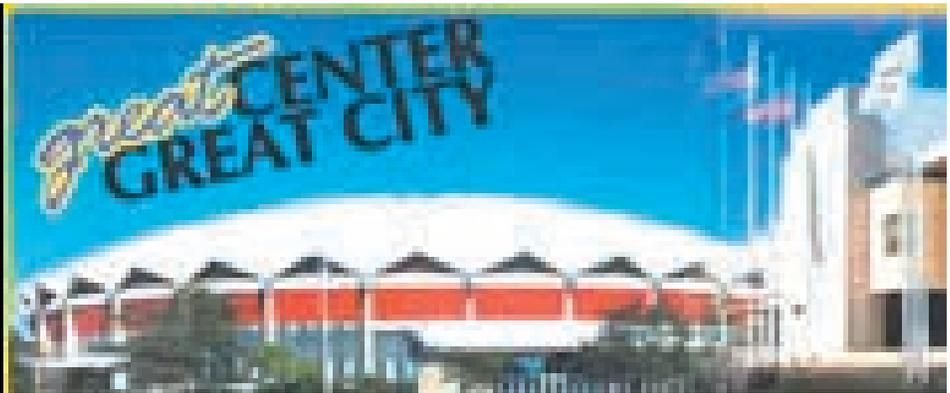


WAPA News

Wisconsin Chapter
American Planning Association

Summer 2002

Volume 2002, Number 3



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Planners Meet Sept 26 at Alliant Energy Center

Wisconsin planners will converge on Madison's Alliant Energy Center on September 26 for WAPA's annual conference. Conference planners have a full day of informative and interesting activities planned, along with a little fun. The conference will offer updates on Wisconsin's Smart Growth planning and APA policies on Smart Growth. Sessions will also be held on planning for transportation corridors, planning for mixed use developments with a look at two existing Traditional Neighborhood Developments in Wisconsin, alternative travel modes, plan commissioner training, and a lively panel discussion on improving Wisconsin communities. Additional breakout sessions will discuss ethics in planning, alternative approaches to Smart Growth planning, Smart Growth planning guides, infill planning, and conservation developments.

The conference day will begin at 9 am in the Exhibition Hall of the Alliant Energy Center. At the close of the day, planners will have an opportunity to chat and relax at a reception with cash bar from 5 to 6 pm. Registration for the conference is \$65. The program will be mailed by mid-August. For more information, contact Tom Favour at 608-238-4943.

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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.

Submission of articles in electronic formats: Articles may be submitted on 3.5 inch floppy disks or via email. If submitting the article electronically, please indicate the exact format in which it was produced (e.g., WordPerfect 5.0, Word 6.0, etc.).

Land Use Tracker Moving

BY ROBERT NEWBY
 CENTER FOR LAND USE EDUCATION
 COLLEGE OF NATURAL RESOURCES
 UW – STEVENS POINT

Electronic notification of The Land Use Tracker will be made via Yahoo Groups beginning with the Fall 2002 issue, due out in September.

Please go to the newsletter page at our website (www.uwsp.edu/cnr/landcenter/newsletters.html) and click on the link to subscribe to the Land Use Tracker group. If you have not used Yahoo Groups before, you will be prompted on what you need to do once you click on the link.

We are moving to Yahoo Groups in order to alleviate clean-up of our email lists, which must be done manually. There are several returned emails with each issue and it becomes very time consuming to clean up the lists. Also, it will eliminate the need for several email lists, which we are forced to maintain due to list size requirements.

Since you must subscribe and unsubscribe to the newsletter at Yahoo Groups, it will cut down on the number of returned emails due to typing errors, etc.

We have initially removed all options so that all you will be able to see are the messages that are posted by the Center for Land Use Education.

Please do not wait until the last minute to subscribe.

Wisconsin Transportation Planning Forum Pewaukee, Country Inn

The program includes exciting and timely discussions on various planning topics, including a special session with Robert Barry Crown, an international expert in roundabout design.

Mark your calendars now!

- **October 22 -- Wisconsin Transportation Planning Forum**
- **October 23-25 -- Roundabout Design Workshop**

For more information contact Marshall Quade at (608) 243-3366 or marshall.quade@dot.state.wi.us

Correction

The quote describing Charlie Causier's memorial service was incorrectly attributed to Tom Dabareiner. Brian O'Connell was the source of that very moving quote. Our apologies to Brian for mis-citing.

Lead and Arsenic in the Soil of Old Orchards

By SUSANNAH MICHAELS

WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE,
AND CONSUMER PROTECTION

Increasingly, developers are converting old orchards to new homesites. Wisconsin planners need to recognize the potential for lead and arsenic poisoning in the soil of old orchards to that any potential risks can be recognized and appropriately dealt with during the planning process—rather than coming as a surprise once development has already occurred. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) recently received a grant from the United States Environmental Protection Agency (EPA) to raise professional public awareness about lead and arsenic in the soil of old orchards.

Lead arsenate pesticides were used to control insects in fruit orchards from the 1890s to the 1960s. Research shows that the lead and arsenic remain in the soil long after the pesticide was used. The lead and arsenic in the soil become a human health concern when old orchards are turned into subdivisions, parks, or schools, where people, particularly children, can come into contact with the soil. The common health concerns associated with lead and arsenic in former orchard soil are from long-term exposure via inhalation and ingestion of soil particles.

