Nominations Are Open: Looking for New WAPA Board Members

Please be advised that the Executive Committee of the Wisconsin Chapter of the American Association of Planners is soliciting expressions of interest from WAPA Members to be candidates for the following elective offices:

- Northeast District Representative
- Southeast District Representative
- Southwest District Representative

Responsibilities include participation as a Voting Member at WAPA Executive Committee Meetings, serving as liaison between District Members and the Executive Committee and coordination of District program activities.

If you have an interest in running for election for one of the above offices, please contact:

Bruce Wilson, Chair
2010 WAPA Nominating Committee
wilsonplan@gmail.com

Expressions of interest are desired no later than June 15, 2010

AICP Application
ALSO Review CDs FREE!

APA has announced that applications for the November AICP exam are being accepted now through July 15.

WAPA purchased the AICP Exam Review CDs offered by the APA Chapter Presidents’ Council. We will give away the CDs for free. Contact Nancy Frank to reserve your copy: frankn@uwm.edu.
The WAPA Newsletter is published electronically four times each year by the Wisconsin Chapter of the American Planning Association to facilitate discussion among its members of planning issues in Wisconsin. Correspondence should be sent to:

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Change of Address: WAPA Newsletter does not maintain the address lists for any APA publication. All lists are maintained at the national APA office and are updated and mailed to the chapters each month. If you have moved, please contact Member Services Coordinator, APA National Headquarters, 122 S. Michigan Street, Suite 1600, Chicago, IL 60603-6107 or call (312) 431-9100 or FAX (312) 431-9985.

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. Or you may opt for Wisconsin Chapter only membership.

Professional Services Directory: Put your business in the newsletter. Advertising rates are $40.00 per issue or $150.00 per year. Send business card or camera-ready copy (2 inches high x 3.5 inches wide) to the newsletter editor at the address below. Digital copy may be sent as an attachment by email to news@wisconsinplanners.org.

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

Submit articles by email attachment. Graphics are encouraged.

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

Visit the WAPA webpage for up-to-date news and information between issues of the WAPA Newsletter.
2010 Chapter Awards

At the Annual Conference in March, WAPA announced its 2010 Award Recipients. Congratulations to everyone who was recognized.

President’s Award

Presented by the President of the Wisconsin Chapter to an individual who has made a significant contribution to planning excellence and the quality of life in Wisconsin.

Milly Zantow, in recognition of her leadership in developing a national recycling program.

Downtown Madison, Inc., in recognition of their contribution to planning vision for downtown Madison.

Other winners are highlighted on the next page.

WAPA gave special recognition to Wisconsin regional planning commissions for extraordinary efforts in promoting Comprehensive Planning within their region.

Bay Lake Regional Planning Commission

East Central Wisconsin RPC
North Central Wisconsin RPC
Northwest RPC
Southeastern Wisconsin RPC
Southwestern Wisconsin RPC
West Central Wisconsin RPC

In addition, WAPA recognized seven plans with honorable mentions,

Centennial Centre – Hobart (plan document)
Conover/Land O’Lakes Community Wildlife (plan document)
Fox-WI Heritage Parkway Feasibility Study (plan document)
Mauston Downtown Revitalization Plan (plan document)
New Berlin 2020 Comprehensive Plan (plan document)
Towards a Sustainable West Allis (student project)
Town of Greenville Comprehensive Plan 2030 (plan document)
KINNICKINNIC RIVER CORRIDOR PLAN  
MMSD, Sixteenth Street Community Center  
JJR, GRAEF, Beth Foy, Pa’lante! Creative
The Corridor Neighborhood Plan connects the KK River back to the community with bike and walking paths, naturalized stream banks, water quality treatment facilities, community gardens, and outdoor classroom opportunities. Recommendations extend into the neighborhood with housing, open space, and commercial redevelopment initiatives.

GREENDALE COMPREHENSIVE PLAN  
Village of Greendale  
GRAEF
Expanding and enhancing the Village’s historic center, linking the value of Southridge Mall with the village center, and re-envisioning an aging industrial park are key elements of the Plan. Best Practice models and critical redevelopment initiatives are identified that will add value to the community and enhance the Village’s unique identity.

SAUK CITY RIVERFRONT PLAN  
Village of Sauk City  
MSA Professional Services
Sauk City is seeking to transform its downtown waterfront from an afterthought to an amenity. The Plan serves as a guide for the Village and prospective investors to coordinate efforts to restore, redevelop, and enhance the downtown. The design recommendations offer specific architectural detail, along with general massing for the riverfront.

RANDY LEIKER  
Town Chair  
Town of Greenville
Randy provided exceptional leadership in establishing a sustainable platform for the Town. His efforts included the creation of a Conservation Subdivision ordinance, a “Phosphate Free” lawn fertilizer ordinance, an eco-municipality ordinance, integrating sustainable practices into the Comprehensive Plan, and installation of rain barrels and a rain garden at Town Hall.

EAST WASHINGTON CORRIDOR PLAN  
City of Madison  
Vandewalle & Associates
The Plan is a bold initiative to create a concentrated, urban employment area, that serves as a gateway to the Capitol. Core principles protect the iconic view of the Capitol, respect existing neighborhoods, establish the Corridor as an employment center supported by transit, and creates an inviting, vibrant boulevard.
Bicycle Boulevard Planning & Design Guidebook

This report is intended to serve as a planning and conceptual design guide for planners, engineers, citizens, advocates, and decision makers who are considering bicycle boulevards in their community. Data for this guide was developed from literature review, case study interviews, and input from a panel of professional experts.

Working in tandem with the Initiative for Bicycle and Pedestrian Innovation (IBPI) at Portland State University and a number of other collaborators, Alta Planning and Design has released the Fundamentals of Bicycle Boulevard Planning & Design Guidebook" <http://www.ibpi.usp.pdx.edu/guidebook.php>. Bicycle boulevards take the shared roadway bike facility to a new level, creating an attractive, convenient, and comfortable cycling environment that is welcoming to cyclists of all ages and skill levels. They are low-volume and low-speed streets that have been optimized for bicycle travel through treatments such as signage and pavement markings, traffic calming, and intersection crossing treatments. This new guidebook was designed to serve as a planning and conceptual design guide for planners, engineers, citizens, advocates and decision makers who are considering bicycle boulevards in their community. Visit the IPBI website <http://www.ibpi.usp.pdx.edu/guidebook.php> for more information on its release. Here’s a direct link to the Guidebook: http://www.ibpi.usp.pdx.edu/media/BicycleBoulevardGuidebook.pdf.

Changing the Scenery – Planning for Brownfield Redevelopment

By the Wisconsin Department of Natural Resources Remediation and Redevelopment Program

What are brownfields? Almost every community has them – abandoned, idle or underused commercial or industrial properties where reuse is hindered by real or perceived contamination. A brownfield can be a small abandoned gas station or a sizeable old manufacturing plant. The Wisconsin Department of Natural Resources (DNR), through its Remediation and Redevelopment (RR) Program, provides three important tools to help planners in converting local brownfields into community assets.

1. On-line property information
2. Grants and no-interest loans
3. Liability relief

Step 1 – Get on-line information! What does DNR know about this property? The first step is often to learn about contamination that’s already been reported to DNR. The DNR’s RR Program maintains CLEAN, the Contaminated Lands Environmental Action Network, which contains on-line information about both contaminated and cleaned up properties known to the agency. The CLEAN database shows the status of cleanups as well as the nature of the contaminants, and includes information about post-cleanup continuing obligations to protect human health and the environment (e.g. a protective cap).

