

The Municipality

Your Voice Your Wisconsin.

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The Municipality

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On the Cover

Egg Harbor - The little village that could, can, and is. Egg Harbor values its cultural heritage and continues to marry the very best Door County has to offer with reinvestments in the community. The Kress Pavilion and Egg Harbor Library, shown on the cover, was constructed with over 75% in private donations. The Peg Egan Performing Arts Center is flourishing and high-quality public art adorns the village. The next step involves making the village more sustainable and easier to navigate on foot and bicycle while protecting and promoting the environment. Maintaining the quaint while investing in generational needs is not easy, but Egg Harbor is up to the task. <https://www.villageofegg Harbor.org/>



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Villages. Where Do You Begin?

Jerry Deschane, Executive Director, League of Wisconsin Municipalities



Wisconsin is a diverse place to live. Want proof? Try to come up with one common thread describing all Wisconsin villages. You can't do it. Believe me, I have tried. While there are things that many of our villages have in common (with cities too, for that matter), such as a shortage of housing, there are even more things that make each one unusual. There are just too many different things going on in our villages. From the humming manufacturing meccas of Menomonee Falls and Mount Pleasant to the quiet lakeside enclave of Lake Nebagamon, villages in Wisconsin come in all shapes, sizes, and speeds. Every one is a little different, every one has its own unique vibe. But every one of those villages contributes to the unique quilt that is Wisconsin. With a little help from a sampling of our villages, we are very happy to present an overview of that landscape. Take a look.

Regardless of whether you're from a city or village, I hope to see you at the Annual Conference, October 23-25, at the KI Center in Green Bay. Check out this year's conference agenda on page 29. It will be three days packed full of good information on everything from human resources to Lambeau Leaps. (Former Green Bay Packers Safety LeRoy Butler is our closing keynote speaker!)

One session that I'm particularly looking forward to is Wednesday's opening general session. Two experts in governance will facilitate a "mock board meeting" to illustrate the best...and the other kind...of a local government meeting. It's an unscripted, unrehearsed one-act play where everyone in the room is an actor and an expert in democracy. (If that sounds painfully like last week's village board meeting, it's supposed to. But don't worry, this one will be more fun!)

Bring an empty note pad; you'll need it.



The League's 121st Annual Conference

Register now using the Registration Form on page 28 of this magazine or register online <https://www.lwm-info.org/731/Annual-Conference>

One-day registration is available!

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Featured Villages

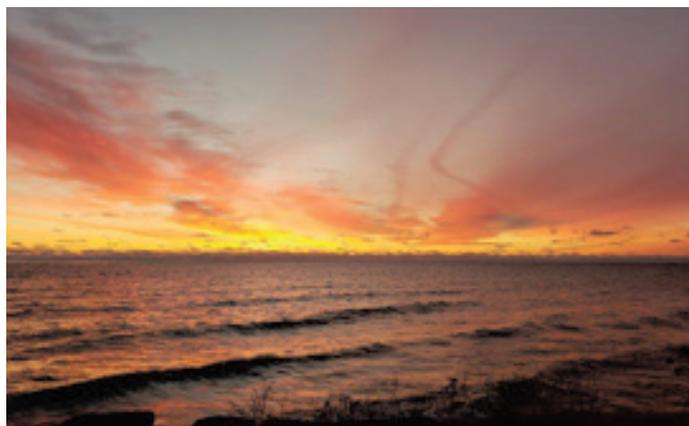


Fox Point

Incorporated In: **1926**

Population: **6,571**

County/COUNTIES: **Milwaukee**



Fox Point's Opportunities:

Fox Point is well positioned to leverage its strengths, including proximity to Milwaukee, diverse and quality housing stock, and Aaa rated financial strength.

Fox Point is 10 miles from downtown Milwaukee, with easy access on I-43 or Lake Drive. This gives residents the

opportunity to get to southeastern Wisconsin with ease. Many professionals call Fox Point home and enjoy easy commutes.

Fox Point offers diverse housing choices. The village offers rental properties ranging from affordable to executive, memory care facilities and Community-Based Residential Facilities (CBRFs), and owner occupied housing from starter homes to mansions gracing the shore of Lake Michigan. Our greatest opportunity might be the homes along the western edge of the village as these offer great housing prospects for those with small children or first-time home buyers as current owners age out, reflecting the desirability of our neighborhoods and schools. This transition reflects a healthy "Circle of Life" in a community's housing stock.

The village is the only village in the state rated "Aaa" by Moody's, reflecting an unparalleled financial profile. This strength allows continuous investment in our infrastructure, delivery of quality services people desire, the discipline to stick to our core competencies (Police, Public Works, Fire), and the ability to respond to unforeseen circumstances and opportunities.

Fox Point's Challenges:

As other municipalities would attest, the single greatest challenge we face is the state of Wisconsin. Neither political party really wants local control, and some municipalities

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Our Villages | Village of Baldwin

Incorporated In: **1874**

Population: **3,988**

County/COUNTIES: **St. Croix**



occasionally hurt the “cause” of local control (and enable the state’s behavior) by turning to the state to solve problems municipalities can solve themselves.

Villages like Fox Point can be laboratories for municipal creativity when given the chance. We have the elected and appointed leadership and financial wherewithal to model creative service delivery which, if successful, could benefit all municipalities.

We also face the challenge of an aging workforce. While the labor market is currently tight, we are concerned that basic demographics may make replacing those who leave our employ far more difficult than in the past even when the labor market loosens. Fox Point will continue to identify and recruit for talent rather than simply advertise for applications. The competition for quality labor is too intense to do otherwise, and we owe our taxpayers the best employees we can retain within fiscal guidelines. Integral to that is keeping the village an “employer of choice” and maintaining a culture employees don’t want to leave.