DATCP has identified three different kinds of old orchard sites in their guidance document titled “Identifying and cleaning up sites contaminated with lead and arsenic from historic pesticide use,” which can be found on their

web site at <http://datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/accp/pdf/guidance.pdf>.

The three kinds of sites are as follows:

- Background Level. Concentrations of lead and arsenic are below 50 mg/kg and 5 mg/kg, respectively. These sites require no action or reporting.
- Pesticide-Use Level. Concentrations of lead are between 50 mg/kg and 400 mg/kg and/or concentrations of arsenic are between 5 mg/kg and 100 mg/kg. These sites do not require any special reporting, but Basic Site Management practices are necessary (such as keeping a grass or asphalt cover over the contaminated soil).
- Priority Site Level. Concentrations of lead are over 400 mg/kg and/or arsenic concentrations are over 100 mg/kg. These kinds of concentrations are likely from a spill or mixing and loading of chemicals. These sites must be reported to DATCP at the Agricultural Chemical Cleanup Program, PO Box 8911, Madison, WI 53708-8911 or call 608-224-4519.

For more details about these three kinds of sites, refer to the guidance document mentioned above.

Door County has already mapped locations of old orchards in their county. Information can be obtained by calling the Door County Soil and Water Conservation Department at 608-746-2214. As part of the EPA grant, DATCP plans to map orchard locations in other counties where there were a large number of orchards and there is current development pressure, such as Waukesha County.

DATCP wants to emphasize that, as in the case of lead-based paint, people can continue to live, work, and play in areas where there are lead and arsenic in the soil from historic pesticide use, but that there are some simple steps they can take to minimize their exposure. People should

- Keep good grass and vegetative cover on lawns; do not leave bare soil exposed,
- Wash hands and face after gardening and before eating,
- Wash garden vegetables well; uptake of lead and arsenic in the vegetables themselves is less of a concern than the actual dirt particles sticking to the vegetables,
- Keep toys and pacifiers, things that children are likely to put in their mouths, clean,
- Bring sand for a sandbox for kids; discourage them from playing in the dirt, and
- Avoid tracking dirt into the home.

In addition to raising public awareness about this issue, DATCP plans to make more resources available to the public for learning more about their own property or property that they are looking into buying. A Question and Answer sheet for homeowners can be found on the DATCP web site at <http://datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/accp/pdf/pbasq&a.pdf>. This document is also available in brochure format by calling 608-224-4513.

WAPA Scholarship Fund (759)

Contributions welcome as memorials, gifts, and honorarium

The WAPA Scholarship Fund is at the Madison Community Foundation (2 Science Court, P.O. Box 5010, Madison, WI 53705-0010) and all contributions are tax deductible. To make contributions place our fund name on the memo line of your check. On an attached note place the name of the person to be recognized and if you would like the Foundation to mail an acknowledgment of your gift to the person or family provide the address of that person or family.

Questions about health concerns can be directed to the Wisconsin Department of Health and Family Services at 608-266-1120 and a two-page fact sheet can be found on their web site at <http://www.dhfs.state.wi.us/eh/ChemFS/pdf/LeadArsPest.pdf>.

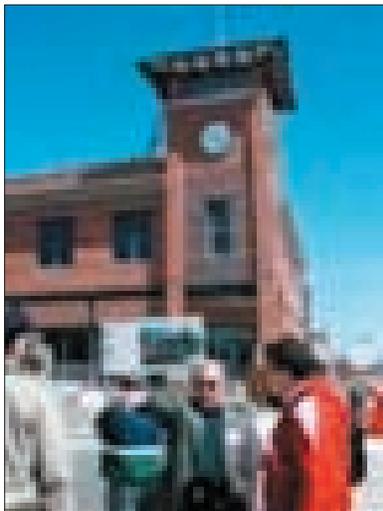
Questions about soil sampling, the DATCP guidance document, or orchard locations can be directed to DATCP at 608-224-4513.

Wisconsin Downtown Action Council

Downtown Update

Marshfield Idea Exchange

About thirty people attended WDAC's second quarterly Idea Exchange held on May 3rd in Marshfield. The program included a brief discussion of Marshfield's planning efforts and a walking and bus tour of the downtown, followed by lunch. Marshfield is experiencing tremendous industrial and commercial growth at its edge. This growth is creating a market from which the downtown is benefiting.



Some of the stories Marshfield shared with its guests included:

- Many of the downtown buildings are being renovated for new uses.
- Owners have used a chemical cleaning process to strip paint from brick facades.
- A highway bypass will cut through the downtown along a rail corridor. Design enhancements for both the new highway and existing streets will include a boulevard cross-section.
- The new highway is creating redevelopment opportunities. Two historic buildings have been relocated from its right-of-way. A major intersection is the site of new infill development.

Legislation

State Representative Dan Schooff has proposed a series of meetings to begin work on legislation and changes

to state policies that would be of benefit to downtowns. We will bring you more information as soon as dates are set.