One way to start identifying brownfields is by comparing property information in CLEAN with local properties that are tax delinquent.

Step 2 – Get financial help! The RR Program understands that financing is a critical need in brownfield cleanup and property redevelopment. It maintains up-to-date information on state and federal brownfield grant and no-interest loan programs, as well as property tax incentives designed to stimulate the cleanup and reuse of contaminated properties. The DNR’s popular Brownfield Site Assessment Grants, which provide fund-
Learn More – Call, Meet, Surf!

- Give us a call! – The RR Program’s knowledgeable staff understand the relationship between environmental contamination and land use. Our regional brownfield specialists can get you answers.
- Request a “Green Team” meeting – RR Program staff will meet with your community to discuss brownfield options.

Step 3 – Don’t overlook liability relief! Environmental liability relief for local governments was created by the Wisconsin Legislature in the 1994 Land Recycling Act. Previously, local governments fell under the same strict environmental liability as everyone else. Since 1994, communities that “involuntary” acquire property – through bankruptcy or tax delinquency, for example (see full list under “Local Government Liability Exemption” below) – may take possession of contaminated property without liability for the cleanup, so long as they did not cause the contamination. This change was designed to help local governments turn brownfields into community assets and promote job growth – local government control can also help in obtaining brownfield grants and in negotiating with potential developers.

If you have liability questions, you can get specific answers to your questions by requesting a general liability clarification letter from the RR Program for a $500 fee.

Contact one of our regional brownfield specialists to request a meeting.
- Go on-line – Visit the RR Program’s web pages for an overview of cleanup and redevelopment options.
- Subscribe – The RR Program offers two free electronic newsletters. The RR Report provides frequent, brief announcements such as grant application deadlines. Our quarterly newsletter Re News includes longer feature articles,
WAPA Endowment Donation Card

The WAPA board established an endowment fund to support scholarships for students attending either of the accredited masters degree programs in planning in Wisconsin: UW - Madison and UW - Milwaukee.

WAPA invites members to contribute to the endowment fund as a way to support the next generation of planners in Wisconsin. Just return this pledge form to WAPA Treasurer Connie White with your contribution.

Your gift is tax deductible.

Name____________________________________________________________

Address__________________________________________________________

City___________________________      State_____________ Zip_________

Pledge Amount ____________________________________________________

Send to:      Connie White
              WAPA Treasurer
              HNTB
              10 W. Mifflin Street, Suite 300
              Madison, WI 53703

Make check payable to Wisconsin Chapter, American Planning Association

JJR
Planners
Contact: Bill Patek
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Urban Designers Madison, Wisconsin 53703
Civil Engineers 608 | 251 | 1177
Environmental Scientists bill.patek@jjr-us.com

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such as brownfield cleanup and redevelopment success stories from around Wisconsin.

**Acquisition Pitfalls – A Cautionary Tale**

One Wisconsin local government acquired a closed landfill that had been licensed by DNR. Unfortunately, due to the license and the fact that the community has purchased the property outright – vs. an involuntary acquisition – the local government was not exempt from cleanup requirements.

Acquisition of contaminated property is often a tricky first step – don’t start thinking about environmental liability after acquisition. Give us a call – a Green Team meeting, a general liability clarification letter or other assistance from the DNR can often avert unwanted long term liability.

---

**Brownfield Dictionary**

To help you further understand the jargon and avoid any pitfalls, here is a brief brownfields dictionary.

- **Local Government Liability Exemption** – The state environmental liability exemption for local governments that acquire property through “involuntary” methods, such as tax delinquency, bankruptcy, condemnation, eminent domain, escheat, slum clearance, blight elimination and use of Stewardship funds.

- **Environmental Site Assessment/All Appropriate Inquiry (AAI)** – The federal code that establishes standards for property assessment. When AAI is completed prior to a purchase to assess the likelihood of contamination, the purchaser may qualify as a bona fide prospective purchaser under federal law. There is no equivalent Wisconsin liability protection for properties that are purchased. Most environmental professionals can perform AAI.

- **Bona Fide Prospective Purchaser** – The federal liability defense under Superfund law (CERCLA) for property owners who purchase contaminated property after January 11, 2002, follow the All Appropriate Inquiry standard before purchase and comply with any continuing obligations.

- **Continuing Obligations** - Certain actions for which property owners are responsible following a completed environmental cleanup (sometimes called “institutional controls” or “environmental land use controls”). These legal obligations are most often found in a cleanup approval letter from the state. Continuing obligations still apply after a property is sold; each new owner is responsible for them and may need to consider them in redevelopment planning. For example, a continuing obligation may require maintaining pavement that covers soil contamination.

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**Recommended Reading on Brownfields**

- The Financial Resource Guide for Cleanup and Redevelopment
- Liability Protection for Local Governmental Units and Economic Development Corporations
Wisconsin Moving Forward with Wind Energy Regulations

By Joe Peterangelo, UW-Milwaukee

Wisconsin public utilities are required to provide at least 10% of the state’s electricity from renewable sources by 2015, and Governor Doyle has set an additional state target of 25% renewable energy by 2025. Wind energy is one of the major sources that can help Wisconsin reach these goals.

The four largest wind farms in Wisconsin all began operating in the past two years, indicating the recent rise of wind energy in our state. These new projects have a combined capacity of 396 Megawatts – 88% of the state’s wind energy total and enough to satisfy the electricity needs of over 100,000 Wisconsin homes (Wisconsin State Journal, December 24, 2009; Renew Wisconsin, www.renewwisconsin.org).

As larger wind farms have sprung up in recent years, public concerns related to aesthetics, noise, and public safety have led many municipalities to pass ordinances controlling the location and scale of wind turbines. According to wind energy developers, however, the regulations imposed by many municipalities throughout the state are intended to make it nearly impossible to develop new wind farms. The developers see the municipal ordinances as a jumbled mess that lacks consistency. As a result, a number of lawsuits between wind farm developers and municipalities have taken place in recent years.

Last September, the State Legislature stepped in with a proposal to create uniform, statewide regulations related to wind turbines. The bill, which was
ultimately signed into law by Governor Doyle on 9/30/10, gave authority to the state Public Service Commission (PSC) to set statewide standards related to the placement of wind turbines, including a number of requirements regarding setback distances from nearby buildings, roads, and other utilities. Under the new law, municipalities are prohibited from creating regulations stricter than those of the PSC.

The PSC took the next step in March, putting together a 15-member Wind Siting Council in charge of creating the statewide regulations. The Council consists of both supporters and opponents of wind energy, including representatives from the public and private sectors and several landowners impacted by existing wind farms (Renew Wisconsin, www.renewwisconsin.org).

Now the Wind Siting Council is asking the public to help shape the new regulations. On May 14th, the Council approved a draft set of rules, which can be found at http://psc.wi.gov/apps/cms_docket (Enter PSC Docket ID 01-AC-231). Public comments are being accepted until July 7th and will help refine the final regulations that are expected this summer. These new regulations can help put both municipalities and developers on the same page, fostering better-planned wind farms and a more energy independent Wisconsin.

APA’s Surface Transportation Policy Guide

BY JOE PETERANGELO, UW-MILWAUKEE

The APA is currently updating its Policy Guide on Surface Transportation, which lays out the principles the APA believes should guide the next federal transportation bill. This guide was last ratified by the Board of Directors in 1997, prior to the passage of both TEA-21 and SAFETEA-LU, the last two major bills.

