units approved for the project was inconsistent with the comprehensive and policy plans. Land uses originally envisioned as business or commercial in nature were shifted to residential uses. The Court did not find any inconsistency. According to the Court, the Friends of Lagoon Valley's argument construed the policies expressed in the plans too rigidly and ignored the flexibility City officials have in implementing them. Rather, the Court found that substantial evidence supported the City's conclusion that the residential development proposed in the project was consistent with the City's comprehensive plan. The comprehensive plan required only that development of the Lower Lagoon Valley include a regionally significant business park and "upper-end" housing, and it listed several requirements for achieving these goals. Consistent with the comprehensive plan, the residential villages in the project will consist almost entirely of upscale single-family homes, which will be integrated with a "championship style" golf course and recreational complex. The Project also brought a number of income-restricted and senior housing units to the Lagoon Valley, many of which will be integrated with the business village.

The Policy Plan gave planning officials leeway to permit mixed uses like the townhouses located in the business village so long as they are consistent with the Policy Plan and do not impair other permitted uses. As stated by the court, "The question is not whether the square footage of the proposed development matches the square footage envisioned for various uses in planning documents, but whether the project is compatible with, and does not frustrate, the [comprehensive] plan's goals and policies. . . . Once a [comprehensive] plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. It is, emphatically, not the role of the courts to micromanage these development decisions." [Citations omitted.]

Layout

The Friends of Lagoon Valley's final inconsistency argument was that the layout of land uses in the Project differed from the comprehensive plan's land use and circulation map. The Court looked to the language in the City's comprehensive plan that stated that the maps were pre-

sented only as "a general illustration of the policies of the [comprehensive] Plan" and was "not intended to reflect every policy direction." The comprehensive plan further stated that review of applicable policies would be "necessary to determine [the] precise land use potential of any site."

Based on this language, the Court concluded the comprehensive plan map was intended to be a guideline, not a mandate, so the City did not abuse its discretion in approving a somewhat different layout of uses than was originally envisioned for the Lagoon Valley.

In sum, California case law establishes that a governing body's conclusion that a particular project is consistent with the relevant comprehensive plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion. An ordinance is consistent with the comprehensive plan if, considering all its aspects, it will further the objectives and policies of the plan and not obstruct their attainment. Consistency does not require perfect conformity.

We'll review additional consistency cases from California and other states in future issues of the WAPA case law update.

Moratoria Case Finally Decided by Wisconsin Court of Appeals

Summarized by Brian Ohm

On February 28, 2008, the Wisconsin Court of Appeals confirmed the authority of local governments to impose temporary moratoria on land divisions under Chapter 236 of the Wisconsin Statutes. The case is entitled *Wisconsin Realtors Association, Inc. v. Town of West Point.*

The facts of the case are relatively straight forward. In September 2005, the Town of West Point in Columbia County adopted an ordinance establishing a temporary stay on the acceptance, review, and approval of any applications for a land division or subdivision while the Town completed an update to its comprehensive plan. The Town, which is under county zoning, relied on the general law enabling the local regulation of subdivisions under Section 236.45(2) of the Wisconsin Statutes. The Wisconsin Realtors Association, along with the Wisconsin Builders Association, initiated a lawsuit arguing that section 236.45(2) of the Wisconsin Statutes did not authorize a town-wide moratoria because (1) section 236.45 authorizes only prohibitions on development "in areas," not all areas of a municipality; (2) the Town's ordinance failed to make applicable all of the provisions of Chapter 236; and (3) allowing moratoria under Chapter 236 would render meaningless the express grant of authority of section 62.23(7)(da) that authorizes municipalities that have not adopted a zoning ordinance to freeze existing uses while a "comprehensive zoning plan" is being prepared .

The Circuit Court for Columbia County decided that the Town of West Point had the authority under 236.45 to impose a moratorium. The Realtors Association and the Builders Association appealed the decision to the Wisconsin Court of Appeals. The Wisconsin Court of Appeals initially determined that, since the case raised issues that had never been decided before in Wisconsin, the case should be decided by the Wisconsin Supreme Court. The Wisconsin Court of Appeals therefore did not issue an opinion in the case and certified the case to the Wisconsin Supreme Court. The Wisconsin Supreme Court accepted certification of the case. Following a briefing of the case and oral argument of the case, the Wisconsin Supreme Court deadlocked in a rare 3-3 tie. The seventh justice, Annette Ziegler, did not participate because of a conflict of interest due to her receiving campaign contributions from the Realtors and Builders.

The Wisconsin Supreme Court then sent the case back to the Court of Appeals to finally decide the case.

The Wisconsin Court of Appeals disagreed with all the arguments made by the Realtors and Builders and held that municipalities do have authority under section 236.45(2) of the Statutes to impose a temporary prohibition on land divisions during the development of a comprehensive plan. It is not certain whether the Realtors Association or the Builders Association will petition to have the Wisconsin Supreme Court review the case. The Court of Appeals did recommend the case for publication so it will serve as precedent for similar cases in other municipalities.

The Wisconsin Chapter of the American Planning Association filed a “friend of the court” brief in support of the authority of local government in Wisconsin to use moratoria.