Surfing the Net

Due to the strong favorable response we received after the last issue of the online newsletter, we will be including a link to some helpful publication or web site in every issue. This time we again turn to the Oregon Downtown

Association for their publication, *Parking Management Made Easy: A Guide to Taming the Downtown Parking Beast*. Found at www.lcd.state.or.us/tgm/pub/pdfs/ParkingGuide.pdf, the guide outlines the steps to conducting a parking study and provides ideas on how to address any deficiencies. It even includes recommendations on parking for the disabled and bicycle parking.

Membership

WDAC offer conferences and other educational programs, has initiatives on Smart Growth and legislation to help communities carry out downtown revitalization activities, and otherwise helps to promote Wisconsin's downtowns. But we can't do it without volunteers and we can't do it without funds. If you are not a member of WDAC, please consider joining. Your \$100 individual/organizational membership will go a long way to furthering our common objectives.

Legalizing Mayberry: TND Ordinance Compliance Picks Up

BY L. WARD LYLES

The classic American neighborhood, with its tree-lined sidewalks, front porches, corner stores and cozy parks is making a comeback, and a new Wisconsin law is helping. One part of Wisconsin's Smart Growth law, passed in 1999, requires the state's largest cities and villages to enact a "traditional neighborhood development" ordinance. The idea was to counter a trend of the last fifty years that has made that classic American neighborhood illegal to build in most communities. Starting in the 1950's, cities and villages began to require over-large lots and streets that were unnecessarily wide. Even worse, they strictly prohibited mixing business, like corner grocery stores, with residences while they did not require developers to install sidewalks. The result was the drive-everywhere, sterile subdivision that has become standard issue across America. Essentially, we made Andy Griffith's Mayberry illegal.

Enter Wisconsin's innovative Smart Growth law. Among its dozen provisions was one that required the Uni-

University of Wisconsin Extension to draft a model traditional neighborhood development (TND) ordinance. Cities and villages with populations above 12,500 were required to adopt the ordinance by January 2002. The idea behind the ordinance was not to require communities to accept a type of development they don't want (the ordinance does not require cities or villages to approve any specific development proposal) but simply to remove a big impediment to getting developers to even propose TND's. Because the cost of holding land before it can be developed is one of the biggest costs for developers, few of them would take a chance on proposing a TND if the local zoning code book did not allow it. Developers simply didn't want to fight with city hall over all of the changes to lot size, building setbacks, street widths and other details that would cost them time and money. The large-lot, cul-de-sac development was the shortest, most profitable route. The hope was that, if communities had TND ordinances in place, more TND projects would be proposed.

So, how are Wisconsin communities doing so far in adopting the new ordinances? Because 1000 Friends of Wisconsin conceived and advocated for the model TND ordinance provision, we decided to follow up with each of the communities that was required to adopt an ordinance. The results were encouraging but more work needs to be done.

Twenty-two communities of the 57 communities required to have a TND ordinance enacted one or have made changes to their existing code to facilitate TNDs. However, six of these ordinances simply incorporate a reference to the model TND ordinance as a non-exclusive guidebook as part of a larger Planned Unit Development or Unified Development Ordinance, which 1000 Friends does not feel this meets the spirit of the law. An additional 17 communities (30%) are still in the process of developing their ordinances. The other 18 communities have either done nothing or the results of their actions are unclear at this point.

A few communities that deserve special attention:

- **River Falls** has passed an ordinance, complete with color photos and illustrations, well tailored to fit its needs. River Falls has also created TND pages on its website containing an easily accessible, user-friendly handbook that provides an introduction to the ordinance and the principles and objectives of TND, as well as the text of the ordinance itself. You can find the River Falls site at: <http://www.rfcity.org/comdev/comdev/zoning/tnd.htm>.

- **Milwaukee** made revisions throughout its entire zoning code to comply with the TND provision of Smart Growth. Milwaukee's initiative proves that TND ordinances are for communities that will experience in-fill development in the future as well as those that are pressing out into the neighboring countryside.

- Although **Kenosha** has not yet passed its ordinance, its preliminary draft will incorporate some of the most innovative aspects of New Urbanism planning and design.

- In Dane County, **Fitchburg, Madison, Middleton** and **Sun Prairie**, the four communities required to pass an ordinance, are working together with other communities

to develop identical or very similar ordinances throughout the county. Notably, Sun Prairie was working on a TND ordinance before the state mandated one, and **Mount Horeb**, which is not required by law to develop a TND, is doing so on its own accord.

Great progress on TND ordinances has been made in the last year, and Wisconsin communities will continue to innovate and move forward in this evolving process of comprehensive planning. For more information, please check out our website at www.1kfriends.org.

Compliance with TND Ordinance Requirement by City/Village

Complied (22)	TND Ordinance/ Comp. Plan In Progress (17)	Not Complied (11)
Appleton	Brookfield	Ashwaubenon
Beloit	Chippewa Falls	Beaver Dam
Eau Claire	Fitchburg	Cudahy
Fond du Lac	Germantown	Greendale
Franklin (*)	Green Bay	Mequon
Glendale	Howard	Neenah
Greenfield (*)	Kenosha	Pleasant Prairie
Manitowoc	La Crosse	Shorewood
Menasha	Madison	Two Rivers
Menomonee Falls	Marshfield	Wauwatosa
Menomonie	Middleton	Wisconsin Rapids
Milwaukee	Sheboygan	
Muskego	Sun Prairie	
New Berlin (*)	Watertown	
Oak Creek	Waukesha	
Onalaska	West Allis	
Oshkosh	Whitewater	
Racine (*)		
River Falls		
Stevens Point (*)		
Wausau		
West Bend (*)		

Notes:

(*) - communities with ordinances that refer to the model ordinance as a "non-exclusive guidebook."

