

# WAPA News

Wisconsin Chapter  
American Planning Association

Summer 2005

Volume 2005, Number 3



Source: The Natural Step website

## The Eco-municipality Model for Sustainable Community Change

A systems approach to creating sustainable communities

BY SARAH JAMES, PLANNING CONSULTANT

Wisconsin has a burgeoning “eco-municipality” movement! During February, over 200 citizens, businesspeople, local officials, and members of two tribal nations in the Chequamegon Bay region of northern Wisconsin gathered to kick off what may be the first eco-municipality initiative—or eco-region initiative—in the United States.

In June, Sustain Dane held a meeting involving representatives from SeKom (National Association of Swedish Eco-municipalities), the Natural Step International, the American Planning Association, Tufts University, 1000 Friends of Wisconsin, and the Wisconsin Chapter of the American Planning Association. Town officials from the Chequamegon Bay region of northern Wisconsin and Lawrence Township, NJ were present and described the emerging eco-municipality initiatives in their communities. SustainDane has set up a listserv for Eco-municipality discussions and will host a video-conference in November. Contact Sustain Dane at [info@sustaindane.org](mailto:info@sustaindane.org) or visit [www.sustaindane.org](http://www.sustaindane.org).

In July, just as this newsletter was going to press, the Washburn City Council voted to adopt the Natural Step as their guideline for future planning, and they voted to become part of the eco-municipality international network.

### What is an “Eco-municipality”?

An eco-municipality aspires to develop an ecologically, economically, and socially healthy community for the long term, using the Natural Step framework for sustainability as a guide, and a democratic, highly participative development process as the method. Comprised of a set of four guiding principles, the Natural Step framework describes how we can develop our individual lives, our society and our economic enterprises in a way that restores and replenishes the earth’s life-supporting resources, rather than depleting or destroying them. These principles, based on “the rules” of

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**Membership Information:** To become a member of the Wisconsin Chapter of the American Planning Association, simply become a member of the APA. An application form is provided on the back of this publication.

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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 in electronic formats:** Articles may be submitted on 3.5 inch floppy disks, CD-ROM, or via email. If submitting the article by email, send it to wapa@uwm.edu.

**Graphics:** Graphics are encouraged for inclusion with the article in paper or electronic format. Please be sure that graphics submitted in paper format are crisp and clear.

**Calendar listings:** Although the WAPA News is published only 4 times annually, the web page at [www.wisconsinplanners.org](http://www.wisconsinplanners.org) provides instant access to information about events of interest to planners. If you are aware of an event, please contact the editor as soon as possible, preferably at least 1 week before the event. If submitting calendar events by mail, email, or voicemail, please be sure to include the sponsor of the event, the date, time, and place, and the title of the event, along with a description including any admission fees or limitations in availability.

**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

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## Nine Wisconsin Planners Earn AICP in May

The results of the May administration of the AICP exam have just been announced. Congratulations to:

Amy L. Bennett, City of New Berlin  
 Dana A. Jensen, Vandewalle and Associates  
 Jeff Muenkel, City of Muskego  
 Patrick Nehring, UW Extension, Waushara County  
 Peter Rafferty, SEH, Inc.  
 Arun D. Rao, Wisconsin Department of Transportation  
 Linda Stoll, consultant and WAPA NE Dist. Rep.  
 Dustin J. Wolff, Vandewalle and Associates

On behalf of all AICP certified planners in Wisconsin: welcome, and don't forget to keep your continuing professional education record up-to-date.

### Deadline to Apply for November 2005 AICP Exam

**September 15 is the deadline** for planners to apply to AICP to sit for the November window of the AICP exam. The exam window runs from November 7-19, 2005. WAPA will offer a review session in Madison sometime during the fall. If you apply for the exam, please watch your email for more information about the review session.

For more information about becoming certified, exam schedules, and review materials, go to the WAPA webpage:

<http://www.wisconsinplanners.org/aicp/aicp.htm>

## Primer Available: On-Site Wastewater Treatment Systems and Wis Comm 83

Russell Knetzger, AICP, and Barry Sullivan, Sanitation and Zoning Specialist, have prepared a detailed primer on septic systems, mound systems, and holding tanks. Planners unfamiliar with these systems can learn how they work and the requirements of Wisconsin Administrative Code, Comm 83. Please go to Resources area on the WAPA webpage.



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## In Memoriam: Jess Bullen

The planning community in Madison was saddened to learn of the tragic death of Jess Bullen in a bicycle accident on July 3 in Cottage Grove, Wisconsin. Jess had just received her Masters in Urban and Regional Planning from the University of Wisconsin – Madison. Prior to coming to the URPL program, Bullen graduated with honors from Earlham University. She had just been selected outstanding student of the year by the URPL faculty.

