



WAPA

WISCONSIN CHAPTER / AMERICAN PLANNING ASSOCIATION

Newsletter

Sustainable Communities and Wisconsin Lessons from Wisconsin and Sweden

By ANNA HAINES, ASSOCIATE PROFESSOR AND
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*Even the journey of a thousand miles must
begin with a single step. – Chinese proverb*

Introduction

Before we start to discuss the topic of
sustainable communities, we want to reassure

readers we will not discuss the philosophy
behind sustainability, or the various argu-
ments, or try to define it. Instead, we intend in
this article to get on with it, and try to answer
what we consider is a key question: What can

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Comprehensive Planning and Wisconsin's Forests

The planning process is about
developing a vision for your community

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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

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

Monthly legal and legislative updates are posted during the last half of each month. Look up information about events sponsored by WAPA, APA, and other organizations with programming related to planning.

Governor Doyle Announces New Phase of Shoreland Protection Rule-making

Governor Doyle’s office released the following announcement on July 25, 2006.



Effort to update shoreland protection rules enters new phase—groups to focus in on areas citizens criticized in original proposal

Wisconsin’s efforts to update its 38-year-old statewide shoreland protection standards entered a new phase in summer 2006. Department of Natural Resources staff finished reviewing the 12,000 citizen comments received during and after public hearings in summer 2005 and in June reconvened the citizen advisory committee that had

helped design the original proposal and had been meeting since the rewrite effort began in Fall 2002.

The advisory committee heard summaries of the public comments on the original proposal to update Chapter NR 115 of the Wisconsin Administrative Code, which governs such things as how far houses need to be set back from the water, lot sizes and limits on cutting down trees and other vegetation (see “Revision Post Hearings- 2006 and Beyond” at website below).

Continued on page 4

Notice to Change WAPA Dues

The Chapter leadership has found it necessary to increase our Chapter dues from the current \$40 per year to \$45 per year. It has been at least 5 years since our last dues increase. Cost increases over that time have necessitated the increase which will be effective at the start of 2007. I hope this is not an issue with anyone. The Chapter continues to strive to provide more services, increase the visibility of the planning profession and advocate for planning both here in Wisconsin and at the federal level. If you have any questions, please contact me.

Gary Peterson, AICP
Chapter President

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The comments roughly fell into nine main areas with several common themes. The public has indicated:

- Their desire for a concise code that increases flexibility while guaranteeing state-wide consistency and increased protections for our natural resources, and
- Strong desire for greater resource protection in the new regulations.

Importantly, the critical player in carrying out and enforcing the rules – The Association of Wisconsin County Code Administrators— said the rules were too complicated and unworkable.

Changes are clearly needed to develop rules that work on the ground. The Department must also address other major areas identified in the comments.

Our goal in coming months will be working with members of the advisory committee, the county code administrators and other key stakeholders to address areas identified in the public comments (see “Revised Timeline” and “2006 Advisory Committee Information” at website below). We have

relied on an open and participatory process for this revision. We believe that this will be key to helping us find that proper balance between property owners’ desires and the public’s rights in Wisconsin waters.

Three technical work groups will help us in this task (see “2006 Focus Groups” at website below). Two groups will consider “impervious surfaces” and “mitigation” respectively, and try to develop options in those areas.

Impervious surfaces are surfaces that prohibit water infiltration into soils: paving, roofs, etc. The idea is that an impervious surface control standard could replace the non-conforming structure (NC) standard. Instead of regulating NC structures, it might focus on where a structure is built on a shoreland lot, connect this information with how the location impacts the water resource, and finally devise a plan that will address those impacts (see “Impervious Surface Goals” at website below).

Mitigation is an action taken to minimize the impacts of development. A greater

degree of flexibility can be introduced if mitigation measures are incorporated to offset the result of development with resource impacts. The original proposal sought to let owners of grandfathered structures keep their structure indefinitely. But when the property owners decide to make major changes to their nonconforming structure, they would be required to take steps to mitigate or offset the impact of their actions on clean water and habitat in the portion of their property closest to the water. The mitigation focus group will now try to refine that concept to devise performance standards to offset impacts to water bodies by utilizing resource protection mechanisms that can realistically meet the standards over the long term. The group will focus on several types of mitigation, not just buffer restoration (see “Draft Mitigation 6-06” at website below).

Once those two groups have developed their options, a third group, comprised of county code administrators, will consider the

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Forests: *Continued from page 1*

(town, village, city, county or regional entity) and then creating a plan to put that vision into action. The plan created will serve as a guide to direct development for years to come. Our forests are a large component of our landscape and quality of life here in

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WAPA Executive Committee Retreat

Each January, the WAPA Executive Committee sets aside a full day to review the organization’s strategic plan, set priorities for the year, and develop the annual budget. This year, Northeast District Representative Linda Stoll hosted the retreat at her home in Menasha. The Executive Committee extends its sincere thanks to Linda for providing a comfortable setting for a hard day’s work.



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Law Update

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A Meeting of One – *Plourde v. Habegger*

Lawrance Plourde wanted to open a car wash on his property in the city of new richmond. The building inspector, wallace habegger, required that plourde install a connecting street as a condition of approving the building permit.

Open meetings

Plourde filed a complaint alleging that Habegger and five other members of the city’s supervisory and safety committee violated the open meeting law by meeting to discuss his building permit without providing notice of the meeting and failing to conduct the meeting in open session. Habegger and the other defendants moved to dismiss, arguing that there was no meeting that was subject to the open meeting law.

The court began its analysis by looking to section 19.83(1) of the Wisconsin statues, which requires that “every meeting of a governmental body shall be preceded by public notice... and shall be held in open session.”

