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American Planning Association
Wisconsin Chapter

Making Great Communities Happen

Winter-Spring 2018 Newsletter

In this issue . . .

Get Your Community Recognized

Building Ground-up Momentum for Active Communities in Wisconsin

By Jen Gilchrist Walker, MPH, MCRP
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Working to make it easier for people to walk, bike and wheel in communities? Wisconsin Active Together is a new initiative that recognizes and supports community groups and partnerships for their commitment to building active, vibrant communities. It encourages communities to build upon what they are already doing to grow and promote their local places to walk, bike and be active, by offering achievable strategies to help move efforts towards policy and systems gains.

Why participate?

- **Gain recognition** for the great work that you are already doing
- **Inspire local residents and leaders,** so they better understand and support efforts
- **Be part of a bigger network** of communities doing this work together
- **Get connected to resources**, training, peer and other experts working on similar issues

Who is eligible?

Any self-defined, local, place-based community entity may apply to WI Active Together. The entity, group or coalition must work with other partners in the community (rather than in isolation) to accomplish shared goals, be interested in making their community a more active place, and be willing and able to meet the application criteria.

How can I apply?

The application process is streamlined and straightforward. It will likely take between 1 to 3 hours to complete. The next application cycle will open in early May, 2018. **Applications will be due on July 30, 2018.**

Learn more at www.wiactivetogether.com**.**

Wisconsin Active Together was developed by the healthTIDE Active Communities Team, a multidisciplinary group of state-level and community-based partners from across Wisconsin. We developed this campaign to support more local-level action on strategies that make it easy, safe and inviting for people to walk, ride a bike and be active in their communities. We also coordinate assistance to applicants, peer networking opportunities, and connections to technical assistance.

DNR State Brownfield Conference for Local Governments

The potential for environmental contamination on properties with a history of industrial or certain kinds of commercial use can be an obstacle to reuse. These types of properties are called brownfields.

Please join the DNR's Remediation and Redevelopment program and special guests who have years of practical

techniques to transform your community's brownfields from cleanup to groundbreaking.

May 10, 2018
Holiday Inn Conference Center
Stevens Point
Registration is just $35, including lunch and snacks.

Lots of good information will be shared by experienced local officials, developers, and current DNR staff who used be employed as private sector consultants.

Most of the presentations will include a moderator and panels of experts discussing common brownfield scenarios, with plenty of time for audience questions and input.

More information is available at https://www.uwsp.edu/conted/ConfWrkShp/Pages/Brownfields%20Conference.aspx