Earlier this year, a draft of the Policy Guide on Surface Transportation was sent to all APA chapters for review and comment at the Chapter Delegate Assembly in New Orleans on April 10. During the Assembly, chapter delegates discussed the Policy Guide at length, made amendments to the draft, and ultimately voted to approve it, forwarding the document to the APA Board of Directors for ratification.

The WAPA representatives at the Chapter Delegate Assembly were Brian O’Connell of the City of Racine and Steve Sokolowski of the City of Sheboygan.

“It was a very participatory and interesting process, and Brian and I were proud to represent the Wisconsin APA Chapter,” Sokolowski said.

The APA’s position on transportation policy is based on six “foundational pillars” aimed at supporting the planning profession’s comprehensive and integrated approach to transportation. These pillars are:

1. Empower and Improve the Mobility of Metropolitan Regions
2. Support Integrated Planning for Sustainable Communities
3. Invest in Transportation that Promotes Economic Growth, Competitiveness and Resiliency
4. Foster Location-Efficient Decisions
5. Create Safe, Healthy and Accessible Communities for Everyone
6. Expand Funding Sources to Meet Transportation Needs in ways that are Flexible, Performance-Driven and Linked to Outcomes

The full draft Policy Guide, which includes detailed policy positions based on these objectives, can be viewed on the APA website at www.planning.org/policy/guides.
Protecting Our Turf: Should Planners in Wisconsin Be Licensed?

By Lara Rosen, Masters Degree Candidate, Department of Urban & Regional Planning, University of Wisconsin-Madison, and Brian Ohm, WAPA Vice President of Chapter Affairs

The 2010 WAPA Conference included a session on the licensing of planners. Because of the importance of this issue to the profession, session attendees wanted to make sure the information that was presented at the session was made available to all members. It is important for WAPA members to think about the issue of licensing because over the past few years, Wisconsin has witnessed a number of different licensed professions related to planning – landscape architects, attorneys, and surveyors – try to better define the scope of their professional practice. In doing so, these other professions begin to potentially impact what planners can do when they are not licensed in those other professions. Should only licensed landscape architects be able to prepare certain types of plans? Should only licensed attorneys be able to draft zoning ordinances? The landscape architect profession and surveyors have recently supported bills in the legislature trying to better define what these professions do. The Wisconsin Supreme Court is currently considering a rule defining the practice of law in Wisconsin.

Conversely, with the passage of the 1999 comprehensive planning law, Wisconsin communities have hired many individuals to prepare comprehensive plans who are not “planners.” Should there be some type of certification process for who is “in charge” of the planning process similar to the “planner-in-charge” requirement of the federal “701” planning process from forty years ago? These are important questions that WAPA members need to be aware of.

Should WAPA be more proactive on this issue or should WAPA continue to just reactive to various licensing proposals presented by other professions? This is a dialogue that Wisconsin planners should have. To provide some background on this issue, this article provides some information about what is meant by...
Not a member of WAPA? Want to become a member?

Just print this out, fill out the form, and return it to APA at:

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Did you know . . .

The WAPA webpage posts RFPs and RFQs related to planning work. Email to: wapa@wisconsinplanners.org

. . . you may post planning jobs for free on the WAPA webpage. Email to: jobs@wisconsinplanner.org

. . . WAPA is always looking for members (or their friends, relatives, and neighbors) willing to volunteer to make WAPA stronger and provide better service to our members. Email Gary Peterson: petersong@sustainablegary.com

You may also download this form at http://www.wisconsinplanners.org/org/memberform2010.pdf
“credentialing,” the credentialing requirements of Michigan and New Jersey, the only two states that currently have a program in place, and AICP recommendations for states considering enacting legislation that would require credentialing.

What Is In a Name?: Certification v. Licensing v. Registration

According to Stuart Meck in a 1998 article entitled “Certification, licensing, and registration of planners”, registration is “statutory control over the use of a title associated with a particular occupation or profession,” while licensing is “statutory control over the right of individuals to practice a profession or engage in an occupation” (Meck, 1998, p. 3). Certification differs from state-mandated credentialing in that it is a “nongovernmental mechanism by which an organization recognizes individuals as having met certain criteria or possessing certain knowledge (measured through an examination) associated with a profession.” The American Institute of Certified Planners (AICP) serves this role for planners throughout the U.S.

Currently Michigan and New Jersey are the only two states that require credentialing. Each state follows a different approach. Michigan requires registration and New Jersey requires licensure. Both approaches are summarized below.

Michigan

Michigan is the only state to require registration for planners. The law has its roots in several lawsuits brought against planners in the 1960s by other professionals. An engineer sued a planner claiming that the preparation of population projections constituted practicing engineering without a license; an attorney sued a planner claiming that the preparation of zoning ordinance texts constituted practicing law without a license (Heidemann, 1993, p. 7). The planning community and the state responded to these lawsuits by enacting licensing of title legislation in 1966. Mary Ann Heidemann argues that while this legislation was an “imperfect response… at least it established the field of planning as an area of practice distinct from engineering, architecture or law” (Heidemann, 1993, p. 7).

In 1980, the Michigan Legislature passed a law requiring registration for use of the title “Professional Community Planner.” The law defined the professional activity to be regulated, established the requirements for registration, and created a board of professional community planners. The definition of the planning practice to be regulated, which still applies today, limits the title of ‘professional community planner’ to “person[s] qualified to prepare comprehensive community plans,” which themselves are “unified document[s] of text, charts, graphics, or maps, or combination of texts, charts, graphics, or maps, designed to portray general, long-range proposals for the arrangement of land uses and which is intended primarily to guide government policy toward achieving orderly and coordinated development of the entire community” (Mich. Comp. Laws §339.2301 (2010)). The requirements for registration include a two-part exam, currently the AICP certification exam and a Michigan-specific portion, and up to six years’ experience in “the type of work necessary to the preparation or implementation of comprehensive community plans” depending on educational background (Mich. Comp. Laws §339.2306 (2010)).

To the chagrin of advocates in the Michigan planning community, title registration has not led to better quality planning or elevated the professional status of its practitioners. Registration may be required in order to use the title of “Professional Community Planner,” but it is not required to practice the profession. Having this option has resulted in stagnant growth in the number of registered planners. Only about 200 planners...
are currently registered, which is about the same number of planners that were grandfathered in 30 years ago. Additionally, the legislature abolished the board of professional community planners in 1996, leaving registration regulation to the Department of Consumer and Industry Services, whose staff has little specific knowledge of the planning field (email correspondence with Dr. Mary Ann Heidemann, PCP, AICP, February 2, 2010).

**New Jersey**

According to incoming New Jersey APA president Charles Latini, New Jersey, like Michigan, enacted its credentialing requirement in reaction to a dispute about “lawful duties” of related professions in the 1960s (email correspondence, February 5, 2010). Unlike Michigan, New Jersey required licensure for anyone practicing the planning profession. The State Board of Professional Planners Laws of 1962 defined the practice of planning as:

- the administration, advising, consultation or performance of professional work in the development of master plans...and other professional planning services related thereto intended primarily to guide governmental policy for the assurance of the orderly and coordinated development of municipal, county, regional, and metropolitan land areas, and the State or portions thereof. The work of the professional planner shall not include or supersede any of the duties of an attorney at law, a licensed professional engineer, land surveyor or registered architect of the State of New Jersey. (N.J. Stat. Ann. §45:14A (2010))

The requirements for registration include a two-part exam, currently the AICP certification exam and a New Jersey-specific portion, and up to eight years’ experience in professional plan-
ning, as defined by the AICP or the board and depending on educational background.