Wausaukee

Incorporated In: **1924**

Population: **568**

County/Counties: **Marinette**



Wausaukee’s Opportunities:

The village has just completed a Facility Condition Assessment and Repurposing Analysis of the former Stephenson National Bank building which lies in the heart of our downtown. The study evaluated the potential reuse

of the facility for a public library, community/senior center, and village offices. Moving forward, the village plans to apply for a CDBG-PF grant along with CDBG-Close Program funds from the county to complete the nearly \$1.2 million dollar project. We hope this project sparks new life in our downtown, increases foot traffic along Main Street, and provides additional opportunities for community activities for our citizens.

The village has a hidden gem in Evergreen Park and Campground within its limits. The campground currently has 40 electric sites nestled along the Wausaukee River (a Class II trout stream), three pavilions, a playground, and walking trails. The amenities are old, however, and they don’t provide what campers are looking for these days. The village was awarded a DNR Stewardship grant for \$300,000 to make improvements to the park including a shower/restroom facility, lift station, water/sewer to each site, gravel pads, pavilion expansion, ADA accessible fishing platform, and walking trail expansion. Completion is slated for the fall of 2020 and we hope to see a large increase in visitors to our village.

Wausaukee’s Challenges:

One of the biggest challenges we face is lack of workforce housing. Wausaukee is home to Decor Products and Carfair Composites. Together, these two companies employ hundreds of people, most of whom live outside the village. We have struggled to find developers who will even have a conversation with us about housing development due to our size – we’re too high risk as they put it. As more and more of our youth graduate and leave, we have watched our population decline by 100 in the last 25 years. Small businesses have closed, and those that remain open struggle to stay afloat.



Village of Windsor

Incorporated In: **2015**

Population: **7,795**

County/COUNTIES: **Dane**



Village of Windsor's Opportunities:

The village of Windsor is among the fastest growing villages in Dane County. Windsor is a diverse village consisting of agricultural, residential, commercial, and recreational uses. Windsor's strong leadership, agricultural heritage, and rural lifestyle, diverse housing inventory, excellent school district, and proximity to regional employment, make our village an attractive place to "live, work, and play." Through long-range planning, intergovernmental cooperation, strategic public and private partnerships, and village branding of "Growing Forward," Windsor continues to evolve and build upon these opportunities. Testaments to Windsor's planning initiatives include The Village Center at Windsor Crossing and revitalization/redevelopment of the old Windsor downtown.



Village of Windsor's Challenges:

Windsor is not without its challenges. While it has a diverse housing inventory, affordability or workforce housing needs is a trending issue. In addition, an aging population has created a demand for more independent/assisted living housing and the need to attract and keep younger families in the community. Similar to many villages, Windsor is challenged by levy limits and funding to address an aging infrastructure and the need for additional public services.



Village of Sussex Civic Center

Our Villages | **Sussex**

Incorporated In: **1924**

Population: **10,819**

County/COUNTIES: **Waukesha**





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Wisconsin Villages Come in All Shapes and Sizes



Jerry Deschane, Executive Director, League of Wisconsin Municipalities and
 Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

It's impossible to characterize the "typical" Wisconsin village. You can measure them by geographic size, by population, or by property value, or by their rural or urban setting, but you still can't put your finger on the one thing they all have in common. Wisconsin villages are uniquely Wisconsin.

The numbers don't tell everything

Wisconsin has 413 villages. The number increases by one or two each year as urbanizing towns petition for and are granted the authority to incorporate. Contrary to most peoples' vision of a village, not all of them are small. The largest, the village of Menomonee Falls in Waukesha County, has a population of 37,413 and a property valuation of \$4.96 billion. It ranks as Wisconsin's 21st largest municipality.

Villages can, of course, be small and many are. The smallest, the village of Big Falls (apparently "Falls" is a popular last name among Wisconsin villages) in Waupaca County has a population of just 57 with a property tax valuation of \$3.38 million. The "median" size municipality (including cities and villages) in Wisconsin has a population of roughly 1,500.

In addition to huge variations in both property value and population, a village is not necessarily urban or rural. Wisconsin's villages can be very urban, like West Milwaukee, or very rural, like the village of Winter in Ashland County.

The suburban village of Brown Deer is on the larger side. Lying adjacent to the city of Milwaukee, Brown Deer has a population of 12,305. This April, the village elected a new village president, Wanda Montgomery. Montgomery was the first African-American village president for Brown Deer and only the second African-American woman elected to lead *any*

Wisconsin municipality. But it was a different form of diversity that she brought to the board.

"I looked at the board and I didn't see *me*," she explained. "I'm not talking about race, or gender or ethnicity, I'm talking about a different way of looking at things; a different point of view than the village had seen before. In the course of my campaign, I learned that we have a rich community, with a lot of ideas and energy. I want to bring that to the village board."

Longtime village leader Barb Dickmann also has a vision and a passion. She grew up in her Washington County home of Saukville (population 4,450), only they called it something different when she was in high school; dropping the letter "a" from the village's name. "I didn't want to hear my community referred to that way ever again," she said. Dickmann has served on the village board for 20 years, but her focus is still on those who come next. "I'm looking at future generations, making Saukville better for them."

If you ask a rural village leader, they will often say that village life is quieter, calmer, and even safer. Beth Schmidt is a trustee on the Orfordville Village Board. Orfordville is a community of 1,450 people in rural Rock County. "When I get back here (from my job in Madison) I go ahhh," she said. "It's a small town and I won't work here, but we wanted to raise our children in a small community." Schmidt uses her commute from Madison as a time to "unwind."

Many of the village leaders we talked to echo that "small town" feeling. More than one person admitted that, not only don't they lock their doors at night, they've forgotten where they put the keys.

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Our Villages | Village of Johnson Creek

Crossroads With a Future

Incorporated In: **1903**

Population: **2,997**

County/Countries: **Jefferson**



Rothschild Village President George Peterson acknowledges that feeling of calm, although he ascribes it more to being in Wisconsin's northern half and to having a well-run village than to living in a village per se. Rothschild, with a population of 5,300, is adjacent to the city of Wausau. "We have a good police department and our public works department keeps up with everything. Maybe it's being 'Up North,' but we just don't worry about things like mass shootings."