1,000 Friends is still evaluating the actions of Allouez, De Pere, Janesville, Kaukauna, South Milwaukee, Superior, and Whitefish Bay.

Thanks to Prof. Brian Ohm, Lisa MacKinnon, Nick Lelack and Dave Cieslewicz for their contributions to this survey and article.

Participation and the Smart Growth Debate

By LAURIE MALONEY

ADMINISTRATOR

TOWN OF DODGEVILLE, WI

This is a copy of a letter to the editor I sent out recently.

I couldn't help but notice that in our local paper last week a woman had a negative opinion letter regarding smart growth. At first I thought this was some local citizen but upon further investigation found she lives in Maiden Rock, WI, a couple hundred miles away. I saw she affiliated herself with an organization called Citizens for Responsible Zoning and Landowner Rights, Inc, but hard as I tried I could not find any address, phone #, web site, etc. regarding this "organization" after much searching. This appears to be some mass mailing to local newspapers to discredit smart growth from a person who isn't even involved in the process locally and has little concept of what is truly happening yet uses scare tactics and generalities to misinform people.

As a facilitator, I do know that when citizens feel decisions appear to be made unilaterally without a thorough understanding, involvement and support from stakeholder's lack of faith is expressed and her letter certainly express this. Lack of faith demonstrates exactly why education, communication, and planning needs to be done in an organized process which is sincere and involves all. Where she sees smart growth as a sham to assist in some secretly planned pre-determined outcome by the powers that be, I see smart growth as a way of opening the doors to all, and starting new discussions and planning fresh.

I hold a position where I will be facilitating Smart Growth and work with a Town Plan Commission, Town Board, Town Landowners, neighboring municipalities, and other stakeholders on Smart Growth. The entity I work for has been supportive of this work. I want to assure this concerned citizen and others that I am NOT, neither are many of the people I'm working with and for, facilitators that she fears are only creating an illusion of participation while we sell out the constituents to further the interests of the higher authorities. Nor am I a master of controlling discussion, nor do I wish to sanitize language, or reject local input. Many of us are dedicated to the public ownership of these issues and I can say personally I have gone out on limb after limb to aid in that endeavor.

Another fear expressed by her letter states that, this is just a way to give up property rights in a formal forum, well I see it differently. She assumes too much, that all of us working on this are doing so to restrict property rights even more than they are now. Many rules in place now, did not have as thorough of a process as smart growth proposes. Many citizens don't know the limitations of their land until they try to do something and are surprised by the rules in

place. The Smart Growth process provides a chance to share with people what exists now, re-evaluate what community's want, and provides a forum for citizens to express themselves and an opportunity to re-work those rules.

That is democracy in action but it is cumbersome and will take time and if someone has a better way I'd like to hear it. Without mass participation-communication-education, implementation is difficult as people do not feel like they were part of the decision making, nor do they understand how the decisions were reached so they are not supportive of those policies.

I'm working very hard to open the process, as are other good people that are volunteering as citizens or working for government involved in the Smart Growth Planning process. It's difficult work, challenging the status quo to open up the process at a new level to citizens and at the same time having some self-interest group with god knows what agenda proposing throwing out the forum I hoped to use for advanced participation. Don't forget, people get involved with government to try to change things and to label everyone involved working in government and on smart growth, as Ms. Hayman has, is simplistic, unfair, and far from realistic.

Causier Scholarship Established

Through Charlie Causier's generosity, and the continuing support of planners across the country, the Charles Causier Memorial Scholarship has been established at the University of Wisconsin – Milwaukee. The initial gift of \$50,000 establishing the scholarship was made possible through a life insurance policy that Charlie purchased, naming the School of Architecture and Urban Planning, where Causier received his planning degree, as beneficiary. Charlie's former colleagues at HNTB, WAPA members, and APA leaders throughout the country expressed their sorrow upon hearing of Charlie's untimely death. Many expressed the desire to recognize Charlie's contributions by making their own contribution to a worthy cause. Recognizing the widespread interest in making gifts in Charlie's name, Tom Dabareiner, representing HNTB, and Paul Farmer, Executive Director of the APA have worked with the School of Architecture and Urban Planning to coordinate an invitation to planners throughout Wisconsin and to Charlie's many planning friends in APA to collectively match Charlie's generosity in supporting students preparing for careers in planning.

Consistent with Charlie's wishes, gifts to the Charles Causier Memorial Scholarship fund will support students in the Master of Urban Planning program at the University of Wisconsin – Milwaukee. Scholarships will be awarded on the basis of academic achievement, financial need, and community involvement. The committee awarding the scholarships will include representatives from the School, HNTB, WAPA, and Charlie's family.

An invitation to contribute will be sent to Charlie's

HNTB colleagues, Urban Planning alumni, and the APA leadership council in September. Others wishing to contribute may contact Nancy Frank for more information (frankn@uwm.edu, 414-229-5372).