NATIONAL PLANNING CONFERENCE
We've made plans! To see YOU in New Orleans

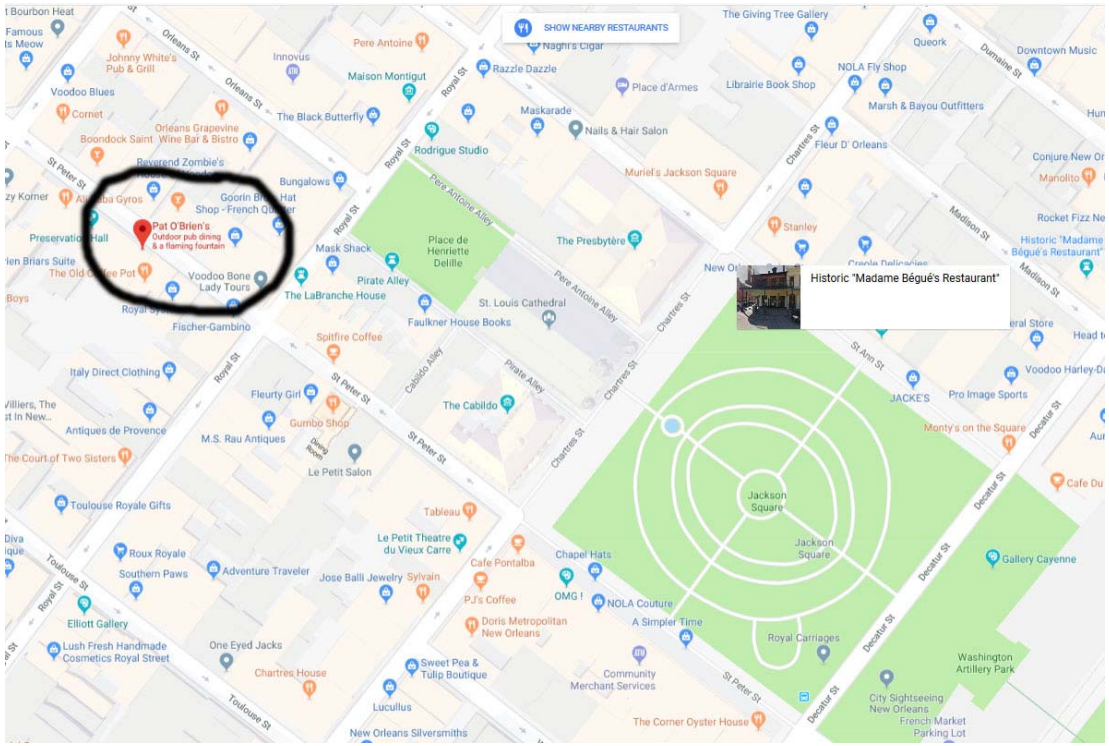
APA-Wisconsin members, students,

libations and conversation at the APA National Conference.
Date: Sunday, April 22
Time: 6 pm - ?
Location: Pat O'Brien's
718 St. Peter Street
New Orleans

Jason is buying a couple of pitchers to get us off to a good start.

See you there!

Here is a link to the Google map: https://goo.gl/maps/isydGXXyszw



Westlawn Gardens Receives National Community Planning Award

Milwaukee public housing community wins prestigious HUD Secretary's Award

WASHINGTON - The U.S. Department of Housing and Urban Development (HUD) and the American Planning Association (APA) today announcedWisconsin's largest public housing community,Westlawn Gardens,the HUD Secretary's Opportunity & Empowerment Award.Jointly presented by HUD and APA, the award recognizes a plan, program, or project that improves the quality of life for low- and moderate-income community residents. Emphasis is placed on how creative housing, economic development and private investments have been used in or with a comprehensive community development plan to empower a community.

"Milwaukee's Westlawn Gardens is a great example of what can be achieved through public-private partnerships and an innovative approach to community planning," said HUD Secretary Ben Carson. "We endeavor to see more public housing communities adopt similar strategies and createa healthy, sustainable living environment for families."

Through a holistic, community-based design process, Westlawn Gardens is successfully being transformed from an aged and stressed community into a lively, mixed-use, mixed-income neighborhood. The $82 million first phase, funded through the state's largest Low-Income Housing Tax Credit (LIHTC) award created 250 new public housing units and is a mix of townhomes and apartments accommodating the housing needs of many seniors and residents with disabilities.

The first floors of the apartment buildings accommodate neighborhood retail and community services. A renovated elementary school, playground and a beloved community center are in the center of the neighborhood. Opportunities for job growth and economic development are also incorporated in the plan. A partnership with Growing Power created a 30,000 square foot community garden on site to educate and train residents about local food production.

"Westlawn Gardens is inspiration for communities around the country looking to change the conversation and

collaboration with residents has generated a strong and vibrant community for years to come."

Future phases will more than double the available housing and will add market rate ownership and rental housing intermixed with public and affordable housing options to provide a truly mixed-income community. Every new home is designed to LEED standards with durable, weather-resisted materials used to reduce heating and maintenance costs as well as improve indoor and outdoor air quality.