Village powers

From a structure and legal powers perspective, whether rural or urban, villages have more in common with cities than they do with towns. Like cities, villages are incorporated, general-purpose units of local government, created at the request of their inhabitants to perform a broad range of local services. Cities and villages have both constitutional and statutory "home rule" powers, which towns do not have. Home rule is a broad grant of authority given to cities and villages to determine local affairs and government, manage and control municipal property, finances, highways, navigable waters, and the public service, and to act for the good order of the municipality, for its commercial benefit, and for the public health, safety, and welfare.¹ In contrast, towns need specific statutory authorization to exercise power.

In the state's earliest days, incorporation was done by petition and referendum; the legislature had the power to incorporate municipalities by special act and issued city charters specifying individual powers. Villages could be created by general charter since 1846.

Milwaukee, which was incorporated in 1846 by the territorial legislature before Wisconsin became a state, was Wisconsin's only city at that time. But even Milwaukee has "village roots" in a way. According to the Wisconsin Historical Society, Milwaukee consisted of five separate villages known as wards and its mayor governed five sets of independent representatives from each area.

1. Wis. Stat. §§ 62.11(5) and 61.34(1).

2. It required circulation of petition, notice of proposed incorporation published in local paper, requisite number of elector and taxpayer signatures, minimum population and minimum area, and was subject to referendum.

In Wisconsin's early days, cities had more powers than villages. Villages whose citizens wanted more public services and greater autonomy needed to apply for city charters from the legislature when they reached a certain population. Madison was incorporated as a village in 1846 and received its city charter from the state legislature in 1856.

Some legal history of "incorporation"

Wisconsin's earliest incorporation statute, enacted in 1898, resembled our current incorporation statute in procedures and basic requirements² but was vague about what it meant to be a "city" or a "village." In a case involving a constitutional challenge to the early incorporation laws, the court tried to determine what the framers of the Wisconsin constitution intended when they referred to a city or village, saying:

The word "city" undoubtedly refers to a municipal corporation of the larger class, somewhat densely populated, governed by its mayor and board of aldermen, with other officers having special functions. A "village" means an assemblage of houses less than a city, but nevertheless urban or semiurban in its character, and having a density of population greater than can usually be found in rural districts. A very common definition of a village found in the books is as follows: "Any small assemblage of houses, for dwelling or business, or both, in the country, whether situated upon regularly laid out streets and alleys or not."

State ex rel. Town of Holland v. Lammers, 113 Wis. 398, 89 N.W. 501, 502 (1902) (cites omitted).

Lammers decided that the incorporation laws required existence of a city – or village – "in-fact" meaning incorporation was limited to territory with a reasonably compact center or nucleus of population, and not a mere agricultural community. The court said inclusion of territory beyond the "thickly settled limits" required that the territory reasonably possess some natural connection with and adaptability to village



Photo Credit: Gio Diaz

Our Villages | Mukwonago

Where life, leisure, and business thrive

Incorporated In: **1844**

Population: **8,055**

County/Countries: **Waukesha/Walworth**



purposes and seem reasonably necessary for future growth and development. The *Lammers* doctrine, requiring a village-in fact, guided incorporation until the incorporation statutes were revamped in 1959.

Wisconsin's current incorporation statute, § 66.0205, contains more detail than its predecessor, in addition to current population and density requirements which vary depending on whether the territory is "isolated" or "metropolitan."

Requirements are less onerous for villages (an *isolated village* must be at least one-half square mile with a minimum resident population of 150 whereas an *isolated city* must be at least 1 square mile, with a resident population of 1,000 and a minimum of 500 persons in any square mile; a *metropolitan village* must be 2 square miles with a resident population of 2,500 and a minimum of 500 persons per square mile whereas a *metropolitan city* must be 3 square miles, with a resident population of 5,000, and a minimum of 750 persons per square mile). The law imposes larger minimum area standards when a proposed incorporation is within 10 miles of a 1st class city or 5 miles within a 2nd or 3rd class city.

In addition to population and density requirements, incorporations are reviewed by the state to ensure the entire territory of a proposed incorporation is "reasonably homogeneous and compact, taking into consideration such things as natural boundaries, natural drainage basin, soil conditions, present and potential transportation facilities, previous political boundaries," school district boundaries, shopping and social customs. Wis. Stat. § 66.0207(a).

The law requires that an isolated municipality must have a reasonably developed community center, including some or all features such as retail stores, churches, post office, telecommunications exchange, and similar centers of community activity. Territory beyond the core must have a minimum number of housing units per quarter section or assessed value for real estate tax purposes, more than 25 percent of which is attributable to existing or potential mercantile, manufacturing, or public utility uses and must have the potential for residential or other urban land use development on a substantial scale within the next three years which can be waived if water, terrain, or geography prevents the development. In addition, the state Incorporation Review

► p.10

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Board must determine that proposed incorporation is in the public interest, considering the following:

- Tax revenue
- Level of services
- Impact on the remainder of the town
- Impact on the metropolitan community

Unlike the number of villages, which has been increasing slowly, Wisconsin has had 190 cities for a number of decades. There have been no recent incorporations of new cities in Wisconsin. Why would a village choose to stay a village when it has the population to become a city? The simplest answer is there is no reason to make the change; the additional powers do not justify the additional burden. Wisconsin villages now are able to exercise largely the same powers as cities. Many laws that read as if they are applicable only to cities, are made applicable to villages by other statutes.³

Hands-on governance

The biggest difference between cities and villages lies in the form of government (village board-village president where the president is a trustee like other board members versus common council-mayor where the mayor serves as chief executive) and the extent of extraterritorial zoning and platting jurisdiction which is 3 miles for larger cities and 1.5 miles for villages and fourth class cities.

For Rothschild Village President George Peterson, the form of government for villages is preferable over cities. “If I was the mayor, I’d be sitting on the sidelines of policy development; as a village president, I have a vote.”