According to the *Capital Times*, Jess grew up in Dexter, Michigan, lived in Chicago, and traveled extensively before settling in Madison to pursue her masters degree. She was known as an avid bicycling advocate. In addition to her bicycle activism, she was active locally with Quann community gardens.

According to those who knew her, “She delighted those close to her with her youthful exuberance, playfulness and curiosity about the world around her.”

In lieu of flowers, Bullen’s family is asking donations to be sent to the Bicycle Federation of Wisconsin in her memory.

*Source: Madison Capital Times. Thanks also to Dan Rolfs, WAPA SW Dist Rep, for submitting this memorial.*

## In Memoriam: Arne Grotbeck, AICP

Arne Grotbeck died unexpectedly on Friday, July 8th. Although Arne retired in 1999 after working for almost 35 years as Sheboygan’s Senior Planner, he continued to work part-time as a Landscape Planner for the City, sharing his broad knowledge base and vast history of planning in Sheboygan and Wisconsin. He attended the University of Wisconsin – Madison, where he obtained a Bachelor of Science Degree in Urban Affairs. All who worked with him over the years appreciated his passion for planning, terrific sense of humor, and love of family and community. He attended the last WAPA conference held in Sheboygan—where a good time was had by all! He will be sadly missed.

A memorial fund has been established in his name for the American Heart Association and St. Peter Lutheran Church.

*Thanks to Paulette Enders, Director of Planning for the City of Sheboygan, for submitting this memorial.*



## “Why Traffic Congestion Isn’t All Bad”

**Lecturer: Anthony Downs, Ph.D.**  
**Senior Fellow, Brookings Institution**  
**Washington, D.C.**

REPORTED BY RUSSELL KNETZGER, AICP, SHOREWOOD, WISCONSIN

*Anthony Downs was the 2005 Charles Causier Memorial Lecturer on April 15, 2005 at the UW-Milwaukee Department of Urban Planning. Charles Causier was an active planning consultant with the Milwaukee office of HNTB Corp. until his untimely death from cancer in 2003. “Charlie” donated much time to UWM as a lecturer, to the City of Wauwatosa in historic preservation, and as a Wisconsin Chapter officer of the American Planning Association. He established a scholarship endowment at the UWM planning program.*

Anthony Downs worked for 18 years in the Chicago home office of Real Estate Research Corporation until 1977, when he left as its manager, and became a senior fellow at the Brookings Institution. His Ph.D. was earned at Stanford University. Dr. Downs is a prolific writer and speaker: 24 books and 500 articles. He started gaining prominence nationally in 1967 when President Johnson appointed him to the National Commission on Urban Problems. HUD Secretary appointed him to the Advisory Commission on Regulatory Barriers to Affordable Housing in 1989, in which he established his advocacy that the minority poor try to live in suburban enclaves nearer to outlying jobs, to avoid the commuting challenge. His current book “Still Stuck in Traffic” provided the material for his lecture. Excerpts from that and earlier books may be visited at [www.anthonydowns.com](http://www.anthonydowns.com).

Americans believe that “All Problems Have Solutions.” Traffic congestion is just one more problem to which there must be solutions. Widen the roadways. Build parallel reliever transit. Curtail urban sprawl, and add density along transit lines. Adjust travel times to avoid the peak hours. And if necessary, all of the above.

However, Dr. Downs argues our economic system depends upon most workers being on the job during the same hours. That is a very hard factor to alter. Therefore, we need to travel during the same hours, which creates “peak hour” congestion. And our interest in, and need for, speed and convenience has led us to the automobile, a remarkably personal, versatile vehicle.

Trips are 87.9% by auto, and the trend toward auto usage is worldwide. Even European cultures that first appeared to remain loyal to walking, biking, and transit, are switching to cars. The few situations where cars are successfully being resisted are authoritarian governments, such

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as Singapore. There the auto permit fee is \$40,000 and the vehicle import tax is \$100,000. China, also still authoritarian, is nevertheless experiencing significant auto congestion.

Downs doubts the possibilities for making much of a dent in congestion as offered by various factions. Economists want more use of *higher tolls in peak hours*. But in a democracy, that won't gain enough votes because it favors the rich, and everyone else won't pay again for something they already bought once through their taxes. Highway builders want to *construct more capacity*. That is too expensive. *Transit expansion* is another favorite. It just doesn't reduce congestion. Transit ridership is only 4.7% nationally, and of that 60% of all riders occur in just nine metropolitan areas that have 17% of the nation's population. In the remaining 83% of the American population, transit usage is only 2.2%.

When congestion is successfully lowered on a particular highway, what Downs calls *Triple Convergence* occurs, and self adjustment by commuters causes the congestion to return. The elements of the triple convergence are *drivers returning* to a route they had earlier abandoned due to congestion; *drivers attracted* by rumors of greater speed on the route; *transit abandonment* when the formerly crowded route eases up.