Prior to the new sustainable housing, the original Westlawn neighborhood is well over 50 years old. Over 700 barracks style public housing units on 75 acres inadequately addressed the needs of its 1,771 residents. Superblocks isolated it from its surroundings, physically and socially. Severely undersized housing did not properly serve growing families and individuals. Outdated and underperforming storm water and energy systems also poorly served the residents of the old Westlawn. Through an inclusive and participatory planning process, the team developed long term strategies to transform the neighborhood into a healthy and empowering place to live.
The 2018 APA National Planning Award recipients will beposted on APA's website on March 28, 2018. Additionally, APA's 2018 National Planning Awards luncheon ceremony will take place during the 2018 National Planning Conference in New Orleans, April 21–24, 2018.The award winners will also be featured in the April 2018 issue ofPlanning magazine.

For a list of all the APA 2018 National Planning Excellence and Achievement Award recipients, visitwww.planning.org/awards. APA's national awards program, the profession's highest honor, is a proud tradition established more than 50 years ago to recognize outstanding community plans, planning programs and initiatives, public education efforts, and individuals for their leadership on planning issues.

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all.

More information about HUD and its programs is available on the Internet at www.hud.gov and http://espanol.hud.gov. You can also connect with HUD on social media or sign up for news alerts on HUD's Email List.

The American Planning Association is an independent, not-for-profit educational organization that provides vital leadership in creating communities of lasting value. APA and its professional institute, the American Institute of Certified Planners, are dedicated to advancing the professional of planning, offering better choices for where and how people work and live. The 38,000 APA members work in concert with community residents, civic leaders and business interests to create communities that enrich people's lives. Through its philanthropic work, APA's Foundation helps to reduce economic and social barriers to

AICP Exam Review

By Nancy Frank, APA-WI Professional Development Officer

An email sent out to our apa-wisconsin listserv on Monday, March 12, found twenty-five Wisconsin planners who are preparing to take the AICP Exam in the next 18 months. Five planners have registered for the May exam, and another nine have applied to take the exam but have not yet registered. Remember these deadlines.

Exam Registration Deadline **AICP Candidate Pilot Program Participants**	April 27, 2018, 5:00 p.m. CT
Registration and Transfer Deadline	April 27, 2018, 5:00 p.m. CT
Testing Window	May 14–28, 2018

If you missed the email about receiving information about a review session, it is not too late. Email me at frankn@uwm.edu to get on the email distribution list.

I will offer a review session in April or very early May. The review will offer advice about test-taking strategies and study tactics. This will also be an opportunity to form study groups and to tell me what else you need to be successful.

Stay tuned and stay connected.

Initiative Funding Network Launched – Applications Now Being Accepted!

By Brian Doudna, Executive Director
Wisconsin Economic Development Association

The Wisconsin Economic Development Association (WEDA) has launched a new program to match its financial institution members with organizations, initiatives and projects involved in housing, small business, community, workforce and economic development. It's called the CRA Network of Wisconsin

The program will break down barriers between financial institutions (large, intermediate and small) and community organizations driving initiatives that meet Community Reinvestment Act (CRA) Strategies of the various financial institutions.

The CRA Network is a method to close the information gap between the people who had CRA-qualified projects and the organizations who are interested in financing those projects or initiatives.

Applications are now being accepted for regional meetings that will be held in June and July. These regional meetings will have a closed session component to hear presentations and to review potential funding decisions that could be a collaboration of multiple financial institutions.

Other states have similar efforts, but the one that is closest to the CRA Network is operated by the Federal Reserve Bank of Kansas City. Since forming in 2011, the Investment Connection has helped to place and track $30 million in CRA eligible projects. There are some video testimonials on its service, where members tell their stories of working with the network. (https://www.kansascityfed.org/community/investmentconnection)

Ultimately, WEDA wants CRA Network members to use this platform to get projects done, to support their companies' missions, and to grow communities across Wisconsin.

Here's how it works:

- Developers, Municipalities and organizations, who have project proposals apply to www.cranetwork.org to present those projects at a closed session during one of the CRA Network's regional meetings.
- The project(s) must be in the area of affordable housing, community services, revitalization or stabilization, or economic development for small business or farms. This typically provides services to or are located in an LMI eligible area.
- CRA Network member financial institutions attend presentations and connect with representatives of those projects they feel meet their investment criteria.
- CRA Network members, its partners and WEDA will vet the applications to determine if they will meet the eligibility criteria for the member banks located in the region.