For a meeting of a governmental body to occur, the court held, two things must happen: 1) there must be a purpose to engage in governmental business; and 2) the number of members present must be sufficient to determine the parent body’s course of action regarding the proposal discussed. The statue defines “meeting” as “the convening of members of a governmental body for the purpose of exercising the responsibilities, authorities, power of duties delegated to or vested in the body.”

The court found that because Habegger, as the City’s building inspector, is the only individual authorized to grant or deny building permits, and the Supervisor and Safety Committee has no vested authority in such matters, the requirement for a “meeting” was not met. Section 19.82(2) states that “members,” plural, must convene. This implies that there must be a least two members present. The court held that the statute was not written with the intent to require public soliloquies by single member governmental bodies, and that the open meeting law is not meant to apply to single member

governmental bodies.

The court further explained that because only six of the fourteen members of the Supervisory and Safety Committee were present when Habegger reviewed Plourde’s permit, it was neither a presumptive quorum nor a negative quorum. Thus the open meetings law did not apply and there was no violation.

Local Improvements are Special – *Genrich v. City of Rice Lake*

The City of Rice Lake levied a \$44,612.25 special assessment against William L. Genrich’s property for an extension of South Street and installation of certain

Special assessments

public improvements including water and storm sewers, sidewalks, curbs and gutters.

The court explained that special assessments can only be levied for local improve-

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ments and that general improvements are those that confer a “substantially equal benefit and advantage” to the property of the whole community, or benefits the public at large.

A local improvement, although incidentally beneficial to the public at large, is primarily made for the accommodation and convenience of inhabitants in a particular locality and confers “special benefits” to their properties.

The court held that because special assessments can only be levied for local improvements, it follows that if an assessment is not local, it cannot be financed in any manner by special assessments.

When Land Descriptions Fail to Describe – *First American Title Insurance Co. v. Dahlmann*

Dennis Dahlmann purchased a building that abutted a city street. At the time of the closing, Dahlmann received a title insurance policy from the title company. In issuing the policy, Dahlmann relied on a survey that depicted the encroachment of an exterior wall of a parking garage but not the encroachment of the garage under a city street. After the closing, it was determined that the building encroached onto the city street and that the city would seek to charge an annual fee for the privilege of the encroachment, or require the removal of the encroachment.

Dahlmann claimed that the encroachment created a defect in his title and therefore impaired his ability to market his land. Dahlmann also claimed that the cost imposed by the city should be covered by his insurance because it was not marked as an exclusion

in his policy. The court faced the question of whether an encroachment by an improvement onto adjacent land constituted a defect or encumbrance in the title of the insured property, for the purpose of the title insurance contract.

The court used a title warranty defect analysis to determine whether, under the totality of the circumstances, the encroachment was substantial. The court held that a substantial encroachment would constitute an encumbrance on the title of the insured property. The court went on to reject the argument that a title policy did not insure title to any property beyond the land described in the policy, noting that such description was meant to identify the land covered, not to restrict the nature of coverage.

The court held that because the definition of “land” in Dahlmann’s policy was ambiguous, and because ambiguous terms in an insurance policy are construed against the drafter, they concluded that the definition of land is not controlling on the scope of coverage and, therefore, does not limit coverage.

Jurisdictional Offers in Condemnation Proceedings – *The Warehouse II, LLC v. State of Wisconsin Department of Transportation*

The Wisconsin Department of Transportation (DOT) began condemnation pro-



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Suzanne K. Schalig
 Attorney Schalig, Brookfield City Attorney for the past twelve years, has joined the firm of Schmidt, Rupke, Tess-Mattner & Fox, S. C., and will concentrate her practice in land use issues, including zoning, development, and commercial real estate.

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ceedings against the property owned by The Warehouse. After DOT issued its jurisdictional offer to purchase, the Warehouse challenged the condemnation under Wis. Stat. § 32.05(5) in Circuit Court. Warehouse claimed that because DOT did not negotiate in good faith before making the jurisdictional offer, they did not have the right to condemn the Warehouse property.

The fact that the DOT did not negotiate in good faith is not in dispute in this case. What is in dispute is whether Wis. Stat. § 32.28(3)(b) applies when a condemner's jurisdictional offer was made in bad faith, causing a jurisdictional defect in the offer to purchase.

The court recognized that the obligation to negotiate with the property owner before making a jurisdictional offer is a valuable right of the property owner. The court held that a good faith negotiation prior to issuing a jurisdictional offer to purchase is not merely a technical obligation, but is rather a fundamental, statutory requirement necessary to validly commence condemnation and confer jurisdiction on the condemnation commission and the court.

The court held that if a condemnee were denied litigation expenses for a successful challenge to the negotiation requirements, there would be little to discourage a condemnor from making a low-ball offer to save money. Therefore, the court found that the Warehouse was entitled to litigation expenses.

Who Pays the Pipe(r) – *Steinbach v. Green Lake Sanitary District*

Eighteen plaintiffs own residential condominium units on Big Green Lake. The Green Lake Sanitary District (District) operates a wastewater treatment plant and a sanitary sewer collection system that serves Big Green Lake. The district is governed by an elected, three-member board of commissioners that have the authority to project, plan, construct and maintain a water, solid waste and sewage system. In 2000, the commissioners planned to extend the sewer service to additional land within the district by using its special assessment powers under Wis. Stat. § 60.77(5)(f).