Underlying triple convergence is the relentless attachment to the automobile. Between 1980 and 2000 the number of autos added in the U.S. was 1.2 for every 1.0 persons added. Miles driven rose 87% in that period while population rose 24%. Households owning cars rose from 86% to 95%. Meanwhile, in that same 20 year span, the culture of highway safety has improved. Highway deaths are down 18%, and the number of total accidents has held constant.

Downs is pessimistic on transit improvement where basic population density is less than 4,200 persons per square mile. With jobs migrating to lower density areas, it becomes harder for transit to serve work trips. Downs also questions methodologies used in calculating the "cost of congestion." The Texas Transportation Institute, for example, measures travel speed at 4AM, and uses that as a deduction against travel time in peak hours to calculate peak congestion cost. But congestion in an air conditioned auto is not all bad. There is radio listening and cell phone calling to gain value from the time in slow traffic.

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## *Law Update*

By MICHAEL R. CHRISTOPHER, WAPA LEGAL COUNSEL  
 DeWitt, Ross, and Stevens S.C.  
 Madison, Wisconsin

### **Alert: Condemnation for Private Redevelopment The *Kelo v. New London* Decision**

In my January 2005 "WAPA Legal Update" and the presentation I gave at WAPA's Planning Conference in May, I reported on a then forthcoming decision to be made by the U.S. Supreme Court which was likely to be its most significant land use decision in decades. Based on the amount of press coverage the decision in *Kelo v. City of New London* has received since the Court decided this issue in a 5-4 decision on June 23, 2005, it looks as if my "hype" was justified. I also believe that the consequences of this decision nationally and in Wisconsin are deserving of a special alert to WAPA members.

Due to the enormous media coverage which summarized the facts and holding in *Kelo*, the purpose of this "Alert" is to focus on the possible impact of the *Kelo* decision in Wisconsin. A few often overlooked facts in *Kelo* are particularly relevant.

The *Kelo* case did not involve a blight determination. Instead, the case interpreted a Connecticut statute that allowed condemnation for economic development purposes. No such statute currently exists in Wisconsin. Second, despite arguments made in blistering dissents written by Justices O'Connor and Thomas, I do not believe that the facts of *Kelo* supported their contention that what the City of New London was doing was condemning property and transferring it to another property owner for the sole purpose of bestowing a private benefit on a particular property owner.

Another fact sometimes overlooked in *Kelo* was that the City had established a New London Development

Corporation (“NLDC”), a private non-profit entity years before Pfizer Inc. had announced that it would build a \$300 million research facility on a site immediately adjacent to the area designated for economic development revitalization. Therefore, the NLDC intended that its development plan would capitalize on the arrival of the Pfizer facility and the new commerce it was expected to attract. Finally, the NLDC successfully negotiated the purchase of most of the real estate in the 90-acre area involved, but the negotiations with some of the private homeowners failed, which gave rise to the condemnation proceedings.

To better understand the significance of the *Kelo* decision in Wisconsin, it is helpful to summarize the two sets of statutes that authorize the use of condemnation in Wisconsin for certain purposes.

The traditional basis for the use of condemnation is outlined in Wis. Stat. Ch. 32. In this statutory scheme, condemnation may be invoked by municipal government to acquire property for “public use.” Although some state courts in the United States are not in agreement as to the test to be applied to determine whether a use is a “public use” or not, Wisconsin clearly supports a more literal interpretation of this phrase. In other words, our courts have held that the exercise of the power of eminent domain implies a direct possession, occupation, and enjoyment of the land by the public or public agencies. Because Ch. 32 can only be used to acquire public property for such uses as to widen a road, to acquire parkland, or to expand the public water and sewer system, the holding in *Kelo* does not change the ability of Wisconsin municipalities to condemn property by using Ch. 32 of the Wisconsin Statutes as a legal basis.

The second method that can be used by a local government to condemn property is pursuant to the establishment of a redevelopment district as provided for in Wis. Stat. § 66.1333. Once a city has determined that at least 50% of the property in a particular proposed redevelopment district is blighted, the Wisconsin courts have said that the blight finding is a legislative determination that the acquisition, clearance, and redevelopment of any property in the district is a public use.

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## WAPA Legislative Update

BY JORDAN K. LAMB

DEWITT ROSS & STEVENS S.C.

June 17, 2005

### A. 2005-07 Biennial Budget Approved by Joint Finance Committee

Shortly after 6:00 a.m. on Friday, June 10, 2005, the Joint Finance Committee voted 11-5 to recommend passage of the 2005-07 budget bill. The four Democrats on the 16-member committee (Senators Decker and Taylor and Representatives Colon and Pocan) were joined by Republican Senator Robert Cowles in voting *against* passage of the multi-billion dollar budget.

In private meetings that began early on Thursday, June 9<sup>th</sup> and lasted until early evening, the Republicans worked out packages to craft their fiscal policy into the final document. In the end, they adopted omnibus motions on transportation, general fund taxes, shared revenue, a property tax freeze, and education.