One aspect of New Jersey’s licensing requirement has been the source of much controversy in the planning community. The original legislation exempted “licensed professional engineers, land surveyors and registered architects” from the licensing requirement, stating that “[n]othing in this act shall be construed to prohibit [such persons] from engaging in any or all of the functions or performing any or all of the services set forth in this act,” provided that they do not “hold themselves out as professional planners” (N.J. Stat. Ann. §45:14A-3 (2010)). Until around the late 1980s, engineers, surveyors and architects only had to pay a small fee in order to be recognized as professional planners; they currently have to take the New Jersey portion of the exam to qualify, but are exempt from the AICP certification exam requirement (Latini, email correspondence, February 5, 2010).

AICP

AICP does not support state legislation that would require credentialing for planners. The organization does, however, acknowledge that there is support for such legislation within the planning community, other professional communities, and state legislatures. In 2000, the AICP Licensing Committee published the AICP Guide to Issues to Address When Preparing Legislation that Regulates Planners to help “enable planners to exercise a greater influence on the contents of any bill to regulate planners that makes it to the floor of a state legislature.” The Guide identifies issues that should be addressed when considering state regulation of the profession and drafting legislation in order to proactively tackle problems that such legislation could produce for planning professionals.

In general, the AICP Guide recommends that any state credentialing requirements be consistent with, if not identical to, AICP standards. The purpose of the legislation should be to “establish minimum standards of knowledge and skill for the professional practice of planning” (AICP, 2000). Moreover, as is the case in New Jersey and Michigan, the criteria for obtaining the required credential should mirror the criteria for achieving AICP membership: “minimum education and experience standards, plus demonstrating a minimum set of knowledge and judgment as measured by a written examination administered by a state agency or board or by AICP” (AICP, 2000). Finally, while the statutory definition of “professional planning experience” should be more precise and succinct than that of AICP, the Guide suggests that the AICP definition “is a good place to start” (AICP, 2000). The AICP definition has four components: (1) “[i]nfluencing public decision making in the public interest,” (2) “[e]mploying an appropriately comprehensive point of view,” (3) “[a]pplying a planning process appropriate to the situation,” and (4) “[i]nvolveing a professional level of authority, responsibility, and resourcefulness” (AICP, 2000). The AICP deems unacceptable as professional planning experience “work in related fields”, “experience in related professions”, “physical and social science research normally performed by other professions or academic disciplines,” and “work at a pre-professional level” (AICP, 2000).

The AICP Guide also recommends that the statutory definition of planning be clear and narrow. After all, [d]evising a definition of ‘planning’ that encompasses the full scope of what professional planners do has long evaded the best efforts of the profession” (AICP, 2000). Legislation “does not have to comprehensively define the ‘practice of planning,’” but should instead provide a narrow definition of the activities to be regulated (AICP, 2000).

This should assuage the fears of some planners that licensing will narrow a field that prides itself on its inclusiveness, breadth, and diversity, characteristics that many believe set planning apart
from other related professions. While concerns about creating excessive barriers to entry are certainly valid, they can be addressed in how statutes define the professional practices to be regulated. Both Michigan and New Jersey “define ‘planning’ much more narrowly than its practice” in their statutes, and despite fears to the contrary, these definitions do not limit what planners can do in their professional practice. Rather, they aim to set minimum standards for what planners should be capable of doing.

Conclusion

Any discussion of credentialing of planners in Wisconsin can learn from Michigan and New Jersey and the guidance offered by the AICP. It is critical for WAPA to think about these issues in the context of the licensing efforts by other professions in Wisconsin and even other national certification efforts that are gaining in popularity, such as LEED professional certification. We need to make sure we take steps to improve the practice of planning in Wisconsin.

References


Court Decisions

March Case Law Update

March 31, 2010

Wisconsin Supreme Court Private Communities: The Emerging Area of “Community Association Law” In Sologowicz v. Forward Geneva National, 2010 WI 20, the Wisconsin Supreme Court
affirmed the decision of the Wisconsin Court of Appeals reported in the January 2009 WAPA case law update. The case involved a lawsuit brought by several condominium owners within a development known as “Geneva National” in Walworth County challenging the developer’s continued control over the development.

Geneva National is a private “master-planned” community comprising 1600 acres “with an overarching development scheme established to create a high end golf and leisure community, containing restaurants, golf clubs, tennis clubs, swimming clubs, single family homes, multiple family homes, wooded hiking trails, private streets with gated access to the community.” The multi-family residential buildings were developed as condominiums. (Other parts of the master-planned community were developed under different ownership arrangements.) The entire development is controlled by a Community Declaration, a restrictive covenant that is the “master governance scheme for the entire development.”

The Community Declaration created two governing bodies to control the development: the Community Association and the Geneva National Trust. The Community Declaration gave the developer significant control over these two governing bodies. The Geneva National Trust has the authority to act in “sole and absolute discretion” to adopt and enforce architectural standards, implementing rules and regulations governing use of the property, and granting variances to restrictions set forth in the Covenant. The Trust’s expenses are paid by the unit owners. The Association maintains Geneva National’s private roadways, medians, entrances and property, and provides utilities and can levy assessments on property owners to pay for improvements.

The condominium owners who initiated the lawsuit were upset over some significant special assessments for certain improvements. They alleged that Geneva National’s governing structure granted the Developer an unreasonable amount of control that violated Wisconsin’s Condominium Ownership Act found in Chapter 703 of the Wisconsin Statues, and argued the actions of the developer amounted to “taxation without representation to infinity.” The Condominium Ownership Act limits the duration of a developer’s control over a condominium project. A condominium developer may maintain control only for three years or until seventy-five percent of the units are sold, whichever comes first, or ten years for an expandable condominium. Wis. Stat. §703.15(2)(c). Here, the developer still had control after eighteen years. Only fifty-two percent of the maximum allowable units have sold but the Community Declaration grants the developer control until eighty-five percent have sold.

The Wisconsin Supreme Court, agreeing with the Court of Appeals, held that the Community Ownership Act (Chapter 703 of the Wisconsin Statutes) did not apply to the Community Declaration because the Community Declaration is not a document that creates condominiums under Chapter 703. As the Supreme Court noted, the condominium declaration is the operative instrument that creates a condominium under Chapter 703. The Community Declaration is different from that declaration. Wisconsin has no statutory guidance for the large-scale planned community created by the Community Declaration which is one of the reasons for some of the confusion in the case.

The Court then provides the following guidance for what is a “planned community”:

---

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We agree with the court of appeals’ statement that planned communities, such as Geneva National, “are an entirely different type and level of development than condominiums.” A condominium is a form of ownership of real property that combines two separate forms of ownership interest: the individual ownership of the dwelling unit and the undivided common ownership, with other unit owners, of the common elements of the condominium parcel. While we found varying characteristics of similarly planned communities, there are several key components that appear to be common to most such communities. First, these communities generally are large developments that usually include a mix of commercial, recreational and residential property, including condominiums. Second, a keystone to such communities is an overall development scheme that not only permits individual units to operate under their own individual governing documents, but also subjects the entire development to a master governing body, which ensures the entire community is developed according to its stated purpose. The communities function as semi-autonomous, private quasi-towns. (Citations omitted.)

The Court stresses that the Community Declaration is a contract between the Developer and those who choose to purchase property within Geneva National. The Court applies ordinary contract law rules and finds that since the terms of the Community Declaration are unambiguous and do not violate any common law principle, the Court is unwilling to void the contract. Again, it is a situation of “buyer beware.”