The District levied against each plaintiff or parcel of record the cost of installing one four-inch pipe stub connecting the sewer main to the property edge of each lot. The district also charged for a connection that was individually levied against every habitable unit and every structure connected to the sewer system that did not include a habitable building. Each condominium unit was a parcel of record, even though they all sat upon one lot of record.

The question before the Supreme Court was whether the District unreasonably levied a sanitary sewer system to the 18 condominium owners, when they only installed one four-inch pipe stub.

The Court found that the assessment was unreasonable because the charge required the owners to bear a disproportionate amount of the costs of the sewer as compared with the benefit they received. The court explained that it was unreasonable because the petitioners were being charged the full amount for the installation of one four-inch pipe stub which they shared.

When defining reasonableness the Court looked at three factors:

- Was there a nexus between the charge to an owner of a parcel of record who shares access to the sewer and the cost to the District to provide that access?
- Were all assessments similar? When making assessments the municipality may not assess one group of property owners by a method that is completely different from the method used to assess another group of property owners resulting in disproportionate distribution of cost among various taxpayers.
- Finally did the property owners received a greater benefit than was provided to other lots who were affected by the sewer extension?

Because the assessment was unreasonable here, the Court remanded the matter back to the circuit court, with the directive to reinstate its order reducing the assessment against each condominium unit to 1/18th of the original charge.

High Court Leaves Wetlands Jurisdiction Unsettled

Summary

Earlier this year, I alerted you to a pending United States Supreme Court decision which hopefully would have resolved the issue of how far the Federal Government can regulate wetlands. Unfortunately, the June 19, 2006 decision of the United States Supreme Court was hardly a source of comfort to either side in the wetlands jurisdiction debate. Developers seeking more certainty as to what land is under the Corps of Engineers' jurisdiction are faced with two quite different theories of jurisdiction, with no clear notion how the lower courts will apply them. On the other hand, environmentalist dodged a bullet, but know that only one vote stands between the current expansive definition of jurisdiction and a much more constricted one favored by four members of the high court.

Analysis

A divided U.S. Supreme Court ruled in two cases involving developer's plans to build on land the U.S. Corps of Engineers and the EPA had ruled contained wetlands that they had to go back to the lower courts for further findings on the question of whether the wetlands are "waters of the United States" subject to the Corps' jurisdiction.

The EPA brought an enforcement action against a property owner for filling wetlands on a planned shopping center site in Bay County, Michigan without obtaining a section 404 dredge and fill permit. The wetlands fed into a drain connected to a creek that flowed into a navigable river. The Sixth US Circuit Court of Appeals upheld the District Court's ruling in favor of the government.

In a companion case before the high court about 16 acres of a 20 acre parcel in Macom County Michigan were wetlands. They adjoin a ditch that flows into a drain that flows into a creek that flows into Lake St. Clair. A 4 foot wide brim separates the wetlands from the ditch. The Corps refused to issue the property owner a permit to fill most of the wetlands in order to build a 112 unit condominium development. The lower courts upheld the Corps determination.

In each of the appeals, the ultimate question before the Court was whether the government agencies had improperly asserted jurisdiction over lands not covered by the Clean Water Act's requirement for a permit to fill in "waters of the United States."

The Supreme Court's plurality opinion authored by Justice Scalia and joined by Justices Thomas, Alito and Chief Justice Roberts, concluded the jurisdictional term "waters of the United States" does not refer to water in general but to water as found in streams, rivers and lakes. Thus, these Justices concluded that the phrase only includes relatively permanent, standing or flowing

bodies of water. They felt that it did not include normally dry channels through which water intermittently flowed. They rejected the notion that "a mere hydrological connection" between a wetland and waters of the United States could confer jurisdiction.

Casting the fifth vote necessary for a judgment, Justice Kennedy issued an opinion that sets out a different standard for the courts to apply in determining jurisdiction. He felt that a water or wetland must possess a "significant nexus" to waters that are navigable in fact. Justice Kennedy felt that the plurality opinion was unpersuasive in that the requirement of permanent standing water or continuous flow made little practical sense in relation to a statute concerned with downstream water quality. He argued that a mere trickle, if continuous, would be regulated while channels carrying huge volumes of water, but intermittently, would not.

In a dissenting opinion, Justice Stevens joined by Justices Souter, Ginsberg and Breyer argued that the wetlands in both cases were adjacent to tributaries of navigable waters. Such wetlands play important roles in maintaining the quality of the adjacent waters and waters downstream. Given these important water quality roles and the ambiguity inherent in the phrase "waters of the United States" the Corps reasonably interpreted its jurisdiction to cover such non-isolated wetlands. These Justices concluded that jurisdiction does not depend on a wetland by wetland inquiry. It is enough that wet-

lands adjacent to tributaries generally have a significant nexus to the watershed's water quality.

To What Extent Can the State Encourage Economic Development?

Summary

On July 7, 2006, in *Northwest Airlines, Inc. v. Wisconsin Department of Revenue and Midwest Airlines, Inc.*, the Wisconsin Supreme Court ruled that a statute providing tax breaks for airlines operating a hub within Wisconsin was not unconstitutional. The obvious result of the decision is that the Court has effectively allowed a seemingly economic protectionist tax exemption to stand due to the jobs and revenue that it could create and be retained within the State.

Analysis

This case centers around Wisconsin Statutes §§ 70.11(42) and 76.02(1) which provide an absolute exemption from ad valorem taxation for any airline that operates a hub facility in Wisconsin. Northwest Airlines, Inc. (Northwest), who does not have a hub facility in Wisconsin, brought suit challenging the constitutional validity of the tax exemption claiming itself disadvantaged. Northwest claimed the hub exemption

violated the Interstate Commerce Clause of the U.S. Constitution, the Equal Protection Clause of the U.S. Constitution and the Uniformity Clause of the Wisconsin Constitution.