A substitute amendment to the original bill, AB 100, that incorporates all of the changes approved by the Joint Finance Committee will be drafted and sent to the Assembly. [The budget was amended and passed by the Legislature on July 5<sup>th</sup>. No additional modifications to the provisions described below were made. As of this writing, bill is awaiting consideration by Governor Doyle.]

### Smart Growth Removed by Joint Finance

As was noted in the last *Update*, the Joint Committee on Finance deleted Wisconsin’s comprehensive planning law (Wis. Stat. § 66.1001) with a vote of 10-6.<sup>1</sup> This vote has generated a large amount of debate about Smart Growth and has spurred several newspaper editorials. This law could be restored by the Governor through a veto.

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Legislative Update: *Continued from page 5*

### Property Tax Freeze

During final Joint Finance budget deliberations, the Republicans announced and approved omnibus motion #897, which freezes property taxes. According to the Legislative Fiscal Bureau, their plan would freeze the December tax bill on a median-valued home at about \$2,705.

Motion #897 prohibits any city, village, town or county from increasing its municipal or county tax levy by more than a percentage determined through a formula, beginning with taxes that are levied in 2005 and become payable in 2006. The percentage by which each city, village, town or county would be allowed to increase its levy is the percentage equal to the percentage change in the equalized value (including the incremental value in TIF districts) of the municipality or county due to new construction, less improvements removed, as determined for January 1 equalized values in the year of the levy, but not less than 0%. There are various exclusions from the limitation on amounts levied.

In addition, the motion creates a procedure under which a city, village, town or county may exceed its levy increase limit if the local government's governing body adopts a resolution to that effect and if the electors of the municipality approve the resolution in a referendum. The motion includes specific requirements for such referenda.

If you are interested in expressing your opinion on the budget, contact Governor Doyle's office at 608-266-1212

On any other legislative topic, consider contacting your legislators via phone, letter or email. You can determine who your legislators are by going to <http://www.legis.state.wi.us> and clicking on the tab labeled "Who are My Legislators?"

### B. Joint Legislative Council Study Committee on Municipal Annexation Approves Recommendations

On June 1, 2005, the Joint Legislative Council Special Committee on Municipal Annexation recommended two pieces of legislation for introduction into the Legislature.

One bill is related to **municipal boundary agreements and the use of alternative dispute resolution in municipal boundary disputes**. This piece of legislation does the following:

- Simplifies the current plan requirements for boundary agreements by a cooperative plan (s. 66.0307, Stats.) and reduces the minimum time period for developing a cooperative plan.
- Provides a procedure for an adjacent municipality to petition for development of a cooperative plan through mediation if an adjacent municipality declines to participate in the current procedure to develop a cooperative plan.

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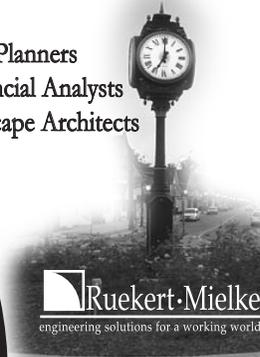
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## WAPA Recognizes Retirees

Three WAPA planners were recognized at the 2005 Annual Conference for their contributions to the planning profession. Arne Clement retired in 2002, he was the Planning Director for Racine County for 39 years (see memorial on page 3). Harlan Kiesow was a planner with East Central Wisconsin Regional Planning Commission from 1972 to 2005, and served as the Executive Director for the past nine years.

Rollie Tonn, AICP has 38 years of planning experience, including over 20 years with Southeastern Regional Plan Commission and seven years with the City of Oconomowoc. Rollie has also been an active member of APA and WAPA during the past 30 years. Rollie's words of wisdom were, "You get back what you put into something (and more). My association with others through AWP, APA, AICP, and WAPA has given me access to new concepts, new ideas, and sustained me throughout me career."

*You get back  
what you put  
into something  
(and more)*

## Land Use Element Guide Now Available

The *Land Use Element Guide* is now available on the web to download. The following website will lead you to it and the other element guides as well.

<http://www.uwsp.edu/cnr/landcenter/elementguides.html>

Within the next two months, the Center for Land Use Education at the University of Wisconsin – Stevens Point will have hard copies of the guide available. If you would like one for your municipality or organization, please contact Anna Haines, Center for Land Use Education, 715.346.2386, ahaines@uwsp.edu.

## Legislative Update: Continued from page 6

- Establishes a specific procedure for common municipal boundaries to be determined by agreement under s. 66.0301, Stats. (the general intergovernmental agreement statute).
- Limits the application of s. 66.0225, Stats. (boundaries fixed by court judgment) to contested annexations and limits the scope of a boundary determination under that procedure to the boundary "that is the subject of the annexation."
- Provides that the current alternative dispute resolution (ADR) statute provision that applies generally to court proceedings, s. 802.12, Stats., applies to a contested annexation.
- Requires the DOA to make available on its public website a list of persons who have identified themselves as professionals qualified to facilitate ADR of annexation, boundary, and land use disputes.