Planning Your Career

BY WARREN W. JONES AND NATALIE MACRIS

(Note: This article is adapted from A Career Worth Planning: Starting Out and Moving Ahead in the Planning Profession, by Warren W. Jones and Natalie Macris, copyright 2000 by the American Planning Association. The book is available from the APA Planners Book Service (at www.planning.org.)

If you have just begun your career in planning and have been working for a couple of years (or more), whether for a public agency, private firm, or non-profit organization, it might be time for you to plan, redirect, or restart your career. Making a career plan goes hand in hand with the process of taking stock and improving yourself. In this essay we do not suggest a model for everyone to adopt and follow, since that is up to you. But, we do suggest things that you can do to help yourself along as you ponder moving onward and upward.

Taking Stock

Making a career plan begins with noting the following:

- **Your Skills.** What are your skills and what do you most prefer doing?
- **Your Likes and Dislikes.** Here we are referring to the things you like to do—or now think you might like to do—versus the things you avoid for whatever reasons, and the things that just don't describe who you are and what you will want to do in the future.
- **Your Strengths.** Putting aside for a moment your likes and dislikes as you now know them, since tastes change over time, what are your real strengths as a person and as a professional?
- **Your Work Style.** All of these skills, strengths, likes and dislikes usually translate into a personal working style and a working environment that you prefer. Are you someone who likes the security of staying with one employer for a long time, possibly until retirement? Or are you the restless type who likes to move from the public to the private sector, consult and then teach, or do both at once, and so on?
- **What You Still Need to Know.** What skills do you want to improve on to accomplish your goals, to advance, or to survive in your chosen job or career?

Your Current Job

Next, try to define what you like and don't like about your current job. Does the job satisfy you? If you were to acquire new skills to do your job better, what would they be? What would you gain by having these new skills? Do you want to have them? What types of jobs would they logically lead to?

This exercise should help you decide whether you ought to stay with your current employer. If the answer appears to be "no" (or even "maybe"), your next step is to explore jobs and career directions you're really interested in.

Exploring New Directions

You may not know exactly what you're looking for yet; in fact, you may only have the smallest inkling of how your skills might correspond with a new job or speciality. What's important is to get out and about, through any or all of the means listed below.

- **Going to Conferences.** If you don't know where you want to work next, conferences give you a chance to hear what others are doing, and think about how your skills might match up with a new job or specialty. If you already have some ideas for your next step, you can make useful contacts.
- **Informational Interviews.** Many people will be flattered that you are interested in the work they do. Set up appointments with them to learn about their jobs and what they did to get themselves to the place where they are now.
- **Seeking Out a Mentor.** There may be one person, or a handful of people, who represent a career ideal for you, or who are especially helpful in providing you with direction. See if they are willing to have you check in with them from time to time for guidance, support, brainstorming, and so on.
- **Seeking Out a Headhunter.** If you have a clear idea of the type of work you want to be doing, a headhunter might be able to lead you directly to it, or have new possibilities that never would have occurred to you.
- **Volunteering.** If you identify a place where you think you might like to work, see if you can get a volunteer (or even part-time paid) position there. This will give you a chance to get to know the organization and the work they do, and decide if it's for you.
- **Continuing Your Education.** Taking a class in a subject you're interested in allows you to find out more about it without giving up your present job and diving into something new that might not be right for you after all.
- **Self-Education.** Learn as much as you can about yourself and the career directions and jobs that interest you. This may mean reading lots of current affairs newsmagazines, subscribing to community or special-interest newsletters, reading books, or visiting with people at the coffee shop in the community where you want to work.
- **Seeking Career Counseling.** Many career counseling services offer diagnostic tests, resume critiques, job-finding services, networking opportunities, and so on. A possible downside of this approach: most career counselors

are not especially familiar with the planning profession, and therefore may not fully understand the skills you offer and the type of work you are seeking. Nonetheless, you may find some value in the more general services these places provide.

- **Sabbaticals/Travel.** Your current employer might be willing to grant you a sabbatical, during which you work somewhere else and return with knowledge useful to your organization. This might give you a fresh perspective, or an opportunity to learn about a job that interests you without quitting your current one.

Alternatively, if your personal and financial circumstances allow, you might take a more free-form “sabbatical,” by traveling or otherwise taking time off with less of a stated purpose in mind. Who knows, you might discover that planning is not for you (and being a gourmet chef, marine biologist, or stand-up comedian is)—or you might recommit to planning with a vengeance and a new sense of purpose.

Be Patient

Be aware that career planning, like the other forms of planning with which you are familiar, does not usually produce instant results. Delays, uncertainties, and slow, small changes are much more typical. While you are in the “treading water” stage, share your thoughts with colleagues and friends, focus on developing your skills, and above all, try to keep your sense of humor and perspective.

Warren W. Jones is CEO of Solano Press Books, a publisher of professional books on contemporary planning practice, planning law, and methods of environmental analysis and review. Natalie Macris is a San Francisco-based urban and environmental planner, writer, and editor.

Smart Growth: Creating Communities for People

What's Inside CBE's Smart Growth Guides?