The first issue that the Court addressed was whether the tax break violated the Commerce Clause. The Court held that when Congress enacted Section 40116 of the U.S. Code, that statute precluded Commerce Clause review of state taxation of airlines. Section 40116 prohibits a number of taxes and types of tax assessment and collection practices with respect to airlines. According to the Court, § 40116 also authorized the states to impose any type of tax and to use any tax assessment or collection practice not prohibited by subsections (b) or (d) of § 40116. Hence, the Court concluded that because Congress clearly intended to preclude Commerce Clause review of airline taxation when it enacted § 40116, and the hub exemption doesn't fall within any of the prohibited assessment or collection practices in subsections (b) or (d), the hub exemption is authorized by § 40116.

State tax classifications require only a rational basis to satisfy the Equal Protection Clause, meaning that, so long as the classification made does not concern a suspect class or implicate a fundamental right, then it must bear only a rational relationship to a legitimate government interest. The Court determined that the hub exemption implicated neither a suspect class nor a fundamen-

tal rights. The Court held that the legislature chose to classify airlines on the amount and type of business that they do in Wisconsin and the Court decided it must accept the classifications adopted by the legislature unless they are very wide of any reasonable mark.

The Court next went into a discussion of all of the legitimate governmental purposes advanced by the hub exemption. First, the Court noted that there would be more nonstop flights to and from the state which would encourage existing business to remain in-state and help attract new business; an increase of all flights to and from the state; in addition it would mean an increase in jobs in the state. The Court also pointed out that when Northwest reduced its Wisconsin presence, Milwaukee lost nearly 100 jobs and that the legislature could have reasonably believed that the hub exemption would guard against the loss of more jobs and prevent a further drop in the number of flights to and from Wisconsin. Finally, the Court noted that both Midwest Airlines and Air Wisconsin, two airlines benefiting from the hub tax exemption, were both looking to expand their operations around the time the exemption was enacted and certainly it was reasonable for the legislature to believe that the exemption would influence the two airlines to expand in Wisconsin.

The Wisconsin Uniformity Clause requires that there be one class of taxable property and that all property within that class must, as nearly as practicable, be taxed

uniformly. The Uniformity Clause also grants the legislature the right to select some property for taxation and to totally omit or exempt other property. The only limitation upon the legislature's authority to exempt property is that the distinction between taxed and wholly exempt property must bear a reasonable relation to a legitimate purpose of government. The Court then used the same economic justifications that it used under the Equal Protection Clause to show that the classifications of the hub exemption are rationally related to the legitimate govern-

mental purpose of ensuring the vitality of the Wisconsin economy.

Although Chief Justice Abrahamson and Justice Bradley dissented to this opinion, the opinion is a strong endorsement of economic encouragement through legislation within the state. The Court chose to allow this tax exemption, noting the obvious economic benefits that the state would gain, as opposed to holding the exemption unconstitutional, despite the fact that the tax exemption is somewhat protectionist and discriminatory in nature.

the requirements of Wis. Stat. § 893.80 (1g). Thus, the Court of Appeals ruled that the six month limitation period to file a lawsuit against the city did not begin to run.

Analysis

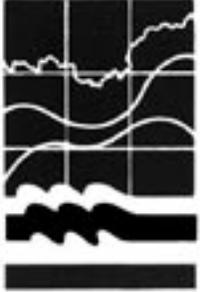
The decision in Pool v. City of Sheboygan reinforced the fact that the courts strictly follow the requirements of § 893.80 which is the statute that requires that a claimant file a notice of claim with the municipality as a precondition to filing a lawsuit. Usually, cases on this subject address the strict procedural requirements that a claimant must fulfill. However, this case shows that "what is good for the goose is good for the gander," so municipalities have to follow this statute strictly too.

Pool owns property that abuts State Highway 28 in Sheboygan. The property contains a privacy fence running parallel to Highway 28. In 2002, the City of Sheboygan advised Pool that he must remove the fence because of a planned project to widen Highway 28. Once Pool did not remove the fence, the City unilaterally removed the fence. Pool then filed a notice of claim and claim alleging inverse condemnation without compensation. Within the 120 day period that the City legally had to respond to the claim, the City sent a notice by certified mail to Pool disallowing his claim and advising him of the fact that he had six months from the date of

Strict Compliance With Notice of Claim Denial Process Required

Summary

On May 3, 2006 the Court of Appeals concluded that a city's notice of disallowance served on a claimant's adult daughter rather than the claimant did not comply with



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mailing to bring a lawsuit on the claim. The certified letter was served on Pool's adult daughter who signed the certified mail receipt of service.

When Pool filed a petition for compensation, the City moved to dismiss the petition because it was filed more than six months after the date of service of the notice of disallowance. The Court of Appeals reversed the trial court decision granting the City's motion to dismiss. The Court of Appeals concluded that there was nothing unclear or open to interpretation in the statutory language that the notice of disallowance must be served on the claimant. Thus, it found that the notice of disallowance served on Pool's daughter was insufficient to comply with the statute because she was not the claimant.

The lesson from this case is that strict compliance for notice of disallowance is necessary to preserve bona fide claims, especially those involving property rights given the narrow six month window the disallowance creates for the claimant to bring their claim against the government.

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WAPA Legislative Update

By Benjamin C. Grawe

DeWITT ROSS & STEVENS S.C.

July 17, 2006

Recent Floor Activity

Although the Legislature is now in its interim period, it met on July 12 to conduct the limited business of passing four administrative bills. All four bills ratified contracts for state employees and were signed by Governor Doyle.