Being able to vote and have a role in the development of municipal ordinances helped Peterson steer Rothschild toward the hiring of a full-time village administrator. Peterson believes that once villages, particularly suburban villages like his, reach a certain population, they need to look at the expertise offered by an administrator. “There comes a point where things get more

complex,” said Peterson. “Your staff leader has to be on top of finances and personnel, and he or she has to be planning ahead.”

This hands-on feeling of being able to get things done was cited by others as the reason they like (small?) (rural?) village living. Orfordville Village President Gary Phillips ran for the board because of a broken window. “Our downtown was empty,” he said, “there were just two stores open and the rest of the buildings were unoccupied. One of those buildings had a broken window. I would drive by weeks later and the window was still not repaired. I wondered if anyone else was seeing this.” Phillips ran and four years later proudly notes that there are plenty of stores downtown (just two vacancies), they have started an Orfordville Chamber of Commerce, they’re scheduling events like live music downtown, and the annual “Airing of the Quilts” in September. And the window has been repaired.

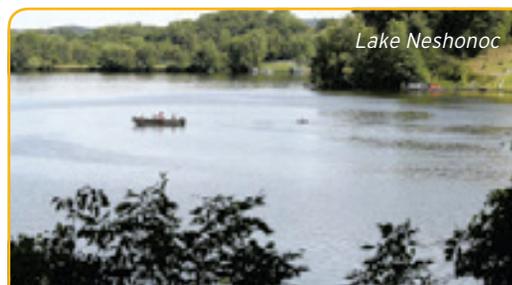


There is no doubt that elected leadership in a village, whether large or small, is still a part-time occupation. Rothchild’s Peterson wouldn’t have it any other way. As a member of the League Board of Directors and its president in 2017, George Peterson has seen enough of city government to hold the opinion that mayors have more duties that fall under the category of “ceremonial” than do typical village presidents. “It’s been my observation that mayors are committed to attend a lot of things that I just don’t want to do on a Friday night.”

Municipal Corporations 60

Contact Jerry at jdeschane@lwm-info.org and Claire at cms@lwm-info.org

3. Examples include § 62.23 (zoning), made applicable to villages by sec. 61.35, and §§ 66.1105 (tax increment law), 66.1201 to 66.1329 (housing authorities and urban redevelopment) and 66.1331 to 66.1337 (blight elimination and community development authorities) which are made applicable to villages by § 66.1339.



Our Villages | West Salem

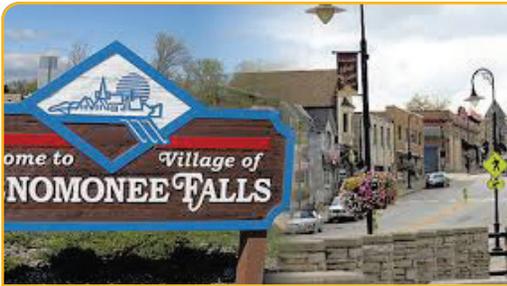
History...Scenery...and Just Plain Fun!

Incorporated In: **1851**

Population: **5,045**

County/Counties: **La Crosse**





Our Villages | Menomonee Falls

More Than a Village

Incorporated In: **1892**

Population: **37,450**

County/Countries: **Waukesha**



Our Villages | Village of Hazel Green

Point of Beginning

Incorporated In: **1867**

Population: **1,263**

County/Countries: **Grant/Lafayette**



Hazel Green Volunteer Fire Department with the Crew of the Sea Dragon Photo Credit: Julie Euler



Our Villages | Williams Bay

Incorporated In: **1919**

Population: **2,603**

County/Countries: **Walworth**



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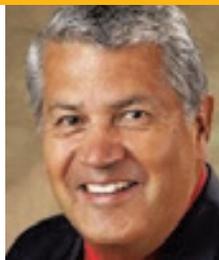
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ADV 0019-1218



A Multi-Partner Approach: The State of Wisconsin's Cybersecurity Efforts

David Cagigal, Chief Information Officer, State of Wisconsin

Cybersecurity has emerged as the paramount challenge of IT service delivery. In the state's Division of Enterprise Technology (DET), we pride ourselves on being able to provide effective and efficient services to our agency customers. With the array of cyber criminals and "black hat" hackers now aligned against us, ensuring the security of IT systems and online transactions has become increasingly complicated. The bottom line is that no service can be either effective or efficient if the underlying security behind it is suspect. It takes all of us working together – the federal government, state, and local government, along with our private-sector partners. This is a formidable multijurisdictional and organizational challenge, but we have made a productive start.

The scope of what we are up against is sobering. IBM's CEO summed it up succinctly and accurately, "Cyber crime is the greatest threat to every company in the world."¹ That is true for governments, as well.

At DET, our responsibility is two-fold: (1) Protect our own backyard, and (2) Provide leadership and resources in the statewide collaborative effort among public- and private-sector partners to protect Wisconsin's critical systems. Because of the interconnectedness of our infrastructure and our missions

to serve the public, government has realized that it takes a network to protect a network.

Securing state government systems requires significant collaboration itself. DET works to ensure the state data center, as well as its backup site, deliver environments where agency applications can run securely and reliably. Wisconsin's recent transition to shared infrastructure services required the development of an enterprise approach to security. Incorporating the results of independent audits and customer feedback, DET completed an enterprise security roadmap in 2013. The roadmap breaks down the state's security strategy into a dozen security service categories and approximately 100 sub-projects and tasks, along with timelines, based on business needs, risks, and opportunities. The roadmap is updated annually to make sure the policies, controls, projects, and technologies are meeting business customers' needs.