What is “mixed-use” development?
Recommended densities for transit and walking.
Neighborhood form.
Designing streets for people.
Basic street and block layout.
Smart parking supply, price, and demand policies.
Transit friendly design.

And much more . . .

For more information about obtaining Smart Growth Guides, visit the WAPA web page:

www.wisconsinplanners.org/SmartGrowth/

Community Open Space Partnership Regional Forums

By **KATIE BEILFUSS**

COMMUNITY OPEN SPACE PARTNERSHIP

Are you tired of “business as usual” in your region’s open space planning efforts? Are you looking for ways to make open space planning more effective?

Spend a day with forty of the most influential people who are shaping green infrastructure in your region. Spend a day with this group considering pioneering open space work.

The Community Open Space Partnership is coordinated by the Urban Open Space Foundation through a USDA grant. The Partnership was launched last fall at the Community Open Space Summit in Appleton. Since then, a steering group of about 20 planners, staff of open space non-profits, and landscape architects have been developing Community Open Space Principles (see sidebar), a Green Infrastructure plan, and the agenda for regional forums to be held this fall in the Fox Valley, central Wisconsin, and southeast Wisconsin regions.

COSP envisions a comprehensive network of open spaces in and around cities that enhances economic vitality, sustains natural systems, connects people to the natural world, and increases individual and community well being. We call this network *green infrastructure*. While other conservation groups are working to protect green infrastructure at the edges of cities and in rural areas, COSP seeks to work at a statewide level to plan for and implement green infrastructure *within* cities and to connect rural open spaces with urban open spaces. Our mission is to improve the biological, social, and economic health of communities across Wisconsin through the creation, expansion, and management of effective green infrastructure via local projects, regional coordination, and statewide land use policy reform. We also seek to develop a strong, unified voice for urban open space issues in the state.

At the forums, participants will develop their skills to improve the ways in which policy makers think about, talk about, and implement cutting-edge open space planning. Our goal is to build support for and coordinate resources with others to achieve each region’s green infrastructure goals and dreams.

At the forums, the first annual Green Ribbon Awards for each region will be announced, recognizing those special community spaces and exemplary open space policies that embody the Community Open Space Principles, and the people that make these spaces and policies successful.

Following the forums, partners will work together to “make the case” for open space needs and opportunities in each region to inform the development of statewide policy. COSP will be drafting *Green Infrastructure for Tomorrow*

(GIFT): A Statewide Plan for Open Space Reinvestment.

This GIFT Plan will summarize:

- The values and impact of green infrastructure on the ecological, social, economic, and cultural aspects of metropolitan areas;
- Stakeholder groups—those involved in providing, managing, and planning for green infrastructure—and their current and potential roles;
- The state of Wisconsin’s green infrastructure, including identification of green infrastructure “types,” and an analysis of how current open space systems are meeting the public’s needs;
- Recommended processes for ensuring inclusive, broad-based, community-driven planning, implementation, and management of green infrastructure;
- State, regional, and local land use trends, model green infrastructure initiatives, and identified gaps in green infrastructure efforts; and
- Current and recommended environmental policies, laws, and institutional support.

COSP is drafting a series of Working Papers on key topics for the GIFT plan, including a problem statement (“what’s broken” or not working as well as it could in today’s urban areas with respect to open space); the economic, social/cultural, biological/ecological, and health impacts of green infrastructure; an inventory and analysis of current state, county, and local policies related to green infrastructure, and suggestions for improving these; and a green infrastructure “lexicon” or set of words that help to define and describe green infrastructure. COSP is seeking the involvement of stakeholders, especially planners, in the development of the Working Papers.

For more information about the COSP regional forums and how you can become involved as a partner in the development of the GIFT Plan, contact Katie Beilfuss at beilfuss@uosf.org or 608-255-9877, Ext. 14.

COSP also has a website with more information about COSP, profiles of community open space efforts, and links to other resources, at www.ouopenspaces.org.

Law Update

BY RICHARD LEHMANN

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The “Dockominium” Case

The Wisconsin Supreme Court, in another divided opinion, has invalidated a program under which a large marina associated with the Abbey Resort on Geneva Lake had been “condominiumized.”

Boat slips were sold as “limited commons,” each slip being associated with a “unit,” consisting of a tiny lock box on the shore.

Critics assailed this as the privatization and selling of portions of the lake/lakeshore, that are public resources.

The DNR approved the plan with conditions that a significant portion of the slips had to remain open for public rental.

The Wisconsin Court of Appeals reversed, holding that the plan violated the public rights in the lake.

The Wisconsin Supreme Court agreed that the scheme was invalid, but for more narrow reasons.

A four Justice majority block found the scheme invalid as a matter of condominium law, in that the designated lock box units were a meaningless sham. The legitimacy of the “commons” parts of a condo depends on the legitimacy of the “unit” parts. If the units are a sham, the whole scheme collapses legally.

Since the slip buyers had no valid ownership in the riparian lands, the scheme also ran afoul of a Statute, sec.

Draft Working Principles

Quality open spaces are:	They result from processes that are:
Equitable/Accessible	Community-driven
Safe	Inclusive
Diverse	Science-based
Connected	Innovative
Ecological	
Engaging	
Cared for	
Funded	

For more detailed descriptions of these principles, go to www.ouopenspaces.org/principles.html.