There are no other scheduled regular floor periods until the end of the Legislature's biennial session in January 2007. As of the date of this Update, the Governor has acted upon 1,957 bills passed by both houses, signed 491 into law and vetoed 47 in their entirety.

2006 Study Committees

In preparation for the interim period, the Joint Legislative Council established 19 study committees to study major issues in Wisconsin, including the following:

- Affirmative Action
- Airport Authorities
- Applicability of Open Meetings Law to Quasi-Governmental Bodies
- Charter Schools
- Disaster Preparedness Planning
- District Attorney Funding and Administration

- Expunction of Criminal Records
- Great Lakes Water Resources Compact
- Highway Weight Limits
- Law Revision Committee
- Navigability and Draining Ditches
- Nuclear Power
- Placement of Sex Offenders
- Recod. of Ch. 21, Military Affairs
- Review of Crimes Against Children
- Review of State School Aid Formula
- State Trails Policy
- State-Tribal Relations
- Strengthening Wisconsin Families
- Uniform Debt Management Services

The committees are comprised of legislators and citizens who are knowledgeable and/or passionate about the topics being studied.

Of particular interest to WAPA members might be the two study groups looking into water usage. First, the *Great Lakes Water Resource Compact* study committee, Chaired by Senator Kedzie, is directed to develop legislation to ratify and implement the Great Lakes-St. Lawrence River Basin Water Resources Compact proposed by the governors of the Great Lakes states. To view a copy of the compact, visit: <http://www.csg.org/programs/ncic/documents/greatlakescompact.pdf>

In developing this legislation, the committee must consider the need for new or modified water resource management strategies, including an integrated strategy that is

based on the relationships between surface water, groundwater, and water-dependent natural resources and that addresses water quantity and quality issues in a coordinator manner.

Second, the study committee on *Navigability and Drainage Ditches*, chaired by Senator Lasee, will look at the definition of navigability, which currently is a combination of statutory references and Wisconsin court decisions. Some elements of the test of navigability are quantitative, or based on factual observations by the Department of Natural Resources. The committee is directed to review methods to clarify "navigability" as defined in the statutes and administrative

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rules, with a focus on how the definition of navigability impacts the regulation of drain-age ditches and ditches with no stream history. The committee is to review the methods the DNR uses to determine navigability.

Update on Impact Fees

The Legislative Reference Bureau has released a Legislative Brief on the new laws affecting impact fees, as first reported in the June edition of Update. To review a copy of the LRB brief, visit: <http://www.legis.state.wi.us/lrb/pubs/Lb/06Lb16.pdf>

[wi.us/lrb/pubs/Lb/06Lb16.pdf](http://www.legis.state.wi.us/lrb/pubs/Lb/06Lb16.pdf)

Madison's Inclusionary Zoning Law

On July 11, the Madison City Council passed a new inclusionary zoning law, bringing changes to the requirements for developers to build low-cost housing. Among those changes are the following:

Individuals who purchase homes under the new law will earn equity based upon the amount of money they spend on the home, as opposed to how long they live there.

Developers are able to request certain conditions to offset the cost of developing the low-cost housing, including reducing the minimum parking standards, allowing higher density projects and reduced street widths.

Some cash subsidies will be available to developers under certain conditions.

A new marketing model is based upon the percentage of regular (i.e., not low-cost) units that sell.

The city will have only a short amount of time to re-purchase a low-cost home that an owner is selling.

The law sunsets in January of 2009.

SB 499 – Regarding Recording and Filing Transportation Plats

Introduced by Senators Grothman, Roessler, Lassa and Kedzie on January 6,

2006, SB 499 provides that the Department of Transportation or a municipality may file a plat describing land that is either acquired or disposed of for a project, and a plat may consist of a single sheet or a detail and a title sheet that describes the limits of the project involving the land, a location map, and identification of plat symbols and abbreviations. SB 499 also provides that an affidavit of correction may be filed to correct scrivener errors but may not be used to reconfigure land parcels or rights or interests that are required for a project. The bill allows a plat to be used to delineate a right-of-way, and allows for flexibility in the materials used for a plat and its acceptable size.

SB 499 was signed by the Governor on May 23, 2006. Now 2005 Wisconsin Act 446, it was published on June 5, 2006. To view a copy of the Act, visit: <http://www.legis.state.wi.us/2005/data/acts/05Act446.pdf>

SB 498 – Regarding Local



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Government's Requirements with Regard to "Digger's Hotline"

Introduced by Senators Liebham and Kanavas on January 6, 2006, SB498 allows a local government to provide an excavator with information regarding the location of water and sewer laterals as shown in maps, drawings, diagrams, or other records, that are readily available. If the local governmental unit has no such readily available information regarding the laterals and the local govern-

mental unit provides the excavator with a written notice that they have no such readily available information, the local governmental unit is considered to have satisfied the requirements under the law to mark the locations within the right-of-way of all laterals connected to the sewer or water facilities. The term "local governmental unit" is defined in the law to mean a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or a special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

SB 498 also requires that any person, after December 31, 2006 who installs a non-conductive water or sewer lateral must also install a locating wire or other equally effective means for marking the location of the lateral. This requirement of the law does not apply to minor repairs to or partial replacements of laterals installed before January 1, 2007.