State agencies are just one important component in the network. In 2014, representatives from 16 critical infrastructure sector owners in the state (e.g., banking, energy, transportation, food and agriculture, water systems, to name a few) began meeting with the goal of producing a Cyber Disruption Response Strategy – a framework to help critical

► p.13

The Top 8 Things Municipalities Can Do to Secure Their System Against Cyberattacks

1. Use strong passwords
2. Change passwords every 60 days
3. Do not share passwords
4. Require re-authentication after 15 minutes of no use
5. Make backups and store them offsite
6. Use two-factor authentication (ID & password plus a PIN)
7. Install anti-virus software
8. Apply vendor-supplied patches

See additional recommendations on the League's website: <http://bit.ly/MuniCybersecurity>



Our Villages | **Winneconne**

We Like it Where?

Incorporated In: **1848**

Population: **2,494**

County/Countries: **Winnebago**



infrastructure owners and operators function in a collaborative, public, and private partnership to respond to cyber disruption events. The strategy was published in October 2015.

The teams that guided the strategy development then evolved into the Wisconsin Cyber Strategic and Planning Working Group (WCSPWG), which has an ongoing mission of providing strategic and planning direction for cyber resources in efforts to identify, protect, detect, respond, and recover assets in collaboration with public/private partnerships. The working group establishes cyber strategies and plans and is accountable to the Wisconsin Homeland Security Council.

Just last month, participants from the public and private sectors gathered at the 7th Annual Governor's Cyber Summit for an update on our collective efforts to address our immediate challenges and share best practices as we continue planning for the ever increasing and complex cyberattacks.

By unifying government cybersecurity efforts, and by working closely with our local government and private-sector partners, we will continue Wisconsin's role as a national model of innovation and security.

Contact David at david.cagigal@wisconsin.gov

1. Forbes, "IBM's CEO On Hackers," <https://www.forbes.com/sites/stevemorgan/2015/11/24/ibms-ceo-on-hackers-cyber-crime-is-the-greatest-threat-to-every-company-in-the-world/#6fcb8b9073f0>



October is National Cybersecurity Awareness Month

- US Dept of Homeland Security toolkit: <https://www.dhs.gov/national-cyber-security-awareness-month>
- Join the conversation on social media by using the hashtags #BeCyberSmart #CyberAware and follow CISA cybersecurity outlets @Cyber @CISAKrebs @CISAManfra National Cyber Security Alliance
- Report a computer or network vulnerability to the US Computer Emergency Readiness Team by calling the Incident Hotline: 1-888-282-0870 or go to www.US-CERT.gov

DID YOU KNOW?



Cybersecurity Issues • Voter Security in Wisconsin

- ★ Wisconsin has two main elections systems: voter registration and vote counting. The voter registration system is very centralized and mostly online. The vote counting system is very decentralized and mostly offline.
- ★ Since 2006, Wisconsin has had a statewide voter registration system, now known as WisVote. That system is hosted on servers owned by the state and protected by our partners at the Department of Administration's Division of Enterprise Technology (DET).
- ★ WisVote has approximately 3,000 users, primarily the clerks in Wisconsin's 1,852 municipalities and 72 counties and their employees. Users have access only to voter records in their jurisdiction, limiting the potential for damage in the event an authorized user's credentials were stolen or of unauthorized actions by an authorized user.
- ★ Every ballot in Wisconsin is either cast on paper or has a paper back-up:
 - 85 percent are cast on optical-scan paper ballots
 - 5 percent are cast on hand-count paper ballots
 - 10 percent are cast on touch-screen voting equipment that has a voter-verifiable paper audit trail. In the event of a recount or audit, the paper record is used.
- ★ Voting equipment in Wisconsin may not be connected to the internet and the computers used to program them must be hardened systems, which means they must be single-purpose computers with no unnecessary software, and unable to connect to the internet.

Source: Wisconsin Elections Commission <https://elections.wi.gov/index.php/elections-voting/security>.



Cities Successfully Defend Against Dark Store Challenges - You Can Too

Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities;
 Attorney Amy Seibel; Assessor Rocco Vita, Pleasant Prairie

While the League’s dark store legislation remains stalled with no clear path forward, a recent string of municipal victories in circuit courts against dark store and *Walgreens*-based assessment challenges may mean a legislative fix is unnecessary. Tax attorneys working for municipalities have found ways to convince judges that the dark store comparables used by thriving big box stores aren’t valid and that the actual rent being paid and recent sale prices of leased commercial space are the best evidence of fair market value.

The cost of defending an assessment against dark store and *Walgreens* challenges can, and often does, lead communities to settle with the taxpayer rather than spend limited resources on litigation. The trouble with settling on a compromise assessed value is that big box stores and other commercial property owners often return the next year and claim the compromise value was too high. A community is then asked to agree to even more reductions from the original assessment.

As the court decisions described below show, a community has a good chance of winning when it chooses to defend an assessment in court. Both the Wisconsin Property Assessment Manual and prior case law favor municipalities when they take on dark store and *Walgreens* arguments, unless the property is a pharmacy. The more often communities choose to litigate, and win, the less inclined big box stores and other commercial properties will be to file

excessive assessment claims. Indeed, a Walmart store in West Bend recently dropped its lawsuit after the city refused to settle and instead chose to defend the assessment in court.

Recent Victories in the Dark Store Battle Zone

Since 2017, municipalities have successfully defended commercial property assessments against dark store and *Walgreens*-based challenges in the following cases:

Debra A. Wolf Investment Trust v. City of Wauwatosa (Milwaukee County Circuit Court – September 20, 2017). This case involved the assessed value of a building built in 2011 and leased to a Firestone automotive store. The city assessed the property at \$3,120,000, reflecting a 2012 sale price of the leased property, while the owner, using the *Walgreens* argument, asserted the value should be \$1,700,000. The owner argued that the property was a “build to suit” property for Firestone and thus the rents charged under the lease were above market levels because the rents were based on the developer’s costs of construction plus a reasonable rate of return. The subsequent investor who purchased the property from the developer argued the sale price did not reflect the true market value of the property because the alleged above-market rents also pushed the sale price above market for the real estate. The court, upholding the city’s assessment, found the 2012 sale of the property was a valid market sale and that Firestone’s rent

reflected market rates for the real estate. Under appraisal practices, rents based on the developer’s costs of construction, together with a reasonable return on those costs, are considered economic rents and are synonymous with market rent. The court further found that the 2012 sale conformed to the sale prices of reasonably comparable properties, which consisted of other Firestone and Tire Plus automotive service centers sold in the market area.