Applications will be reviewed prior to the meeting to confirm eligibility or to restructure the project for greater appeal.

Legislative Update

Drew Pennington
VP-Chapter Affairs
APA-Wisconsin

As this legislative session ends, I want to thank all of your for your increased advocacy over the past few months. I've heard from many of you who have called, emailed, or met with your elected officials to oppose the current barrage of ill-advised bills. Some of you even traveled to Madison and waited hours to testify in various public hearings. With that said, I must report that several significant bills of interest to planners have been adopted by both the Assembly and Senate, and are awaiting action by Governor Walker. The following bills have been adopted:

- Developer's Bill (AB770/SB640), first summarized in the Legislative Alert below dated 12/12/17.
- Landlord's Bill (AB771/SB639), which has significant rental safety implications and includes a major blow to historic preservation.
- Wetlands Bill (AB547/SB600), which relaxes wetland protections and was vehemently opposed by environmentalists and hunting groups.

Fortunately, I have some good news, as one bill that APA-WI supported was adopted as well. The bill prohibiting the stockpiling of violent sex offenders from around WI in low-income communities (AB539/SB446) passed the Senate unanimously on Tuesday. This bill requires each County to house their own offenders, and gives County planners a role in location decisions. I've heard from some County planners with concerns about another unfunded mandate, which is a valid concern, but unfortunately this bill was needed to address a real and outrageous environmental injustice against vulnerable communities being pushed by the WI Department of Health Services and rubber stamped by NIMBY judges around the state.

I will provide more information and final bill/act language once the Governor acts, and these bills will be highlighted and discussed at our fall conference as well. Many planning-related bills were not adopted this session, so if you have questions about any, just let me know. Thanks again.

Law Update

By Brian W. Ohm, JD
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For questions or comments about these cases, please contact: bwohm@wisc.edu.

Visit the Law and Legislation page any time to access the current and past issues of the Case Law Update.

January and February Case Law Update

Wisconsin Supreme Court Opinions

Assessment Using Mass Appraisal Technique Was Appropriate

Metropolitan Associates v. City of Milwaukee, 2018 WI 4, involved an excessive assessment action against the City of Milwaukee related to property taxes for seven properties owned by Metropolitan.

Apartment properties owned by Metropolitan were initially assessed by the City using a “mass appraisal” technique, a process whereby an assessor values entire groups of property using systematic techniques and allowing for statistical testing. The City also conducted a more individual analysis of the property using a comparative sales approach that arrived at a value higher than that produced with the initial mass appraisal.

Metropolitan challenged the City’s assessment of the properties based on the mass appraisal technique. An appraiser for Metropolitan concluded the properties had a lower value than reflected in the City’s assessment. Following a trial, the circuit court determined that the City’s assessment was more reliable and upheld the City’s assessment. The Wisconsin Court of Appeals upheld the Circuit Court’s decision.

The Wisconsin Supreme Court, in a decision written by Justice Ann Walsh Bradley, affirmed the decision of the Court of Appeals. According to the Court majority, the City's assessment of the Apartments complied with Wis. Stat. § 70.32(1). The City appropriately used mass appraisal for its initial assessment and confirmed its initial

declined Metropolitan's request to upset the circuit court's findings of fact because they were not clearly erroneous.

Justices Rebecca Bradley and Daniel Kelly filed a dissenting opinion.

Water Law

Movrich v. Lobermeier, 2018 WI 9, involved a lawsuit between a brother and a sister over the rights of owners of waterfront and waterbed property on the Sailor Creek Flowage in Price County. In 1941 a landowner granted the Town of Fifield the perpetual right to flood their land so the Town could construct a dam across Sailor Creek. The landowner retained ownership of the submerged land. The submerged land was subsequently sold. In the present case, Lobermeier (the brother) had acquired the fee simple interest (owned) in submerged property that was part of the flowage waterbed created in 1941 and Movrich (the sister) owned the abutting upland waterfront property. For a number of years, the sister made use of the flowage in various ways (wading, fishing, etc.). She allowed her brother to use their dock for fishing and to moor his boat. Then the brother and sister had a falling out and the brother asserted that he had exclusive rights to the waterbed. The sister then sued her brother seeking a declaration of their riparian rights as owners of waterfront property.