The second bill relates to the **Department of Administration advisory review of certain annexations**. This bill extends the Department of Administration (DOA) advisory review of annexations commenced under s. 66.0217, Stats. (annexations initiated by electors and property owners) to include such annexations commenced in any county, not only those commenced in counties with a population of 50,000 or more. In addition, for annexations of more than 20 acres, the draft requires the DOA in making its advisory public interest determination to consider the impact of the annexation on the tax base and property taxes.

Both bills will be introduced as Senate bills.

*Continued on page 11*



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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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# Planning Awards

## *Town of Nasewaupee 2025 Comprehensive Plan*

**Category: Planning Document**  
**Awarded to: Foth & Van Dyke**

Foth & Van Dyke worked with the Town to develop the 2025 Comprehensive Plan. The Town, located in Door County, has a rich history and geography that provided a unique and challenging planning environment. The Plan was developed with the aim of engaging the reader through the quality of its content and its visual presentation. For example, the Economic Development element includes a detailed assessment of desirable commercial uses and preferred building and site design features; the Intergovernmental Cooperation element includes a detailed strategy for improving the town’s relationship with the City of Sturgeon Bay in eight key opportunity areas.

The Plan was built on an extensive public participation effort that spanned a 5 year period and utilized every level of public participation, from public awareness to public partnerships.

## *City of Ashland Comprehensive Plan 2004-2024*

**Category: Planning Document**  
**Awarded to: City Ashland**

The City of Ashland’s Comprehensive Plan: *The Making of an Exceptional City*, is an innovative document which identifies sustainability, in the context of economic, environmental, and cultural sustainability, as a community value and vision. Specific implementation strategies, goals, and policies were carefully crafted to continue the City’s incremental steps towards realizing this vision.

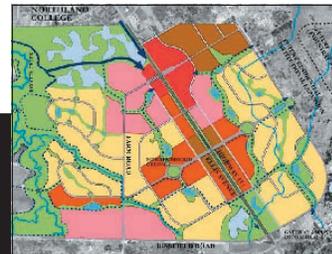
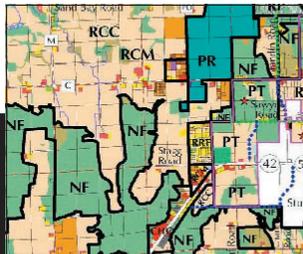
The community identified that Lake Superior and its natural environment are an economic, social, environmental, and recreational asset. The Plan includes a section on coastal resources including Lake Superior, coastal wetlands, and watersheds. They also embrace the growth of local businesses, educational facilities, medical facilities, and regional tourism. The Comprehensive Plan is a living document and is instrumental in the region’s growth and environmental, economic, and cultural well-being.

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# Annual Conference 2005

## *La Crosse's Historic Downtown Revitalization Plans*

**Category:** Planning Document  
**Awarded to:** City of La Crosse

The City of La Crosse and Downtown Mainstreet Inc. completed a multi-faceted planning and marketing effort to comprehensively study downtown La Crosse, make plans for future redevelopment, understand the downtown retail market, and respond with the development of marketing materials. To do so the City contracted with several planning and marketing firms to prepare a number of studies, including:

*URS Corp.* - Preservation Plan for La Crosse's Historic Downtown Commercial National Register District

*Planning & Design Institute* - City Vision 2020 Downtown Master Plan

*Interact Communications* - Marketing Strategies & Tools

*UW-Extension and UW-La Crosse Small Business Development Center* - Downtown La Crosse Retail Market Analysis.



## *General Development Plan: West Prairie Village, Sun Prairie*

**Category:** Plan Implementation  
**Awarded to:** Planning & Design Institute, Inc.

PDI worked with Connery/Fedler Building and Design Inc. to develop the General Development Plan (GDP). The plan adapts new urbanist principles to a rapidly growing suburban area. The primary goal of the plan is to create high quality hybrid neighborhoods. The neighborhoods offer many of the amenities, life-style qualities, and stimulating activities of well-established historic neighborhoods, but with slightly larger lots typical of conventional single-family suburban developments.

PDI also incorporated a form-based approach to development controls and created the innovative Building Types Summary Table, as well as a Land Use Development Chart. The GDP was designed to create flexible market patterns, respect traditional forms of land ownership, and promote well-designed urban places. The GDP is a pivotal element in the success of the Westside Neighborhood Plan.