SB 498 was signed by the Governor on May 19, 2006, and is now 2005 Wisconsin Act 425. It was published on June 2, 2006. To view a copy of the new law, visit: <http://www.legis.state.wi.us/2005/data/acts/05Act425.pdf>



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Sweden: *Continued from page 1*

communities *do* to move toward a sustainable future?¹

Over a decade ago, Swedish municipalities stopped talking about sustainability and started taking action. Approximately 70 of the 290 municipalities in Sweden have decided to move towards becoming sustainable through The Natural Step model (see box on next page). Many other Swedish municipalities, including Stockholm, Göteborg, and Kalix are moving towards a sustainable future as well, but using a different framework. About halfway through the tour, we realized that most speakers started their talk with two reasons why their municipality is moving towards a sustainable future: Rapidly increasing human population and increasing carbon dioxide (CO₂) concentrations as a measure of global warming. While each person had a different graphic to rep-



Kalix

Sustainability Defined

To satisfy those readers who would like a definition of sustainability, I have provided one, although there are countless definitions of the term. Probably the most recognized definition is from the Brundtland Commission: Sustainable development...meets the needs of the present without compromising the ability of future generation to meet their own needs.

resent these two phenomena, their reasoning was the same: the planet is in trouble. Another reason Sweden is on the forefront of this discussion on a world-wide basis is their lack of fossil fuels. While Sweden has an abundance of natural resources, oil and coal are not part of that resource base.

So, are Swedish communities sustainable? Have they accomplished all there is to accomplish? NO. Are they moving in the right direction? YES. This article will tell some stories of Swedish municipalities, a few Wisconsin ones, and provide lessons for us.

Swedish Communities

Like in Wisconsin, Swedish communities come in all shapes and sizes. Sweden is one of the largest countries in Europe (158,926 sq miles), but with one of the smallest populations. It is equivalent in land area to California, but only has a population of 9 million.

Many of Sweden's municipalities have steadily worked toward sustainability for more than ten years. As of 2006, 70 of

Sweden's 290 municipalities have become eco-municipalities and have joined SEkom – the National Association of Swedish Eco-Municipalities--to share sustainability ideas and learn from one another. SEkom has developed 12 sustainability indicators that each member municipality monitors on an annual basis. In addition, these indicators have created friendly competition between eco-municipalities.

There are three important aspects to this story: One, each municipality has taken its own approach and set of actions. Each community we visited was different from the next. Two, all of these municipalities had people – the firesouls – in them who worked hard over many years to convince politicians and others that taking steps towards a sustainable future was the right path. Three, to various degrees, each municipality experienced, like the old adage, two steps forward, one step back. A number of places had made lots of progress initially, and then, due to a variety of different circumstances, the sustainability program coasted along until another leap forward.

Swedish examples

Kungsör is a small municipality of about 8,300 people on 78 square miles. It is located on the western edge of Lake Mälaren, Sweden's third largest lake and is connected to the Baltic Sea near Stockholm. The largest percentage of the workforce, 32%, is employed in manufacturing and mining. In 1984, Kungsör, like many rural communities, experienced population decline and loss of employment from companies that moved away or went bankrupt. During the 1980's, Kungsör tried a variety of economic development policies, but nothing was working. By late 1989, the municipality had heard about The Natural Step and in 1990 officially became an eco-municipality. That year the municipal officials agreed to host the first eco-municipality meeting.

Of course, it's not enough to say you are an eco-municipality, you need to begin to do something. Kungsör went through a visioning process and community members realized that maintaining a good place to live and work was their primary goal. Sound familiar? A good place to live and work for Kungsör's citizens means the maintenance of their cultural landscape. This landscape of oak savannahs and pastures has been occupied for over a thousand years and is dotted with ancient burial grounds.

Kungsör now takes a broad view of economic development. It combines habitat

The Natural Step system conditions and practices

Develop policies and practices that ultimately:

Guiding Objective	Type of Practices
1. Eliminate our community's contribution to fossil fuel dependence and to wasteful use of scarce metals and minerals.	Transit and pedestrian-oriented development; development heated and powered by renewable energy; alternatively fueled municipal fleets; incentives for organic agriculture that minimize phosphorus and petrochemical fertilizers and herbicides.
2. Eliminate our community's contribution to dependence upon persistent chemical and wasteful use of synthetic substances.	Healthy building design and construction that reduces or eliminates use of toxic building materials; landscape design and park maintenance that uses alternatives to chemical pesticides and herbicides; municipal purchasing guidelines that encourage low- or non-chemical product use.
3. Eliminate our community's contribution to encroachment upon nature (e.g., land, water, wildlife, forest, soil, ecosystems).	Redevelopment of existing sites and buildings before building new ones; open space, forest and habitat preservation; reduced water use and recycling of wash water.
4. Meet human needs fairly and efficiently.	Affordable housing for a diversity of residents; locally based business and food production; using waste as a resource; eco-industrial development, participatory community planning and decision making.

(James and Lahti, 2004)

restoration with eco-tourism, education and training. Kungsör encourages new environmentally friendly businesses to move into their community. The latest business to open in a restored building near the railway station is Ecoil. Ecoil produces oil for energy (heating) use from rape seed (better known here as canola). The owner contracts with farmers in the area for the rape seed. They use machines made in Iowa(!) to crush the seed to extract the oil. The municipality provides an annual award to a sustainable business within its jurisdiction to highlight the impor-



Ecoil

tance of a sustainable present and future, and the 2006 award went to Ecoil. While many businesses in Kungsör do not fit this image, Kungsör believes it is now on a path that will maintain it as a good place to live and work.