The case presented the Court with issues based on the interplay between private property rights, riparian rights, and the public trust doctrine. A majority of the Wisconsin Supreme Court Justices concluded that any riparian rights the Movriches may enjoy in regard to the man-made body of water created by the flowage easement must be consistent with Lobermeiers' property rights. Because the placement of a pier is inconsistent with Lobermeiers' fee simple interest and does not arise from the flowage easement that supports only public rights in navigable waters, Movriches' private property rights are not sufficient to place a pier into or over the waterbed of the Flowage without Lobermeiers' permission.

The Court majority also concluded that while the public trust doctrine applies to the flowage waters, the publics trust doctrine conveys no private property rights. While the Lobermeiers' property rights are modified to the extent that the public may use the flowage waters for recreational purposes, no private property right to construct a pier arises from the public trust doctrine. While the Movriches were not entitled to place a pier into the water from their property, consistent with the public trust doctrine (the water is owned by the public), the Majority concluded the Movriches had the right to access and exit the Flowage directly from their shoreline property.

The Majority opinion was written by Chief Justice Roggensack. Dissenting and concurring opinions were filed by Justice Rebecca Bradley joined by Justices Abrahamson and Ann Walsh Bradley.

Wisconsin Court of Appeals Opinions

City's Interpretation of Sign Ordinance was Reasonable

Adams Outdoor Advertising v. City of Fitchburg, involved a dispute over the City of Fitchburg's denial of Adams Outdoor Advertising's application for a permit to convert a panel of an existing standard billboard to a digital billboard. The issue in the case centered on the City's interpretation of its sign ordinance.

The City's sign ordinance stated:

No flashing, alternating, rotating, or swinging sign, operated by mechanical means or wind driven, whether illuminated or not, is permitted, except time and temperature signs may be permitted by issuance of a conditional use permit by the plan commission. No flashing, alternating, rotating or swing flood, spot or beacon light is permitted for the purpose of illuminating any sign.

The Ordinance defined a "[f]lashing sign" as "a sign where any part is varied in brightness, color or message at intervals more frequently than once every two minutes." Adams Outdoor Advertising's application stated the sign would change no more frequently than once every 2 minutes so it was not prohibited as a "flashing sign." However, the City denied the sign as an "alternating" sign operated by mechanical means.

The Sign Ordinance did not define "alternating." The City's zoning administrator looked to the Merriam-Webster dictionary definition of "alternating" as "occurring ... in or forming a repeated series or used to describe something that happens one time, does not happen the next time, happens again, etc." The City acknowledged that billboard technology had changed since the City enacted the Sign Ordinance. At the time the Ordinance was drafted, an alternating sign was a three-sided paper sign that would switch a message. However, the City argued that a digital sign had the same fundamental characteristics as conventional alternating billboards. The Wisconsin Court of Appeals concluded that it was reasonable for the City to determine that the digital sign proposed by Adams, which would change "from one static image to another, no more frequently than once every two minutes," was an alternating sign consistent with the dictionary definition.

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

Town Authority in Shoreland Area Mistakenly Construed By Court

Washington County. The land was located within 1000 feet of Big Cedar Lake and was therefore located within the shoreland zoning jurisdiction of the County. The County approved the subdivision but the Town denied the subdivision because it failed to comply with the Town's setback, minimum lot size, and frontage requirements. The Town did not specify the specific ordinance that the subdivision violated though the minimum lot size and setback requirements were found in the Town's general zoning ordinance and the frontage requirements appear in both the Town's zoning and subdivision ordinances.