## *Ashwaubenon Pedestrian District Master Plan*

**Category:** Urban Design  
**Awarded to:** Vandewalle & Assoc.

The Pedestrian District Master Plan involved the design and planning of a unique, mixed-use urban entertainment district designed to support year round activity, and incorporate key elements of "winter city" design. The district leverages off nearby Lambeau Field, the Resch Center (a multi use sports/entertainment venue), and a recently refurbished regional mall. The focus of the district is an athlete's village, patterned loosely on an Olympic Village, but including a rich mixture of buildings, activities, and events.

The main task of the project was to transform a collection of mostly brownfield and grayfield sites into a highly animated, walkable, mixed-use area that would serve as the centerpiece of the community. A sequential strategy for implementation includes a phasing plan, new zoning district recommendations, design guidelines, and partnership recommendations.



**Law Update, Kelo Decision:** *Continued from page 5*

The most relevant case in Wisconsin interpreting the powers of a city in the redevelopment district context, is *Grunwald v. Community Development Authority of the City of West Allis*, which was decided in 1996. In *Grunwald*, despite the fact that the Grunwald's property was only several years old and not blighted, the court said that because the City of West Allis had determined that the area was blighted, the municipality could then condemn sound, conforming buildings if they were located in a blighted area. Moreover, the court held that the condemned property may be in public use for ownership for only a short period of time but that that fact did not defeat the right to condemn.

Therefore, even before *Kelo* was decided, a Wisconsin municipality could condemn property and then transfer it to another redevelopment agency or even another property owner since our courts concluded that the public would benefit and that the benefit to the private property owner was incidental.

Therefore, the only fact situation which I could conceive of where a Wisconsin municipality would not be legally permitted to condemn property in the context of a redevelopment district is overwhelming evidence that the condemnation and ultimate transfer of the property was merely a smoke screen to bestow benefit to another private property owner. It is hard to imagine how a municipality would not be successful in its effort to implement a comprehensive redevelopment plan by using the power of eminent domain.

By far the most significant aspect of the *Kelo* case for Wisconsin officials, developers and planners is not so much the end result of the holding, but how it got there. The court reached its conclusion that significant deference should be given to a local legislative decision when that decision is based on a carefully considered comprehensive plan. Thus, the decision in *Kelo* is based on a number of assumptions that are near and dear to planners.

First, the court embraced the argument that the private sector often cannot accomplish the job of economic development without governmental assistance, including the use of condemnation. Second, the court recognizes that eminent domain can be abused but it stated that careful planning and public participation can limit that abuse.

The 25 briefs filed on behalf of *Kelo*, the 12 briefs filed in support of the City of New London, the vigorous oral arguments and the cogent majority, concurring and dissenting opinions are reflective of the significance of this decision. The *Kelo* case was one of five decisions made by the U.S. Supreme Court in this term wherein an *amicus curiae* brief filed by the American Planning Association was persuasive in upholding the importance of planning in land use decisions.

However, it was the briefs filed on behalf of *Kelo* that raised some eyebrows since an interesting coalition was

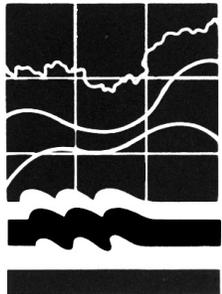
formed. Besides the predictable property rights advocates, *Kelo*'s position was also supported by John Norquist and the NAACP, among other liberal organizations. Their position was that to allow government to take property solely for public purposes was bad enough but to extend the concept of public purpose to encompass any economically beneficial goal guaranteed that those losses will fall disproportionately on poor communities.

It is somewhat ironic that in Justice O'Connor's last written opinion, she was on the losing side. She concluded that nothing now prevented a state from replacing any Motel 6 with a Ritz Carlton or any home with a shopping mall or any farm with a factory. She concluded by saying that the fallout from this decision would not be random. Instead, she argued that the beneficiaries were likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms.

My conclusion is that at least in Wisconsin there are not many examples of governmental abuse of the eminent domain power which would justify Justice O'Connor's concern. In her dissent, she cites a five-year state-by-state report examining the abuse of eminent domain that was published in 2003.<sup>2</sup> However, I looked at the one example of abuse in Wisconsin in the report, and it was fairly minor as compared to what had happened in other states.

The only instance of what is termed "private use condemnation" was a situation where the City of Milwaukee in 2001 created a tax incremental financing district and authorized the Milwaukee Redevelopment Authority to begin eminent domain proceedings to acquire the 15-acres of land needed to build a 156,000 square foot Super K-Mart store. Twelve buildings would have been demolished and dozens of small local businesses would have been removed to make way for the discount retail giant. However, the City put an abrupt hold on all plans to condemn properties for the project when K-Mart filed bankruptcy protection in February 2002. The City refused to take the property until K-Mart's financial picture became clear. The project was ultimately abandoned by the City, but it did appear as if the purpose of creating the TIF district and condemning the businesses was just to give the property to K-Mart.