Helsingborg

In contrast to Kungsör, Helsingborg is a municipality of about 122,000 people. It is situated on the western coast and is the closest Swedish city to Denmark. The city has a major port that draws large companies, such as IKEA, and Pfizer, to locate in the area. Helsingborg's sustainability initiatives reach into many aspects of municipal government and it became an eco-municipality in about 1995. Helsingborg focuses on six sustainability strategies, including citizen cooperation, sustainable transportation, sustainable energy, "Healthier Helsingborg," sustainable planning, and clean water. One objective within its sustainable energy strategy is to reduce greenhouse gas emissions by 20% from 1990 levels by 2010. To achieve that objective Helsingborg's Climate Investment Program carries out five major initiatives: bio-fertilizer distribution via pipeline, sorted waste from railway, energy comfort system, street light dimmer, bio-gas (methane) production from waste and from sewage, and information. So far, for example, they have 61 biogas buses operating within the municipality.

Övertorneå

Sweden's northernmost eco-municipality is Övertorneå, a municipality of about 5,200 people that covers 917 square miles and includes a part of the Arctic Circle. Övertorneå became Sweden's first eco-municipality in 1983. The municipality's initial focus was working with farmers on organic and other alternative agriculture methods. Over a twenty year period, the municipality has received grants for and worked towards education and training programs, fish inventories, the planning and construction of an eco-village, a recycling



Övertorneå

program, green purchasing, green building, energy planning, a solar heated community swimming pool and green schools. One of the most remarkable accomplishments is achieving a goal of using no fossil

fuels in municipal operations. Övertorneå transformed all five of its heating plants to use biomass. Many municipal buildings not part of the district heating system also have switched from oil to wood-based fuel. Finally, the municipality transformed the truck, bus and car fleet to biofuels, such as ethanol and bio-diesel. The municipality also produces about 50% of its electricity from wind using 7 turbines.

There are many more Swedish examples. Each municipality has looked to its own needs and made decisions about how to accomplish its goals and objectives. It is important to note here that each municipality went through a planning process at least to identify goals and objectives.

Wisconsin Communities

What has been happening in Wisconsin? Much more than you might imagine. Wisconsin's largest city, Milwaukee, has hired Ann Beier as an Environmental Sustainability Director in July 2006. One of her main priorities will be to develop a Green Plan. Prior to that, the mayor appointed a "Green Team" task force made up of business leaders, government officials and citizens. The task force developed a framework for long-term sustainability and the city now has a number of initiatives related to stormwater management, smart energy, and green economy (see Box 3 for examples).

Chequamegon Bay Region

However, issues of sustainability haven't only caught the attention of Wisconsin's largest city, the rural region around Lake Superior is moving forward with a draft sustainability plan for the region. The Chequamegon (pronounced Che-wa-megon) Bay Area of Ashland and Bayfield Counties, includes the cities of Ashland, Bayfield, and Washburn, and the Bad River and Red Cliff Bands of Chippewa. The population of this area is about 32,000. The City of Washburn was the first city in the United States to pass a resolution declaring it an eco-municipality based on the Swedish model using the Natural Step Framework. The City of Ash-

land soon followed. The City of Bayfield is currently considering adoption of a similar eco-municipality resolution.

However, these actions didn't suddenly occur in the Chequamegon Bay region. The Alliance for Sustainability for many years has sponsored a variety of educational forums of which "Pie and Politics" held at Big Top Chautauqua is a prominent example. In addition, the Alliance coordinated nine study circles with approximately 80 participants. These learning forums helped many individuals to "realize that it may indeed be possible to have a sustainable city and were inspired to finally take action in the community" (Silberstein, 2006). In June 2006, eight people from the region went on the

Examples of Milwaukee's Green Actions

- **Stormwater management** – The mayor has directed city departments to reduce by 15% the amount of stormwater runoff from city properties and encourages businesses and residents to do the same. The city will do this by disconnecting downspouts, planting rain gardens that absorb stormwater, building green roofs, and more.

- **Smart energy** – Purchase biodiesel for city vehicles. Mayor Tom Barrett continues his efforts toward a greener Milwaukee to start purchasing biodiesel fuel for 35% of the City's fleet by July 1, 2006. The move to biodiesel fuel, expected to begin July 1, will improve the City's environmental sustainability and will have a positive impact on air quality.

- **Green economy** – Review regulations to remove barriers to green. Government should work to promote ecologically sustainable practices while protecting human safety. Mayor Barrett has directed the Department of City Development to review current state and local building regulations to eliminate those that unnecessarily prevent green building practices.

Sustainable Sweden tour, which was by far the largest local contingent out of 17 from Wisconsin.

Madison

Wisconsin's Capitol city is considered one of the most progressive communities in the State. Not surprisingly perhaps, in December 2005 Madison passed a resolution to use The Natural Step framework to guide their decisions, operations and management. Madison plans to train about 25 city employees in The Natural Step (TNS) starting in September 2006. SustainDane and 1000 Friends of Wisconsin have been working with the city on training issues and will continue to work with it during the post-training implementation period. Figuring out how to institutionalize TNS training within a city's structure is a challenge. Another challenge is working with employees who see sustainability as extra work rather than incorporating it into their daily tasks and decisions. The city has identified a core team to work with employees and elected officials to build support and understanding about the TNS framework and sustainability.

Like the Chequamegon Bay region, Madison's City Council and Mayor didn't wake up one day and decide to become an eco-municipality. Through a local environmental group, Sustain Dane, 125 people participated in study circles addressing such topics as TNS framework, agriculture, trans-

portation, energy and solid waste management. One result of these study circles was a "Rain Barrel Initiative." Sustain Dane volunteers installed over 100 rain barrels across Dane County in May, 2006, and, as a result of education and outreach, there is now a waiting list for other residents who want to install them.