Wisconsin Court of Appeals opinions

Condemnation for Transmission Lines Fields v. American Transmission Co. involves a dispute related to the valuations of property as part of a condemnation action initiated by the American Transmission Co. (ATC) to acquire an easement for a new high-voltage transmission line. The issue involved “whether pre-existing easement rights may be considered by a jury when determining just compensation.” The Court of Appeals held that yes, such evidence may be presented.
The Court of Appeals also clarified that the jury is supposed to find before and after values of the whole property to arrive at the just compensation. The jury should not try to just determine the value of the property rights taken by the new easement because just compensation is based on the fair market value of the land as a whole. In addition, the Court of Appeals clarified that the date of evaluation is the date that is 2 years prior to the date of which the certificate of public convenience and necessity was issued for the new transmission line.

**WAPA May Legislative Update**

**Steve Hiniker**  
**June 1, 2010**

**Summary of May Floor Period**

The Wisconsin Legislature finished its work on April 22. The Senate’s sudden adjournment while the Assembly was still working on key bills, including Regional Transit Authorities and the Clean Energy Jobs Act, left many totally shocked by the outcome. Rumors persisted for weeks that the Governor would call a Special
Session of the Legislature to address the unfinished business but with little evidence that any legislators were willing to actually pass the legislation, the rumors died.

The highlights of the recently completed session include changes to the state comprehensive planning law (SB 601), now Act 372 and provisions to promote traditional Neighborhood Design (SB-314), now Act 351. The issues left unresolved include Regional Transit Authority legislation for Milwaukee, Southeast Wisconsin, the Fox Valley and Brown County. The legislature also did not act on the Clean Energy Jobs Act that would have included substantial changes to land use planning and aids to communities adopting sustainable design practices.

Legislative Races for the Fall of 2010

There are already a record number of legislators announcing their retirement plans, opening up Assembly races across Wisconsin. The July Report will focus on who is retiring and what the next legislature may look like.

Bills Signed Into Law

SENATE BILLS SIGNED INTO LAW

SB-172. Annexations (Holperin) Limits city and village use of direct annexation; authorized limited town challenges to an annexation.

SB-227. Temporary Government (Legislative Council) Interim successors for legislators, meetings of the legislature and legislative committees, temporary seat of government for the legislature.

SB-273. Renewable Resource Credits (Plale) Creates renewable resource credits by electric providers.

SB-279. Bioenergy (Legislative Council) Financial assistance related to bioenergy feedstocks; biorefineries, conversion to biomass energy; definition of agricultural use for determining assessed value; requires strategic bioenergy assessment; study of regulatory burdens related to biofuel production facilities; etc.

SB-291. TIF (Sullivan) Authorizing the designation of a TIF as distressed and expanding the use of donor TIF districts. Act 310.


SB-412. TIFs (Erpenbach) Changes certain administrative procedures under the tax incremental financing program. Act 312.

SB-604. Planning (Kreitlow) Makes various changes affecting comprehensive planning.

SB-623. Farmland Preservation (Kreitlow) Processing of certain applications for farmland preservation agreements.

SB-624. Energy Efficiency Loans (Lehman) Expands authority of political subdivisions to make residential energy efficiency improvement loans; authorizes political subdivisions to make water efficiency improvement loans and impose special charges for the loans. Act 272

SB-626. Platting (Hansen) Modifications to platting requirements.

SB-651. Green to Gold (Lassa) Loans to manufacturing businesses for energy improvement, job creation, retooling, etc. Act 332

SB-661. Wetland Permits (Wirch) General permits for certain wetland restoration activities.


ASSEMBLY BILLS SIGNED INTO LAW

AB-260. Plat Approvals (Smith) Extraterritorial plat approval on basis of land’s use.

AB-580. Managed Forest Lands (Clark) Petitions and management plans; transfers of ownership; establishing stumpage values; filing cutting reports;
estimating withdrawal taxes; signatures and authentication requirements for orders under forest croplands program.  

**AB-658**  
**Mortgage Originators** (Parisi) Qualifications of mortgage loan originators.  

**AB-857**  
**Gas Companies** (Soletski) Creates an exemption for interstate natural gas companies form certain requirements regarding real estate transactions and court actions, creation and powers of municipal electric companies, and exempts from certificate of public convenience and necessity for certain electric transmission line projects.  

**AB-950**  
**Private Sewage Systems** (Seidel) Eligibility for grant funding under a maintenance program that applies to private sewage systems.  

**VETOED**  
**SB-616**  
**Energy Conservation** (Risser) Energy conservation standards for construction of certain buildings. [Veto Message](#).  

**New Legislation**  
**March 22, 2010**  

**SB 601 Relating to comprehensive planning**  
3/9/2010 – Introduced by Senators KREITLOW and HARSDORF, co-sponsored by Representatives HUBLER and BROOKS.  

Referred to Committee on Ethics Reform and Government Operations.  

Under the current law commonly known as the “Smart Growth” statute, if a city, village, town, county, or regional planning commission (local governmental unit) creates a development plan or master plan (comprehensive plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. A town may create a comprehensive plan only if it exercises village powers as authorized by the town meeting. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; land use; and intergovernmental cooperation.  

Also under current law, beginning on January 1, 2010, if a local governmental unit engages in any of these specified actions, the comprehensive plan must contain at least all of the required planning elements. This bill specifies that the actions of a local governmental unit that must be consistent with the local governmental unit’s comprehensive plan are ordinances related to official mapping, local subdivision regulation, and zoning, including zoning of shorelands or wetlands in shorelands. “Consistent with” is defined in this bill to mean “furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.” This bill also specifies that enacting a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation.  

Also under this bill, if a local governmental unit has not adopted a comprehensive plan, it may be exempt from the consistency requirement if either:  
1) the local governmental unit has not received a comprehensive planning grant from the Department of Administration (DOA), and the local governmental unit adopts a resolution stating that it will adopt a comprehensive plan by January 1, 2012; or  
2) the local governmental unit has received a comprehensive planning grant and an extension from DOA. The local governmental unit is exempt from the consistency requirement until January 1, 2012, if it qualifies under the former provision or until the expiration of
the extension granted by DOA if it qualifies under the latter provision. Also under this bill, a town may adopt a comprehensive plan whether or not it exercises village powers.

This bill was developed in conjunction with 1000 Friends of Wisconsin, Brian Ohm of UW-URPL, the Wisconsin Towns Association, the Wisconsin League of Municipalities, the Wisconsin Realtors and the Wisconsin Builders.

SB 626 Relating to modifications to platting requirements

March 17, 2010 – Introduced by Senators HANSEN, KREITLOW and COWLES, cosponsored by Representatives MOLEPSKE JR., ZIGMUNT, BERCEAU, SUDER, SOLETSKI, ROTH, HUEBSCH and HINTZ.

Referred to Committee on Ethics Reform and Government Operations.

Under current law, a county, town, city, or village (approving authority) has the right to approve or object to a plat (the map of a subdivision). Generally, the location of the subdivision determines which approving authority or authorities have the right to approve the plat. Approval of a plat is conditioned, among other things, on the plat’s compliance with the local ordinances and comprehensive, master, or development plan of the approving authority or authorities that have the right to approve the plat.