Although I do not believe that the *Kelo* decision, in and of itself, will have significant impact on how Wisconsin courts view these matters, I do think that *Kelo* could result in significant legislative changes in Wisconsin. Senator Dave Zien and Representative Jeff Wood are in the process of drafting a "Property Rights Protection Act" which they say would restore private property rights and prohibit government from hiding behind the eminent domain law to confiscate private property for the benefit of corporations and private companies. In addition, the CRG Network, a conservative think-tank, is also launching efforts to strengthen state statutes to protect Wisconsinites against what they consider to be a disgraceful attack on personal property rights. One possible legislative change, is that Wis. Stat. § 66.1333 could



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be amended so that it is much more in keeping with the stringent eminent domain statute as interpreted by the courts in Ch. 32 of the Wisconsin Statutes. Jordan Lamb and I will monitor future legal and legislative developments that occur as a result of the decision in *Kelo*.

#### Footnotes

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<sup>2</sup> Institute for Justice, D. Berlinger, Public Power, Private Gain: Five-year, state-by-state report examining the abuse of eminent domain (2003).

**Legislative Update:** *Continued from page 7*

### C. Assembly Property Rights and Land Management Committee Holds Informational Hearing on Planning Questions

On June 1, 2005, the Assembly Property Rights and Land Management Committee, chaired by Representative Sheryl Albers (R-Reedsburg), held an informational hearing on the following questions:

- Should the state have a planning related policy to prevent certain outcomes (i.e. landlocked property, barriers to aggregate production)?
- Do Wisconsin's assessment guidelines provide sufficient information for accurately valuing property of all types, including properties with development rights, easements, or other exactions?
- What planning related policies might the state consider as an alternative to the current Chapter 66 comprehensive planning statutes, to achieve cost efficiencies while retaining local control and local decision making?
- Should boundary agreements be required before development can proceed in annexed areas or extraterritorial zones and those areas abutting them?

Secretary of the Department of Administration, Marc Marotta, presented a summary of the comprehensive grant program to the Committee. Since 2000, 645 communities have received grants to develop local comprehensive plans. 157 communities have completed their plans and 488 communities are still under contract with DOA to complete their plans.

In addition to Secretary Marotta, several other individuals presented oral and written comments including **Gary Peterson of the Wisconsin Chapter of the American Planning Association**. Gary gave an overview of what Wisconsin would look like if the comprehensive planning law is repealed. Specifically, a repeal would (a) lead to a piecemeal adoption of plans; (b) isolate planning from the political mainstream; (c) no longer require citizen participation in the planning process; (d) provide no definition of "comprehensive plan" to provide a framework for planning; (e) no longer require any consistency between zoning, subdivision and official map ordinances; and (f) leave towns without any clear planning authority.

### D. New Stand-Alone Legislation

Summaries of new stand-alone legislation is available on the WAPA website, see Law and Legislation.

### E. Update on Previously Introduced Legislation

#### 1. Size of County Board of Supervisors and Common Councils (Cities) – 2005 Senate Bill 4 / 2005 Assembly Bill 60

As noted in the April 2005 *Update*, Senator Ted Kanas (R-Brookfield) and Representative Gregg Underheim (R-Oshkosh) have introduced companion bills regarding the sizes of county boards and common councils in cities. On June 15, 2005, SSA1 to SB4 was passed by the State Senate. It now awaits consideration by the State Assembly.

*Continued on page 13*



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**Traffic:** *Continued from page 4*

Downs feels major policy changes will not occur in a democracy, but marginal efforts may succeed in nibbling at congestion. These include building more capacity where it is not overly expensive; peak hour pricing that buys a premium service that the poor can access when they need to, such as two “toll hot-lanes” next to three “open-to-all-lanes”; wider use of ramp metering; electric light signs that inform and guide drivers; use of GPS technology; rapid response teams to clear up accidents and “incidents” so traffic is slowed for the least possible time; having employers buy transit passes; clustering of density at transit stops; and discouraging sprawled growth.

But in the end, Downs regards avoidance of traffic congestion in larger metropolitan areas as an impossible goal. Congestion abated in the San Jose, California region when the technology boom busted in 2001. Reduced congestion there was a sign of economic decline, not of economic

**Legislative Update:** *Continued from page 11*

*2. Quorum Requirements for Zoning Board of Appeals or Adjustment – 2005 Assembly Bill 24*

As noted in the January 2005 *Update*, Representative Sheryl Albers (R-Reedsburg) introduced 2005 Assembly Bill 24, which makes changes to the quorum requirements for zoning boards. AB 24 has now passed the State Assembly and was recommended for passage by the Senate Committee on Judiciary, Corrections and Privacy and awaits Senate Floor action.