To summarize, Wisconsin communities have taken the following steps:

- Listened to presentations by various "firesouls" from the Chequamegon Bay region²
- Held study circles to learn about sustainability and eco-municipalities³
- Adopted eco-municipality resolutions
- Plan to train city employees in The Natural Step
- Prepared plans for action

The important part about these initiatives is that local governments are talking about how to make sustainable decisions for the local economy and ecosystem. The ones we have talked about are local governments that either are using or considering the use of the TNS framework to help them make decisions today for the promise of tomorrow.

Lessons

1. It's a local decision to move towards a sustainable future using an approach and taking actions that fit your community. Each

community must choose its own strategy. There is no one right way to move forward. Each community must choose a path that fits its political, fiscal, economic and social realities.

2. Your community needs firesouls, people who are willing to start the conversation and keep it going. There is no reason why a planner, a plan commissioner, or an elected official cannot act as a firesoul.

3. Building local capacity is an important component to any initiative. Many communities have begun study circles or discussion forums to understand issues, systems thinking, sustainability, and implementation.

4. Sometimes you might lose ground. Some of the Swedish communities took two steps forward, then one step back.

5. Bottom line: START THE CONVERSATION!

References

James, Sarah and Torbjörn Lahti. 2004. *The Natural Step for Communities: How Cities and Towns Can Change to Sustainable Practices*. New Society Publishers: BC, Canada.

Silberstein, Jane and Hildebrandt, Lauren. 2006. *Study Circle Effectiveness in the Chequamegon Bay: Learning about and Applying the Principles of Sustainability*. UWEX manuscript.

Other Reading

Gruder, Haines, Hembd, MacKinnon and Silberstein. Sustainability Toolkit for Local Governments. Manuscript form. Expected Fall 2006. UWEX.

Footnotes

¹ I was compelled to write about sustainable communities after going on an eco-municipality tour in Sweden. WAPA's President, Gary Peterson, and Anna Haines, the Planning Officials Development Officer attended the tour. The eco-municipality tour was June 2-14, 2006. Participants saw a range of municipalities from the south to the north. If you are interested in a future tour, please contact the Sustainable Sweden Association at <http://www.sustainablesweden.org>, or contact Lisa MacKinnon at 1000 Friends at lmac@1kfriends.org

² Individuals from Chequamegon Bay area and Dane County have spoken about eco-municipalities and TNS to a variety of communities including, Marshfield, Rice Lake, Menomonee, Eau Claire, Appleton and Oshkosh.

³ Study circles are active in Jefferson County and Sturgeon Bay.

Forests: *Continued from page 5*

Wisconsin, yet long term sustainability of these forests are often overlooked by many residents. By using today's comprehensive planning process to protect forests and urban green space, you can ensure that your community and its forests will remain healthy long into the future.

It is here that the Department of Natural Resources Division of Forestry can help. The Division of Forestry is committed to providing communities and their planners with useful information and data that covers the economic, ecological, and social impacts of forests at many scales. The Division has created the Smart Forestry for Smart Growth Planners Toolbox to allow easy access to this information and data. Find it at: <http://dnr.wi.gov/org/land/forestry/SmartForestry>

A periodic update of data and information within the Planners Toolbox will be completed by early August. If you would like to receive email updates, if you have questions, or if you can provide feedback regarding the Toolbox, please contact Amy Peterson in the Division of Forestry at: amy-peterson@dnr.state.wi.us
or
608-264-6039.

Shorelands: *Continued from page 4*

revised code and make sure it is workable for the local officials who will be charged with administering and enforcing whatever final rules emerge from the revision process. Although the groups have some initial ideas to work with, this will be a work in progress over the summer and fall before final recommendations are made for addition into a new draft of NR 115.

DNR Water Division Administrator Todd Ambs has said he hopes to refine the rules to be acceptable to all parties. He anticipates taking a revised proposal back to the Natural Resources Board in several months, with public hearings on a new proposal likely sometime in 2007.

Details regarding the Focus Groups, past meetings and databases referenced above can be accessed at:

<http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm>

For more information contact:

Toni Herkert, Policy Coordinator, Bureau of Watershed Management
Wisconsin Department of Natural Resources
(608) 266-0161 or
toni.herkert@dnr.state.wi.us

Just One More Page . . .
WAPA Nomination Information on page 22

WAPA Executive Committee Nominations

The Executive Committee of the Wisconsin Chapter of the American Planning Association (WAPA) announces that there will be an election of officers of the Association conducted in the month of October 2006. The positions that are up for election and the candidates that have been nominated for each of these positions are as follows:

Vice President for Chapter Affairs:

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At-Large Representative for Awards:

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Erik Johnson, AICP

Treasurer:

Carolyn Seboe, AICP

Petition Candidates

The WAPA Bylaws (Section 9.2(B)) provide the opportunity for additional candidates to be nominated for any office by petition. A petition to nominate an additional candidate for any position up for election must be signed by 5% of the Chapter members eligible to vote on that position. (For

the purpose of this election, a petition to be placed on the ballot will require at the signatures of at least 30 WAPA members) Petition candidates shall be reported to the Nominating Committee Chair by September 17, 2006 to be included on the ballot. A brief position statement may be included with the petition. Official ballots will be sent as soon as practical after October 1, 2006, with the deadline for ballots to be returned to the WAPA Secretary by November 1, 2006.

Please address any petition candidates or questions to:

Roland O. Tonn, AICP
Past President and
Nominating Committee Chair
928 Tanglewood Court
Oconomowoc, Wisconsin 53066
Telephone: 262-567-3888
Email: rtonn41@ameritech.net



Biogas Bus in Helsingborg – see details on page 18