Lagoon Lane sought review of the Town's denial in circuit court. The circuit court concluded the Town improperly denied the subdivision "for zoning reasons." The circuit court noted that under the State's shoreland zoning law, Wis. Stat. §59.692, and the Court of Appeals decision in Hegwood v. Town of Eagle Zoning Bd. Of Appeals, 2013 WI App 118, the Town lacked authority to zone the shoreland areas within the Town. (As discussed below, this is not the current state of the law in Wisconsin.) The Town then appealed the circuit court's decision the Wisconsin Court of Appeals.

The Court of Appeals agreed with the circuit court. The Court of Appeals also incorrectly summarized the relationship of town authority and county authority in the shoreland area: "The power to zone shorelands in towns rests exclusively with counties." Neither the Court of Appeals nor the circuit court mention 2015 Wis. Act 41 enacted in response to the Hegwood case. Effective July 3, 2015, Act 41 reestablishes the ability of towns to have concurrent zoning authority with the county in the shoreland area with certain limitations. Under Act 41, a town can adopt a general zoning ordinance under Wis. Stat. § 60.61 or § 60.62 that applies in the shoreland but the town zoning ordinance "may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland zoning ordinance enacted under 59.692." The language added by Act 41 is codified in Wis. Stat. § 60.61(3r) and 60.62(5). While the Court of Appeals' decision states that it is applying the 2015-16 version of the Wisconsin Statutes, the Court fails to note the language added by Act 41.

The Court of Appeals correctly notes that zoning and subdivision ordinances can contain significant overlap and that a town can enact the exact same restriction under both its subdivision and zoning authorities. While the Court correctly states that a town may enact subdivision regulations in the shoreland area, the Court is mistakenly convinced that the Legislature through the shoreland zoning program has removed the authority of towns to zone land within the shoreland area. The Town concedes that the setback and lot size requirements were enacted under the Town's zoning authority. The frontage requirement was enacted under both the Town's zoning and subdivision authorities but the Court concludes it is a zoning regulation. Because the Court thinks that the Legislature has removed town authority to zone in the shoreland area, the Court of Appeal agrees with the circuit court that the subdivision was improperly denied.

The case is recommended for publication in the official reports.

No "Walking Quorum" in Violation of Open Meetings Law

Zecchino v. Dane County involved a challenge by Adams Outdoor Advertising to the denial of a lease renewal for 3 billboards located at the Dane County Regional Airport. Adams alleged that before the vote on the lease one county board member emailed 8 other county board members about the lease. Adams alleged these emails amounted to a "walking quorum" in violation of Wisconsin's Open Meeting Law. A "walking quorum" is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.

The Court of Appeals found no violation of the Open Meeting Law. The Court looked at the large size of the Dane County Board. The lease renewal was rejected in an 18-16 vote. 34 members voted. To influence the vote, a majority of 18 members would be needed. The one county board member who sent the emails only had contact with 8 members – less than one-fourth of the board. The Court also examined the content of the emails. According to the Court, none of the emails reflected a tacit agreement between the county board members to vote against the lease. The emails dealt with scheduling matters, or asked the other board members for their opinions. Most of the emails were one-way messages garnering few if any responses.

The case is recommended for publication in the official reports.

Short-term Rental Was a Legal Nonconforming Use

County of Walworth v. Hehir involved the issue of whether the use of a home for short-term rentals was a legal nonconforming use. Hehir purchased a single-family residence in 2009 and spent six or seven months rehabbing the property. In 2013 he began renting the property for short-term stays (less than 30 days). In December 2014 Walworth County adopted an amendment to the County Zoning Ordinances intended to address issues related to short-term rentals. In August 2016 Walworth County cited Hehir for illegally operating a "lodge" in a residentially zoned district as a result of the 2014 amendment to the County's zoning ordinances. Hehir challenged the citation arguing that the use of the property for short-term rentals was protected as a legal non-conforming use.

Under Wisconsin law, a structure used for a use allowed at the time a zoning ordinance is adopted or amended may continue even though it does not conform to the provisions of the new ordinance. A property owner bears the burden to prove by a preponderance of the evidence that the nonconforming use was an active and actual use that existed prior to the commencement of the new ordinance and has continued to the present. If the use is merely casual and occasional or incidental to the principal use, it does not acquire nonconforming use status.