This bill specifies that the local ordinances with which a plat must comply are those in effect when the preliminary plat is submitted, or when the final plat is submitted if a preliminary plat is not. The bill allows an approving authority and a subdivider to agree to waive or vary requirements under an ordinance that is in effect when the preliminary plat, or final plat if no preliminary plat, is submitted and to agree as to the application of ordinances that are enacted by the approving authority after the preliminary plat, or final plat if no preliminary plat, is submitted.

Current law allows an approving authority to enact ordinances governing the subdivision of land that are more restrictive than the provisions in the statutes. The bill provides that local ordinances may not be enacted that are more restrictive than the provisions in the statutes with respect to time limits, deadlines, notice requirements, or other provisions that provide protections for subdividers.

Current law provides that if a preliminary plat is submitted and approved, the final plat is entitled to approval if it substantially conforms to the preliminary plat.

The bill requires a professional engineer, planner, or other person charged with the responsibility to review plats to provide the approving authority with his or her conclusions as to whether the final plat substantially conforms to the preliminary plat and with his or her recommendation on approval of the final plat.

Under current law, as a condition of approval, an approving authority may require a subdivider to execute a surety
bond or provide other security to ensure that certain improvements will be made. The bill provides that the approving authority may not require any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements and that, if the project will be constructed in phases, the amount of the security must be limited to the phase of the project that is being constructed.

Current law requires a subdivider to record the final plat in the office of the register of deeds in the county where the subdivision is located. The register of deeds may not accept the final plat for recording unless it is offered for recording within six months after the last approval and within 24 months after the first approval. The bill specifically provides that a subdivider may record the final plat in separate parts at different times. In addition, the bill extends the times for recording to within 12 months after the last approval and within 36 months after the first approval.

**AB 818** Relating to notices concerning construction near or on lakes, streams, or wetlands that are given to applicants for building permits and other construction approvals, requiring the Department of Natural Resources to furnish informational brochures about wetlands laws, requiring the Department of Natural Resources to provide evaluations and statements about whether certain land contains wetlands, and making an appropriation.

3/9/2010 – Introduced by Representatives BIES, ZIGMUNT, BERCEAU, MURSAU, PETROWSKI, TOWNSEND and ZEPNICK, cosponsored by Senators KREITLOW, A. LASEE, MILLER, COWLES, HANSEN, HOLPERIN, LEHMAN, ROBSON, TAYLOR and WIRCH.

Referred to Committee on Natural Resources.

This bill requires the Department of Natural Resources (DNR) to provide certain services relating to wetlands to persons who own or lease land. Under the bill, a wetland is an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and that has soils indicative of wet conditions. The bill requires DNR to provide, for a fee, a wetland map review, a wetland identification, or a wetland confirmation upon request by a person who owns or leases land.

Under the bill, a wetland map review consists of a written evaluation, based upon a review of wetland maps prepared by DNR or other information available to DNR, of whether a parcel of land is likely to contain a wetland. A wetland identification consists of a written evaluation, based upon an on-site inspection of the land by DNR, of whether a parcel of land contains a wetland. A wetland confirmation consists of a written statement, based upon an on-site inspection of the land by DNR, of whether DNR concurs with the boundaries of a wetland as delineated by a third person.

The bill provides that, if DNR furnishes a wetland identification or a wetland confirmation, that identification or confirmation is effective for a period of five years. The bill requires DNR to negotiate with the U.S. Army Corps of Engineers (Corps of Engineers) to enter into a memorandum of agreement that provides that the Corps of Engineers will concur with any written evaluation by DNR of whether a parcel of land contains a wetland for purposes of a wetland identification. The bill also specifies that DNR may not provide a wetland identification before the date on which it enters into such a memorandum with the Corps of Engineers.

The bill establishes deadlines under which DNR must provide these wetlands-related services after a person
files a request for the service. The bill specifies that, if adverse weather conditions or other adverse conditions prevent DNR from conducting an accurate on-site inspection for a wetland identification or a wetland confirmation, DNR may provide the service as soon as possible after conditions allow DNR to conduct an accurate on-site inspection.

The bill also requires that each county, city, village, and town (municipality) that issues a building permit or other approval for construction activity must give the applicant a written notice that contains information about construction near or on wetlands including a statement that advises the applicant that the applicant is responsible for complying with state and federal laws concerning construction near or on wetlands, lakes, and streams. The bill requires the Department of Commerce to include this notice on every standard building permit form that it prescribes. The bill provides that a municipality is not required to give the notice if it issues a building permit on a standard building permit form prescribed by Commerce. If the municipality is required to give the notice, the bill provides that the municipality must require the applicant for the building permit to sign a statement acknowledging that the person has received the notice.

The bill also requires DNR to furnish an informational brochure to municipalities for distribution

AB 843 Relating to energy conservation standards for the construction of certain buildings, energy and environmental design standards for state buildings, structures, and facilities, energy and environmental design standards for school district facilities and other local government buildings, leasing of state buildings, structures, and facilities, standards for the construction and use of graywater systems, granting rule-making authority, and making an appropriation.

March 11, 2010 –Introduced by Representatives MOLEPSKE JR., MASON, PASCH, ROYS, POPE–ROBERTS, MILROY, SINICKI and BERCEAU, cosponsored by Senators RISSER and SCHULTZ.

Referred to Committee on Jobs, the Economy and Small Business.

Currently, with certain exceptions, the Department of Administration (DOA) must ensure that the specifications for each state construction project require the use of recovered and recycled materials to the extent that such use is technically and economically feasible. With certain exceptions, DOA must also prescribe and enforce energy efficiency standards for energy consuming equipment that is installed in connection with state construction projects. The standards must meet or exceed specified statutory standards. The Building Commission must also apply these standards when entering into certain leases on behalf of the state. Current law also requires the commission to employ a design for cogeneration of steam and electricity in state-owned central steam generating facilities unless the commission determines that such a design is not cost-effective and technically feasible.

Currently, the commission must also ensure that state-operated steam generating facilities are designed to allow the use of biomass fuels and refuse-derived fuels to the greatest extent cost-effective and technically feasible. In addition, under current law, the commission is prohibited from approving the construction or major remodeling of or addition to any state building or structure unless the building or structure makes maximum practical use of passive solar energy system design elements and, unless not technically or economically feasible, incorporates an active solar energy system or photovoltaic solar energy system or other renewable energy system.

This bill directs DOA and the Building Commission to ensure that the plans and specifications for each major state
A construction project (each project for the construction of any new state building, structure, or facility containing at least 10,000 gross square feet of conditioned space, or for the repair, renewal, or renovation of any existing building, structure, or facility, for occupancy by any state entity if the building, structure, or facility contains at least 10,000 gross square feet of conditioned space and the project affects more than 50 percent of the existing gross square feet of conditioned space in the building, structure, or facility, or for the expansion of an existing state building, structure, or facility to add at least 10,000 gross square feet of conditioned space) conform at a minimum to the requirements under the LEED Green Building Rating System at the silver performance level, as prescribed by the Department of Commerce (Commerce) based upon the standards of the U.S. Green Building Council. Upon completion of a major state construction project, the bill directs DOA to obtain certification by the U.S. Green Building Council that the project conforms at a minimum to the requirements under the LEED Green Building Rating System at the silver performance level, as prescribed by the Department of Commerce (Commerce) based upon the standards of the U.S. Green Building Council. Upon completion of a major state construction project, the bill directs DOA to obtain certification by the U.S. Green Building Council that the project conforms at a minimum to the requirements for certification at the LEED silver level. The bill also directs DOA and the Building Commission to ensure that each project to construct such a building, structure, or facility for the state shall conform to specified requirements for recycling of construction waste and demolition materials. In addition, the bill directs the commission to enforce compliance with the bill’s requirements with respect to all major construction projects whenever the buildings, structures, or facilities being constructed are purchased by the state under a purchase agreement or whenever construction, repair, renewal, renovation, or expansion of a building, structure, or facility is performed for the state under a lease agreement with option to purchase.