DANE COUNTY REGIONAL PLANNING COMMISSION GETS TWO YEAR EXTENSION

Governor McCallum chose not to veto language in the Budget Repair Bill that grants the Dane County RPC a two year extension against its previously-scheduled expiration on October 1st of this year.

The Commission was reorganized by language in a State Budget two years ago and a task force was asked to explore forming a six-county South Central Wisconsin RPC. Those explorations dead-ended.

The extension of life until October 2004 is not coupled with any conditions or directions.

30.113, saying that riparian rights can only be owned by people who own the shorelands. This is the statute usually applied to invalidating the granting of riparian rights to parties who own only an easement down to the shore.

A strongly worded dissenting opinion was issued by Justice Diane Sykes, joined in by Justice David Prosser. The dissent rails against the judicial invalidation of property rights of 185 boat owners who had purchased the “dockominium” slips.

The “dockominium” case is ABKA Limited Partnership v. DNR, 2002 WI 106, decided July 16, 2002. The opinion is available at <http://www.wisbar.org/res/sup/2002/99-2306.htm>.

New Legislation Limits Zoning Control Over Amateur And Citizen Band Antennas

The following is the text of new state legislation that took effect on April 17, 2002.

WAPA testified against this legislation on grounds that single issue preemptions from normal planning and zoning jurisdiction is fundamentally contrary to comprehensive planning, which the Legislature has mandated for all municipalities.

The Legislature passed the bill anyway, after being told that ham radio operators contribute to law and order and the war on terrorism.

An Act to create 59.69(4f), 60.61(3d) and 62.23(7)(hf) of the statutes; relating to: the authority of cities, villages, towns, and counties to regulate amateur radio antennas and antenna support structures.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. 59.69(4f) of the statutes is created to read:

59.69(4f) Amateur radio antennas. The board may not enact an ordinance or adopt a resolution on or after the effective date of this subsection . . . [revisor inserts date], or continue to enforce an ordinance or resolution on or after the effective date of this subsection continue to enforce an ordinance or resolution on or after the effective date of this subsection . . . [revisor inserts date], that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

Editorial on Dockominium Case

By RICHARD LEHMANN

Justice Sykes has written an opinion containing strong language expressing strong concern for property rights. The earlier case was the State v. Outagamie County variance case (2001 WI 78, previously reported in WAPA News), where she called variances “a remedy against individual injustices caused by sweeping land use regulations.” Neither opinion was joined in by a majority of the members of the Court.

Her comments in these two cases were offset by a majority opinion she wrote in the R.W. Docks and Slips v. State case in June of 2001 (2001 WI 73, also previously reported.) That opinion supported a regulation that had devastating effects on the economics of a development by wiping out the planned last phase.

The interesting fact is that the R.W. Docks case was briefed by the developer and the State. No friend of the court briefs were filed.

The Outagamie County case and the ABKA “dockominium” cases both had friend of the court briefs filed by the Wisconsin Builders Association, espousing property rights/anti-regulation viewpoints.

The impact of friend of the court briefs is currently under discussion by the Chapter’s Legislative Committee and Executive Board.

Land Use Law Conference

The State Bar of Wisconsin CLE Seminars and Government Lawyers Division and Wisconsin Chapter of the American Planning Association will sponsor a CLE seminar on Land Use Issues on September 20, 2002.

Knowledgeable practitioners will discuss a variety of land use issues, including:

- * Smart Growth at two years;
- * affordable housing;
- * tribal land use issues;
- * the Department of Transportation’s role in planning; and
- * the most recent legislative and administrative developments.

The program will also feature a presentation by Professor Daniel Mandelker of the Washington University School of Law, a leading authority on land use law.

Members of the American Institute of Certified Planners may earn up to 6.0 CPDP credits for attending this program. Tuition is \$179.00 and luncheon will be included at the live program compliments of the seminar sponsors.

For more information on this seminar or to request a brochure, please contact the State Bar of Wisconsin at 800-728-7788 or 608-257-3838, or visit the State Bar of Wisconsin’s website at:

www.wisbar.org/cle/seminars

Section 2. 60.61(3d) of the statutes is created to read:

60.61(3d) Amateur radio antennas. The town board may not enact an ordinance or adopt a resolution on or after the effective date of this subsection . . . [revisor inserts date], or continue to enforce an ordinance or resolution on or after the effective date of this subsection . . . [revisor inserts date], that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

Section 3. 62.23(7)(hf) of the statutes is created to read:

62.23(7)(f) Amateur radio antennas. The governing body of a city may not enact an ordinance or adopt a resolution on or after the effective date of this paragraph . . . [revisor inserts date], or continue to enforce an ordinance or resolution on or after the effective date of this paragraph . . . [revisor inserts date], that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

2. The ordinance or resolution reasonably accommodates amateur radio communications.

Wisconsin Court Of Appeals “Signals Disfavor” And Asks The Supreme Court To Reverse A Prior Appeals Court Land Use Ruling

The Court of Appeals is not empowered to overrule its prior decisions, but it can tell the Supreme Court that it wants the prior decisions overruled and ask the Supreme Court to accept the case for review. The Court of Appeals has done so in an April 11, 2002 case: *Wood v. City of Madison* (Court of Appeals, District IV, Appeal No. 01-1206).