The circuit court determined that Hehir met the burden of establishing that the use of the property for short-term rentals was a lawful nonconforming use. He expended time and money rehabbing the property and the property was not his primary residence although he occasionally stayed there with his family. In 2013 Hehir licensed the property as a tourist rooming house with the State of Wisconsin Department of Agriculture, Trade and Consumer Protection and renewed his license every year. Hehir testified that he continuously rented the property since July 2013 for periods of time from a weekend to two weeks. While Hehir did not have complete documentation of the rentals, he testified that the biggest gap between rentals was two months.

The Court of Appeals agreed that the evidence supported the circuit court's determination that Hehir's use of property for short-term rentals was an existing, nonconforming use at the time the County adopted the ordinance amendment.

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

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Reminder: 2017 Wisconsin Act 59 **added the following regarding short-term rentals:**

Creates Wis. Stats sec. 66.0414 prohibiting local governments from enacting an ordinance prohibiting the rental of a residential dwelling for 7 consecutive days or longer. A local government may limit the total number of days within any consecutive 365 day period that a dwelling may be rented to no fewer than 180 days, if a residential dwelling is rented for periods of more than six but fewer than 29 consecutive days. A local government cannot specify the period of time during which the residential dwelling may be rented, but it may require that the maximum number of allowable rental days within a 365-day period must run consecutively. Act 59 requires persons who rent their residential dwelling to notify the local clerk in writing when the first rental within a 365 day period begins.

Act 59 also requires any person who maintains, manages, or operates a short-term rental

for more than 10 nights each year, to: (a) obtain from the Department of Agriculture, Trade and Consumer Protection a license as a tourist rooming house, as defined in s. 97.01(15k), and (b) obtain from a municipality a license for conducting such activities, if the local government has enacted an ordinance requiring such a person to obtain a license. Act 59 specifies that if a local government has in effect an ordinance that is inconsistent with this provision, the ordinance would not apply and could not be enforced.

Finally, Act 59 adds language to the room tax law, Wis. Stats. Sec. 66.0615, making it clear that a municipality may impose the tax on lodging marketplaces (e.g., Airbnb) and owners of short-term rentals. A lodging marketplace must register with the Department of Revenue (DOR) for a license to collect taxes imposed by the state related to a short-term rental and to collect room taxes imposed by a local government. Once licensed, if a short-term rental is rented through the lodging marketplace, the lodging marketplace must: (a) collect sales and use taxes from the occupant and forward such amounts to DOR; (b) if the rental property is located in a local government that imposes a room tax, collect the room tax from the occupant and forward it to the municipality; and (c) notify the owner of the rental property that the lodging marketplace has collected and forwarded the sales and room taxes described in (a) and (b). A local government would not be allowed to impose and collect a room tax from the owner of a short-term rental if the local government collects the room tax on the residential dwelling from a lodging marketplace.

Unconstitutional Provisions Are Severable From Remainder of Ordinance

Green Valley Investments, Inc. v. County of Winnebago involved the latest in a series of court challenges to Winnebago County's regulation of adult entertainment establishments in the County zoning ordinance. In 2006 Green Valley opened an adult cabaret offering nude entertainment in violation of the County zoning ordinance. In 2015 the U.S. Court of Appeals for the Seventh Circuit found that the conditional use permitting process for adult entertainment establishments violated free speech protections under the First Amendment to the U.S.

and setback requirements from other uses were severable and that the remaining ordinance was enforceable. The Seventh Circuit Court of Appeals held that severability was not a federal question so the state courts should answer it. This state court case was brought to answer the severability question.

The Wisconsin Court of Appeals noted that the County zoning ordinance included a severability clause. The Court noted that this clause is not controlling but is given great weight in determining whether valid provisions can stand separate from invalid provisions. The Court of Appeals concluded that the permitting process could be severed and the remaining provisions were a valid restraint on the local of adult entertainment establishments.

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