The bill also directs the Building Commission to apply all moneys available for its use under the Authorized State Building Program to achieve certification as of January 1, 2015, by the U.S. Green Building Council for not less than 15 percent of the gross square footage of conditioned space owned or leased by state agencies, as determined by DOA, as conforming at a minimum to the LEED energy performance requirements for the operation and maintenance of existing buildings. In addition, the bill directs DOA to promulgate rules that require the Building Commission to continue to apply all moneys available for its use under the Authorized State Building Program during the period from January 1, 2015, to January 1, 2030, to achieve certification by the U.S. Green Building Council for greater percentages of the gross square footage of conditioned space owned or leased by state agencies as meeting minimum LEED performance requirements for the operation and maintenance of existing buildings by specified dates.

Currently, DOA has responsibility for the negotiation and administration of leases of real property by this state, except as otherwise provided by law. The Building Commission has authority to approve leases of real property by the state, except as otherwise provided by law. This bill directs DOA, before entering into any lease, or renewing or extending any lease, for improved real property to be used by a state agency, to require the prospective lessor to disclose the energy use intensity for the total property and the annual energy usage for the total property, calculated in accordance with Energy Star standards, as determined by Commerce, and to verify and forward that information to the Building Commission. The bill directs DOA to require other state agencies that have author-
ity to enter into leases for improved real property to obtain and forward the same information to the Building Commission before entering into, or renewing or extending, any lease for real property. The bill then prohibits the Building Commission from approving any lease for improved real property to be used by this state containing at least 10,000 square feet of conditioned space unless DOA certifies to the commission that the energy use intensity for the total property and the annual energy usage for the total property conform to Energy Star standards at a level sufficient to conform at a minimum to the threshold for compliance with the LEED Green Building Rating System for existing buildings—operation and maintenance performance requirements, as determined by Commerce. The bill directs the Building Commission to obtain certification by the U.S. Green Building Council that any such property conforms at a minimum to the requirements for certification at the LEED silver level. The bill directs the Building Commission to require other state agencies that have authority to enter into leases for improved real property to certify to the commission, before entering into, or renewing or extending, any lease for real property to be used by this state, that the energy use intensity for the total property and the annual energy usage for the total property conform to the same standards.

The bill also requires DOA, with limited exceptions, to ensure that major state buildings, structures, and facilities that are constructed by or for the state conform to specified energy performance standards at increasingly stringent levels by specified dates beginning on the first day of the 7th month beginning after the day the act resulting from the bill becomes law and ending on January 1, 2030, by which date all major state buildings, structures, and facilities that are constructed by or for the state must achieve a zero net energy level of energy performance. In addition, the bill directs DOA to report annually to the governor and the Building Commission concerning the percentage level of adherence to the requirements imposed upon DOA under the bill that become effective on a date later than the end of the preceding year and the percentage level of adherence to the requirement imposed upon the Building Commission to apply all moneys available to the commission to achieve certification for at least 15 percent of conditioned space in existing owned or leased state buildings, structures, or facilities as conforming at a minimum to the LEED energy performance standards specified in the bill.

Under current law, Commerce is required to promulgate an energy conservation code that sets design requirements for construction and equipment for the purpose of energy conservation in public buildings and places of employment. Commerce must consider incorporating into the energy conservation code design requirements from the most current national energy efficiency design standards, including the International Energy Conservation Code (IECC) or another energy efficiency code that is generally accepted and used by engineers and the construction industry. Current law requires that Commerce review the code on a regular basis, including whenever there is a revision of the IECC, and update the code accordingly.

This bill requires Commerce to incorporate into the energy conservation code a standard that is based upon a specific standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) and eliminates the requirement to use other standards specified under current law. As with the revision requirements under current law, the bill requires Commerce to update the code whenever the ASHRAE standard is revised.

Current law also requires Commerce to promulgate rules for ventilation systems in public buildings and places of employment. This bill requires Commerce to incorporate a specific ASHRAE standard into those rules and to update the rules when the standard is revised.
Under current law, a city, village, town, or county may exercise jurisdiction over the construction of new dwellings by passing an ordinance, provided that the ordinance meets the requirements of the one- and two-family dwelling code under current law, this bill provides that such an ordinance may exceed the requirements of that code as they relate to energy conservation in the construction of new dwellings.

This bill authorizes Commerce to promulgate rules that establish standards for the installation of graywater and rainwater systems and that authorize the reuse of graywater and rainwater within the building, or on the property surrounding the building, from which the graywater or rainwater was generated. Under the bill, graywater is defined as wastewater generated from the use of a clothes washer, sink, shower, or bathtub.

This bill also imposes on a political subdivision (any city, village, town, or county) certain requirements for a major construction project. Under the bill, a major construction project means a project for the construction of a public building by or for a political subdivision that will contain at least 10,000 gross square feet of office space, or for the repair, renewal, or renovation of an existing public building that contains such space if the repair, renewal, renovation, or expansion affects more than 50 percent of the existing building, or for the expansion of an existing public building that adds at least 10,000 gross square feet of such space. The requirements imposed on a political subdivision under the bill are based on the requirements that the bill imposes on DOA and the Building Commission for a major state construction project.

The bill requires a political subdivision to ensure that the plans and specifications for each major construction project conform at a minimum to the requirements for certification at the silver performance level under the LEED Green Building Rating System, as prescribed by Commerce and based on the standards of the U.S. Green Building Council, and that the energy performance, use and disposal of construction and demolition materials, ventilation components, indoor air quality performance, and water usage level for each major construction project conform to standards specified by Commerce that are derived from various national and international building codes.

This bill imposes similar requirements for major construction projects of school districts. Each school board must ensure that the plans and specifications for each major construction project conform at a minimum to the requirements of the LEED Green Building Rating System at the silver performance level, as prescribed by Commerce. Upon the request of a school district, the state must pay all necessary LEED registration and certification fees on behalf of the school district. Upon completion of a major construction project, a school district must obtain certification from the U.S. Green Building Council that the project conforms at a minimum to the standards for certification at the LEED silver level. The bill also directs each school board to ensure that the energy performance, use and disposal of construction and demolition materials, ventilation components, indoor air quality performance, and water usage level for each major construction project conform to standards specified by Commerce that are derived from various national and international building codes.

**AB 852 Relating to general permits for certain wetland restoration activities and providing a penalty.**

March 12, 2010 – Introduced by Representative BLACK.
Referred to Committee on Natural Resources.

Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to construct, operate, and maintain dams, to place structures or deposit material, permits to construct or maintain bridges, permits to enlarge or connect waterways or to grade or remove top soil from banks along navigable waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways.

Current law also prohibits a person from discharging dredged or fill material into certain wetlands unless the discharge is authorized by a certification from DNR that the discharge will meet all applicable state water quality standards.

The bill authorizes DNR to issue a general permit for wetland restoration activities sponsored by a federal agency (wetlands general permit) in lieu of issuing certain individual permits or water quality certifications that would otherwise be required for those activities. Under the bill, a wetlands general permit remains authorized under the permit until the activity is completed.