Approximately ten years ago, the City of Madison denied a land subdivision in its extraterritorial area because the intended use of the proposed lots was inconsistent with the City’s master plan for the extraterritorial area. The Court of Appeals said denial of a subdivision for land use reasons had to be done as part of zoning. Madison had no extraterritorial zoning and the County zoning allowed the intended development. *Gordie Boucher Lincoln-Mercury of Madison, Inc. v. City of Madison Plan Commission*, 178 Wis. 2d 74 (Ct. App. 1993). The Court was troubled about the fact that a

master plan could be adopted by the Plan Commission only and did not require a public hearing or have other procedural protections that zoning laws afforded. (This was before the adoption in 1999 of the comprehensive plan statute that provides for a hearing and adoption by the Council.)

More recently, the City denied a different extraterritorial plat on grounds of land use, but this time the land use standards were spelled out in the subdivision ordinance itself. The case—*Wood v. City of Madison*—found its way to the Court of Appeals. Only one member of the Appeals Court panel today was also on the panel in 1993.

The City pointed to a difference between the new case and the 1993 *Gordie Boucher* case, namely, that the basis for the denial was part of the subdivision ordinance that had a hearing and was adopted by the Council.

The Court of Appeals dismissed this distinction as not being important. In the final analysis, the *Boucher* decision rested on the idea of a different distinction: zoning decides land use and land subdivision ordinances decide what the court called “quality questions,” such as design details and infrastructure.

However, in its 2002 *Wood* decision, the Court of Appeals says it no longer believes that this distinction is legally correct. Noting the statutory statement of purposes for land subdivision regulation includes the purpose of “encouraging the most appropriate use of land” (§ 236.45(1), Wis. Stats.), the Court of Appeals announces its new view that land use can be regulated by land subdivision ordinances, and presumably by other ordinances that have a scope of interest that includes land use, even if such ordinances contradict the applicable zoning.

The Wisconsin Supreme Court has accepted an appeal on the *Wood* case and will hear oral arguments on October 8th. Friend of the court briefs have been filed in support of the developer by the Wisconsin Realtors Association and State and County Associations of Towns. The League of Municipalities filed a brief in support of the City.

Additional Law Updates on the Web

- Land Use Moratorium
- Court Limits Fishing Expeditions
- Recent Court Decisions on Legality of Municipal Condemnation

Law Updates can be found at:

www.wisconsinplanners.org/law/

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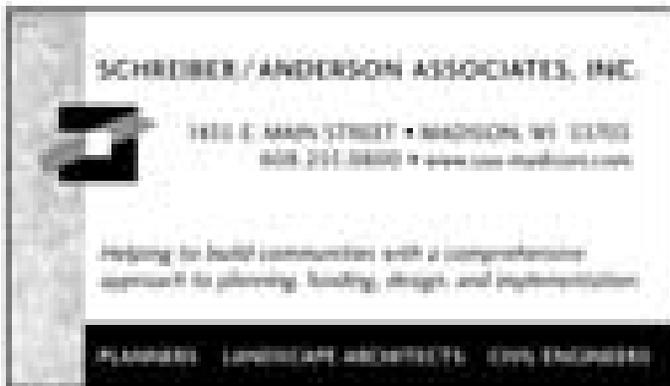
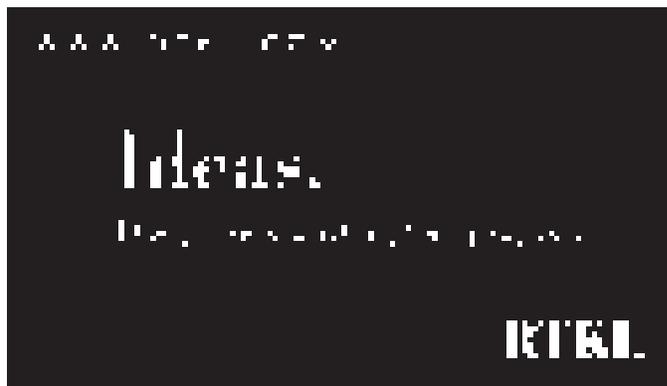
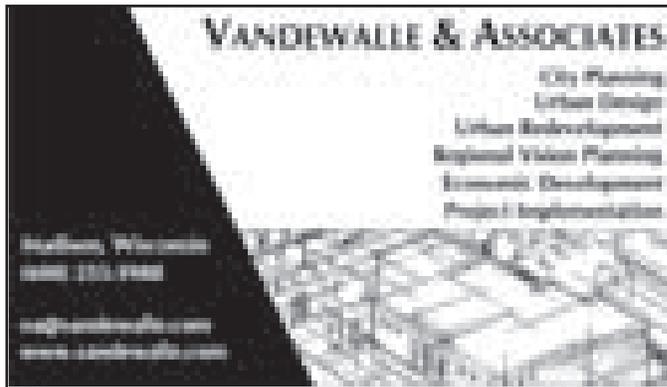
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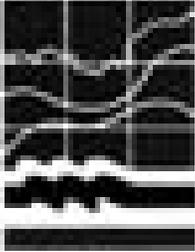
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