Kohls Value Services, Inc. v. City of Delafield (Waukesha County Circuit Court – March 20, 2019). Kohls Value Services, Inc. used both dark store and *Walgreens* arguments to try to convince the court that the leased property, assessed at \$9.1 million, was worth only \$5.6 million. Kohls presented the sales prices of four vacant and clearly distressed buildings as comparable properties for determining the value of the newer building it was leasing. Kohls also applied a “25% functional obsolescence factor,” arguing that, if it left, the property would be worth much less. The court was unpersuaded. Upholding the city’s assessment, the court also rejected Kohls’ argument that the actual lease rates Kohl’s was paying were above market and should therefore not be considered as evidence of value.

Lowe’s v. Village of Plover (Marathon County Circuit Court – April 9, 2019) Home improvement retailer, Lowe’s, argued that its 2016 and 2017 assessments of \$7.36 million should be cut in half to \$3.73 million. Lowe’s

argued that the value of its occupied stores should compare with the sale prices of empty, vacant big-box stores in other parts of the state. Plover pointed out Lowe’s was an anchor in a successful retail development experiencing low vacancy rates and couldn’t compare the value of its location to empty K-Marts, Targets, or Wal-Marts. The court agreed and upheld the Village’s assessment.

Mayfair Mall, LLC v. City of Wauwatosa (Milwaukee County Circuit Court – May 9, 2019). Although Mayfair Mall’s assessment challenge did not turn on the “dark store” theory directly, the decision is an important example of how cities that defend an assessment in court can win even when the property owner uses high-paid attorneys and experts. Mayfair Mall (“Mall”) argued that the *Walgreens* decision prevented the assessor from considering the actual rents being paid by the 150 plus tenants at the Mall. Instead, the Mall argued that hypothetical rents should be used instead. The court rejected this theory because when rental property such as the Mall sells, the sale price is not based on hypothetical income but rather actual income being received. This was a particularly complex retail assessment case. The trial lasted six weeks and involved dense, complicated testimony from multiple competing national experts in mall property appraisal. The court issued a 34-page

decision in favor of the city, finding that Wauwatosa Assessors Steve Miner and (later) Shannon Krause repeatedly used correct data, scrupulously followed the Wisconsin Property Assessment Manual and Wisconsin case law, and assigned values that were conservatively beneath the Mall’s actual fair market value.

Sherwood Manor VI, LLC v. City of Brookfield (Waukesha County Circuit Court – July 9, 2019). This case involved a multi-tenant medical office building, which the owner had recently purchased for \$7.6 million. The city assessed the property at just over \$7.5 million, based in part on the recent sale price. The taxpayer argued the property’s value was \$4.8 million, claiming the recent sale price did not indicate fair market value because the property was subject to above-market leases, asserting application of the *Walgreens* decision. The court upheld the city’s assessment concluding: 1) the recent arms-length sale of the property established fair market value, 2) the actual rents tenants were paying fell within the range of market rents for medical office buildings, and 3) the property’s lease rents did not include other “creative financing” costs that pushed the leases beyond market rents.

Best Buy v. City of Wauwatosa (Milwaukee County Circuit Court – July 18, 2019). The City of Wauwatosa

assessed a Best Buy store at \$8,695,800, while Best Buy asserted the value should be \$5,750,000 based on the dark store theory. The court noted the assessor utilized mass appraisal and relied heavily on the Wisconsin Property Assessment Manual when determining the assessed value. The court pointed out that the taxpayer’s analysis of comparable sales relied on points of comparison that, under Wisconsin law, were not reasonably comparable and therefore their analysis was less reliable than the city’s analysis. In determining the property’s highest and best use, the taxpayer looked at its property from a standpoint of being either vacant, a property in transition with lower rents, or a second-generation property with a lesser use. The court concluded this approach did not apply in determining the highest and best use of a first-generation property like the Best Buy property at issue and upheld the city’s assessment.

Lowe’s Home Centers, LLC v. City of Delavan (Walworth County Circuit Court – August 12, 2019). The court upheld the city’s assessment of a Lowe’s store and rejected the taxpayer’s use of dark and distressed stores as comparables supporting a lower assessed value. The court noted the Wisconsin Property Assessment Manual (“WPAM”) makes clear that dark or distressed properties

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are not to be used as comparable sales “unless the subject property is similarly dark or distressed.” Five of the six comparable sales Lowe’s used to support their lower value were either vacant or in receivership when sold. Lowe’s also contended the assessor did not follow the WPAM when determining the assessed value – claiming he simply carried the value forward from prior years. The court found that the assessor did, in fact, follow the WPAM by: 1) reviewing sales from Delavan and surrounding areas for potential comparable sales, 2) calculating a new value using the cost approach to determine if the prior value was current, and 3) comparing Lowe’s value to other similar properties for which he had also calculated a new cost approach to determine the legitimacy of the Lowe’s assessed values and to make sure they appeared correct and valid.