The bill authorizes DNR to renew or modify a wetlands general permit. The bill requires DNR to provide public notice of its intention to issue a wetlands general permit and to provide an opportunity for certain interested persons to request a public hearing with respect to DNR’s intention to issue a wetlands general permit. DNR must hold a public hearing if it determines that there is significant public interest in holding the hearing.

Under the bill, a person who wishes to proceed with an activity under the authority of a wetlands general permit must file an application with DNR not less than 15 days before commencing the activity. The bill authorizes the sponsoring federal agency to file the application on behalf of the person wishing to proceed with the activity if that person authorizes the federal agency to do so. The bill also authorizes DNR to request additional information before determining whether the activity is authorized by the wetlands general permit. If, within 30 days after application, DNR does not inform the person wishing to proceed with the activity or the sponsoring federal agency that an individual permit will be required, the activity is considered to be authorized under the wetlands general permit. The bill authorizes DNR to require a person to apply and obtain an individual permit if DNR determines that the activity is not authorized under the wetlands general permit or that site specific conditions require restrictions on the activity. The bill also authorizes a person wishing to proceed with an activity for which a wetlands general permit has been issued to request an individual permit in lieu of seeking authorization under the general permit.

AB 863 Relating to eliminating the requirement to pay a conversion fee for having land rezoned out of a farmland preservation zoning district.

March 16, 2010 – Introduced by Representatives NEWCOMER, ROTH, BIES, GUNDERSON, KAUFERT, KERKMAN, LEMAHIEU, LOTHIAN, SPANBAUER, SUDE, TOWNSEND, VOS and ZIEGELBAUER, cosponsored by Senators A. LASEE, LEIBHAM and ELLIS.

Referred to Joint Committee on Finance.

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) administers the Farmland Preservation Program, which contains some of the requirements that a farmer must meet to qualify for the
Wisconsin Chapter, American Planning Association

farmland preservation tax credit. Under current law, one requirement for qualifying for the farmland preservation tax credit is that the farmland must either be in a farmland preservation zoning district under a certified farmland preservation zoning ordinance or be covered by a farmland preservation agreement executed by DATCP.

Under current law, in order to rezone land out of a farmland preservation zoning district, a political subdivision must find that the land is better suited for a use not allowed in a farmland preservation zoning district, that the rezoning is substantially consistent with the certified county farmland preservation plan, and that the rezoning will not substantially impair the agricultural use of surrounding parcels that are zoned for agricultural use. Also under current law, a political subdivision with a certified farmland preservation ordinance may not rezone land out of a farmland preservation zoning district unless the person who requested the rezoning pays a conversion fee equal to the number of acres rezoned multiplied by three times the per acre value of the highest value of cropland in the city, village, or town in which the land is located, as determined by the Department of Revenue for the purposes of use value assessment.

This bill eliminates the requirement that a person who requests that land be rezoned out of a farmland preservation district pay a conversion fee.

**Updates on previously reported legislation**

AB260 - Related to extraterritorial plat approval on basis of land’s use.
2/23/2010 – Passed in the Assembly and sent to Senate Committee on Rural Issues, Biofuels, and Information Technology.
Recommended by Committee 5-0 and available for scheduling.

AB 670 - Requiring sellers of residential real property to disclose whether the property is subject to a shoreland zoning mitigation plan.
2/16/2010 - Passed the Assembly and sent to the Senate Committee on the Environment.

There will be a hearing on Tuesday, March, 16th at 1:30pm in 300-SE.

SB 399 – Relating to authorizing two or more cities, villages, towns, or counties, or a combination of such political subdivisions, to create a commission to issue conduit revenue bonds and exercise eminent domain authority and exempting from taxation interest on such bonds.
3/4/2010 - Passed the Senate and sent to the Assembly Committee on the Urban and Local Affairs.

SB 507 - Changes the fees collected by a registrar of deeds, creates incentives to remove social security numbers from electronic documents and changes the land information program.
2/25/2010 - Passed the Senate and sent to the Assembly Committee on Urban & Local Affairs.

**April 26, 2010 Legislative Update**

The 2009-2010 legislative session ended on Thursday, April 22 when the State Senate adjourned abruptly before the Assembly could act on major legislation dealing with Regional Transit Authorities and the Clean Energy Jobs Act.

I am preparing a summary document of all enrolled bills and will send out as soon as it is completed. The legislature is done for this year (except for a possible veto override session) unless the Governor calls them into special session.

**No Action Taken**

AB-649. Clean Energy Jobs (Black)
Clean energy jobs bill. (Request of Gov. Doyle)

AB-282. RTA (JLC) The creation of regional transit authorities and making appropriations
Cities wanting to be “greener” have a new tool available to slow urban runoff into water bodies, such as via urban storm sewers. The new tool is pavements that absorb rainwater rather than shed it.

There are now four classes of such porous pavement commercially available, porous pavements are typically placed over 8 to 20 inches of clean stone, the spaces between the stone acting as the storage for storm water. Infiltration out the bottom or slow discharge through a drain tile carries the stored water slowly away after the storm ends. The slowness imitates nature before the area was urbanized.
1. Porous Concrete consists of standard cement-based concrete, with the sand left out, and a polymer substituted as a binder. Porous concrete in a freeze-thaw climate such as Wisconsin has had some failures. In these cases, the surfaces started to crumbling within 1 to 3 years of installation, resulting in a “gravel parking lot.”

2. Porous Asphalt also leaves out “the fines” from the mix, and there are some temperature adjustments to the hot mix. Like the other types of porous pavements, this surface is not meant for high traffic volume or heavy weight. Like all the others, this is typically used in parking lots. Porous asphalt is proving quite successful, and by paving it over crumbling porous concrete, the porous concrete base may be saved, a test plot at MSOE in downtown Milwaukee seems to be showing.

3. Interlocking Concrete Pavers: These paving block have lip edges around their outer perimeter in the same manner as wood flooring, to allow one paver to interlock the next. This resists upward forces from frost heave, and downward forces from vehicle weight. A quarter inch joint between them plus rounded corners to leave drain holes, achieves the desired porosity.

4. Open Cell: Available in either plastic or cast cement, the weight of the vehicles is born by the outer walls of each cell, grounded on a roundstone base for water storage. Think of a common basement cement block as the concept. Grass plugs can grow in the open cell. This is ideal for overflow parking into an area that otherwise is intended to be part of a mown lawn.

Costs for the above systems range from $6-$12/sf for concrete, to $3-$6/sf for asphalt, [ for open cell ] and $3-$6/sf for pavers and blocks, material only.

All of these systems are for low traffic areas such as parking lots, perhaps curb lanes for quiet residential streets. They work best on flatter areas under 6% gradient, and need to be ten feet away from structures to avoid water damage to foundation walls. They are best installed after all other construction and landscaping is in place, to avoid adjacent silt or sand infiltrating these pavements. Such
infiltration eventually seals up the porosity and defeats the basic goal of infiltration. Vacuums 2 to 3 times a year is needed to pick up fines. Jet washing is also useful. This system works well in retrofit situations such as a parking lot rebuild because adjacent land is often already stabilized. Filter fabric at the bottom of the excavations for the stone base is essential to avoid upward migration of fine sands and soils that will seal the porosity as much as top down migration.

References and Sources

· Bruce K. Ferguson (2005), Porous Pavements, CRC Press
· National Concrete Pavement Technology Center (February 2006)_Mix Design Development for Pervious Concrete in Cold Weather Climates, Iowa State University
· Interlocking Concrete Pavement Institute, www.icpi.org

Photo Sources