*3.. Allowing Certain Towns to Create TIF Districts – 2004 Assembly Bill 156 / 2005 Senate Bill 153*

As described in the March 2005 *Update*, Representative Jeffrey Mursau (R-Crivitz) and Senator Roger Breske (D-Eland) have introduced Assembly Bill 156, which allows certain counties to create TIF districts. On June 14, 2005, Assembly Bill 156 as amended by Assembly Amendment 1, was passed by the State Assembly.

*More bills are discussed in Jordan Lamb’s full legislative summary, available on the WAPA website; go to Law and Legislation at [www.wisconsinplanners.org](http://www.wisconsinplanners.org).*

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Eco-municipalities: Continued from page 1

natural science, can be interpreted more practically as “guiding objectives” for how we design, develop and manage our communities. (see side bar)

The concept originated in Sweden in 1983 with the founding of the first such community, Övertorneå. That pilot project in a northern rural town of 5,000 was such a success that it sparked what today has become a network of more than 60 eco-municipalities across Sweden, ranging from villages of 300-400 residents, to the capital city of Stockholm, with a population of several hundred thousand.

Now Sweden is in the process of sharing the eco-municipality concept with other parts of the world, such as the United States, Japan, Uganda, New Zealand, Estonia and Argentina.

What is different about this model?

Many communities in the United States and around the world have initiated and are carrying out sustainable development projects. Green building programs, affordable housing, open space preservation, recycling, climate change initiatives, smart growth initiatives, are just a few of these. While these initiatives have made progress toward sustainable goals, they largely are occurring on a project-by-project or issue-oriented basis. Frequently these efforts, as laudable as they are, are unconnected and unintegrated throughout municipal governments and the larger communities.

In contrast to this “silo approach” to sustainable development, the eco-municipality model uses a systems

GUIDING OBJECTIVES FOR A SUSTAINABLE SOCIETY, BASED ON THE NATURAL STEP FRAMEWORK

DEVELOP POLICIES AND PRACTICES THAT ULTIMATELY

1. Eliminate our community’s contribution to fossil fuel dependence and to wasteful use of scarce metals and minerals.
2. Eliminate our community’s contribution to dependence upon persistent chemicals and wasteful use of synthetic substances.
3. Eliminate our community’s contribution to encroachment upon nature (e.g., land, water, wildlife, forests, soil, ecosystems)
4. Meet human needs fairly and efficiently.

approach. Key ingredients of this systems approach are widespread community awareness-raising and integrated municipal involvement, using a common “sustainability language” based upon the Natural Step framework. Using this common language brings about a shared understanding of what sustainability means and how to achieve this throughout all sectors of municipal government and the wider community. The likelihood of conflict and competition among resulting actions is therefore minimized, since all sectors are using same “sustainability playing rules.”

Continued on page 15

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founder of the Swedish eco-municipality movement and Director of the international Sustainable Robertsfors demonstration project, are Project Managers. Both are authors of *The Natural Step for Communities: How Cities and Towns can Change to Sustainable Practices*. Michael Jalmy, recent past President of Esam A.B., Sweden is Project Advisor. We are presently seeking organizations and foundations interested in working with us as project partners.

The Natural Step was featured in *Planning Magazine*, May 2002, available at the APA website at: <http://www.planning.org/planning/member/2002may/ecocities.htm>.

### Further Reading on Natural Step

Natural Step International Gateway  
<http://www.naturalstep.org/>

Natural Step Canada  
<http://www.naturalstep.ca/>

### Track record of success

Communities ranging from small villages of 300 people to urban centers of over 700,000 have officially become eco-municipalities, adopting a common set of sustainability objectives as official municipal guiding policy and implementing these widely throughout their governments and larger communities. Over sixty municipalities in Sweden are official eco-municipalities and have formed a national association of eco-municipalities that assist each other and work to influence national policy. They have educated thousands of employees and citizens about what sustainability means and why it is important, so that every employee has the opportunity to contribute to the process.

Community recycling rates have shot up, in some cases as high as 90 per cent of all solid waste. Some of these municipalities have reduced fossil fuel use by 40 percent or more in five years; one town of 5,000 has been almost 100 percent free of fossil fuels since 2001. Depressed communities have used this process to bring about economic and social revitalization in an ecological way. New democratic processes include involving more citizens in municipal and civic affairs in a real way. The eco-municipalities demonstrate that the model can work in almost any community regardless of size, geography, or circumstances.

### To Learn More

Sarah James, APA member and co-author of APA's *Planning for Sustainability Policy Guide*, and Torbjörn Lahti,

**Share Your Planning Success Stories**

Brian Ohm, Vice President of Chapter Affairs, is collecting stories from WAPA members and other Wisconsin planners and residents about how a planner's involvement in a community issue either avoided costs (both monetary and non-monetary) or generated benefits with direct or indirect monetary advantages.

Send your planning success stories to Brian at [bwohm@facstaff.wisc.edu](mailto:bwohm@facstaff.wisc.edu). The stories will be compiled on the WAPA website for use by planners across the state.



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