Best Practices for Defending an Assessment against Dark Store and Walgreens-based Arguments

As the above cases show, municipalities can successfully defend property assessments when Walmart, Menards, Target, Lowe’s, and other big-box stores go to court seeking reductions in their tax bills. Wisconsin law does not support dark store or *Walgreens* arguments in the contexts raised by the plaintiffs in the above cases. Municipalities and their assessors should follow these best

practices to be in the best position for success in assessment litigation:

1. Adhere to the practices and procedures found in the Wisconsin Property Assessment Manual (WPAM) when determining assessed values. Wisconsin law requires assessors to follow the WPAM and courts have supported assessment work performed in compliance with the WPAM.
2. Annually review local sales evidence, building permits, and published reports to determine if a value adjustment is necessary for a property or property type. This is most important during a non-revaluation year, also referred to as a record maintenance year, when an economic, physical, or functional change may impact a single property or a property type more than other properties in the municipality.
3. Each year require your assessor to create and deliver an Annual Assessment Report (AAR) that describes the scope of the mass appraisal work the assessor performed for the assessment year covered by the report. This report details the assessor’s efforts to review the factors mentioned above to determine what, if any, value adjustments are necessary and for which properties.
4. Wisconsin law permits an assessor to use mass appraisal techniques when valuing properties. The WPAM provides that if an income approach is used to assess rental properties the actual rent being paid can be considered market for mass appraisal purposes.
5. Whenever a property sells in what appears to be an arm’s length transaction, the sale price should be considered in the assessment unless the assessor has a valid reason to ignore the sale price.
6. The sale price reported on a Real Estate Transfer Return (RETR) is valid evidence of a market sale price for the real property. Assessors should carefully consider sales of real estate reported on a RETR.
7. It is not unusual for a commercial property to sell as part of a multi-property transaction, also known as a portfolio sale. According to the WPAM and case law, portfolio sales can be used as market transactions as either a sale of the subject property or as reasonably comparable sales.
8. The WPAM states, and case law supports, that unless there is reliable and accurate sales data for reasonably comparable properties, the sales comparison approach should not be used to value commercial real property.

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9. The WPAM and case law state that sale properties that were dark, vacant or otherwise distressed, or in transition to another use, should not be used as reasonably comparable properties unless the subject property is also similarly, dark, vacant, distressed or in transition.

Taxation 1059

About the Authors:

Curt Witynski, Deputy Executive Director, League of Wisconsin Municipalities, manages the League's lobbying program, representing the League before the Legislature, the governor's office, and state agencies. He writes the *Legislative Bulletin* and *Capitol Buzz* newsletters, organizes legislative material and the Budgeting Toolkit for the League's web page, and answers questions from the media and members about legislation that the League is following. Curt joined the League staff as assistant legal counsel in 1987 and was named Deputy Director in 2000. Contact Curt at witynski@lwm-info.org

Amy R. Seibel, an attorney and CPA with Seibel Law Offices, LLC has successfully represented municipalities across the state in excessive property assessment actions. She has practiced property tax law for over 35 years. She has won decisions at both the circuit court and appellate levels successfully challenging the "dark property theory" as well as promoting the use of actual income and expenses to value an income producing property in the same manner as is done in the real estate investment market. Over the last 18 months the successful litigation has saved municipalities over \$25 million in property tax refund claims. Amy served as one of 12 members of the 2018 Legislative Study Committee on Property Tax Assessments that developed proposed legislation for further consideration by the Wisconsin Legislature. She was recently awarded the *Fair and Equitable Award* by the Wisconsin Association of Assessing Officers "For exceptional service to the citizens of Wisconsin, by conscientious efforts to promote fairness and equity in the assessment and taxation process as legislated by the Wisconsin Statutes." Contact Amy at ars@amylawoffices.com or 414-881-4262.

Rocco Vita is the Director of Assessment Services for the Village of Pleasant Prairie and through intergovernmental agreements he manages the assessment duties for a number of other municipalities in Kenosha County. Rocco is a Past-President of the Wisconsin Association of Assessing Officers (WAAO) and is the current chair of WAAO's Legislative Committee, he has instructed a number of continuing education seminars on a broad range of appraisal and assessment topics, and is a long-time member of the International Association of Assessing Officers (IAAO).

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Putting “Responsible” Back Into “Lowest Responsible Bidder”

Cynthia Buchko, General Counsel, Construction Business Group

Generally, public construction projects must be competitively bid and awarded to the “lowest responsible bidder.”¹ The statutes and state administrative regulations provide little, if any, meaningful guidance on what constitutes a “responsible” bidder. As a result, many public project owners are reluctant to award the work to anyone other than the lowest bidder, even if there is good reason to believe that the lowest bidder may end up costing the taxpayers more in the long run due to poor work quality, project delays, and change orders.

Public project owners do not want to risk being sued and are concerned about project delays caused by a lawsuit. These risks, however, can be mitigated to a large degree by both understanding the law and creating a proper administrative record of the bid award decision.

The legal standards applicable to a public entity’s decision to award a contract are very favorable to the public entity. As a threshold matter, bidders have no legal right to a contract with the public entity. A “public bidding authority cannot be compelled to award the contract to the lowest bidder....”² While courts have authority to review a public entity’s decision to award work, the standard of review is deferential to the public entity. “A reviewing court will only interfere with a bidding authority’s discretionary act if it is arbitrary or unreasonable.”³

“An arbitrary action is one that is either so unreasonable as to be without rational basis or is the result of an unconsidered, willful, or irrational choice of conduct. An unreasonable action is one that lacks a rational basis.”⁴ Specifically with respect to determining whether a bidder is responsible, a decision will pass the arbitrary and unreasonable bar if the decision is based on “bona fide judgment, based upon facts tending to support the determination.”⁵

For example, in *D.M.K., Inc. v. Town of Pittsfield*,⁶ the Court of Appeals upheld the town’s determination that the lowest bidder was not responsible due to “numerous legitimate concerns about D.M.K.’s performance of prior contracts....” The record created by the town to support its decision included past instances of unsupervised workers, damage to new asphalt while shouldering, leaving gravel on the road, and not responding to calls during projects.

What if, however, the public entity does not have personal experience with the lowest bidder as the town did in the *D.M.K.* case? Bid statutes allow public entities to require a sworn statement as to the bidder’s “responsibility” prior to submitting a bid.⁷ Public entities can request, among other things: verification of a principal place of business; proof of licensure to do business in Wisconsin; disclosure of investigations and law

violations; proof of a substance abuse prevention program, required by Wis. Stat. § 103.503; proof of training and safety programs; proof of financial ability to perform; examples of previous similar experience; and much more. Some public entities have taken the additional step of enacting an ordinance or administrative code section setting forth prequalification, responsibility standards.⁸

Even in the absence of specific bidder prequalification forms or a responsible bidder ordinance/administrative code section, project owners can conduct independent research to verify the responsibility of a bidder. General contractors can and should conduct research on subcontractors to ensure that subcontractors being used are responsible and reliable.

There are state and federal court databases that will have judgments listed. Wisconsin and neighboring states maintain debarment lists. The Wisconsin Department of Financial Institutions maintains a public, online listing of all domestic and foreign companies that are licensed to do business in Wisconsin. The Wisconsin Department of Revenue maintains a list of entities that have delinquent tax warrants. There are even online databases that collect much of this publicly available information in one place. LexisNexis maintains a business database, although accessing the database

1. See Wis. Stat. §§ 16.75, 23.41(5), 38.18, 43.17(9), 59.52(29), 59.70(13), 62.15(1) and (6), 61.54, 62.15(1) and (6), 60.47(3), 66.0901, 83.04, 85.077(1), 86.31(2), 86.51(4), or 88.62(1).

2. *Five Star Airport Alliance, Inc. v. Milwaukee Cnty.*, 939 F. Supp. 2d 936, 941 (E.D. Wis. 2013) (citing *N. Twin Builders, LLC v. Town of Phelps*, 334 Wis. 2d 148, 154 (Ct. App. 2011)).

3. *PRN Assocs. LLC v. State Dep’t of Adm.*, 313 Wis. 2d 263, 268 (Ct. App. 2008).

4. *Id.*

5. *Aqua-Tech, Inc. v. Como Lake Prot. and Rehab. Dist.*, 71 Wis. 2d 541, 551 (Wis. 1976) (internal citation and quotations omitted).

6. 290 Wis. 2d 474, 476-77 (Ct. App. 2006).

7. See, e.g., Wis. Stat. § 66.0901(2).

8. See, e.g., Wis. Admin. Code § Adm. 21.02(8)(c).

and obtaining a report involves paying a fee. Construction Business Group has compiled publicly available information on over 8,800 contractors operating in Wisconsin and offers free access to the database to registered users.⁹

If independent research is conducted, however, the information must be reliable and should be made part of the public entity's record for its decision not to award the contract to the low bidder due to lack of responsibility. It is the quality of the information that demonstrates a "bona fide judgment, based upon facts tending to support the determination."¹⁰

Applying the proper legal standard to reliable facts, it is unlikely that a decision to reject the lowest bidder because the contractor is not responsible will be overturned by a reviewing court. And, rejecting a bid because the bidder is not responsible will likely save the public entity time and money in the long run. As the adage goes, cheaper is not always better.

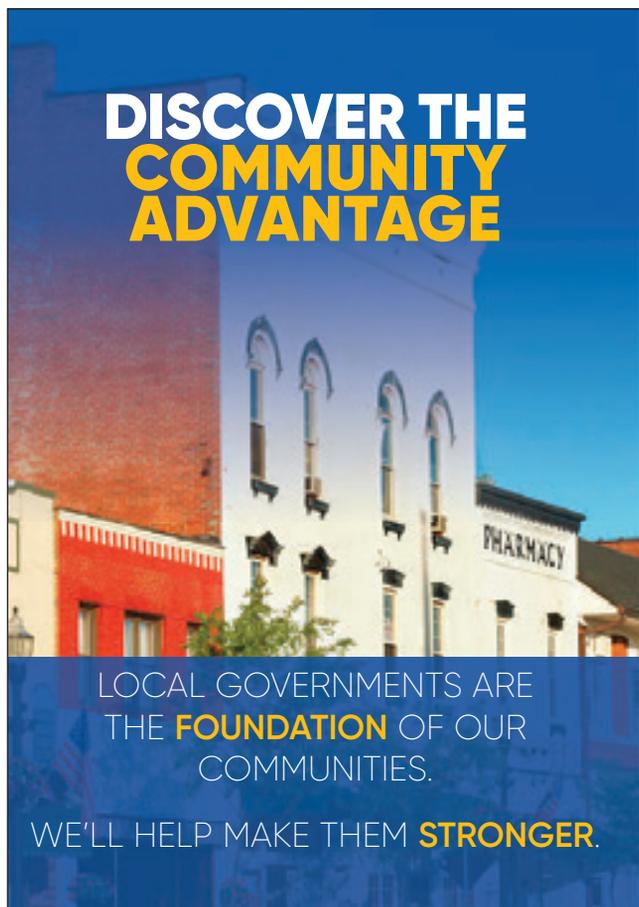
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Cynthia (Cindy) Buchko is the General Counsel of Construction Business Group (CBG), a trade organization protecting the interests of 21,000 construction workers and 3,500 contractors. Cindy is the immediate past Chair of the Construction and Public Contract Law section of the Wisconsin State Bar. She is a Board Member of both Heartland Farm Sanctuary and the YWCA of Madison Foundation. Contact Cindy at c.buchko@cbgwi.com

9. See www.cbgwi.com.

10. *Aqua-Tech, Inc.*, 71 Wis. 2d at 551.



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ABCs on CBD

Barry J. Blonien, Attorney, Boardman & Clark, LLP

In what feels like the blink of an eye, one can now find countless products containing CBD being sold everywhere throughout the state. Municipal employees may be wondering about the substance, its legality, and whether villages, towns, and cities can and should take any steps to regulate retail sales within their territory. This article provides a big-picture overview for those who may not be familiar with the topic.

CBD is one of the chemical compounds found in cannabis. CBD does not appear to have any psychotropic effects associated with THC found in marijuana (that is, it does not cause a “high”), but it may offer relief for patients suffering from a range of maladies, including epilepsy, PTSD, and insomnia. Indeed, in 2018 the FTC approved the drug Epidiolex, which is a CBD oral solution for the treatment of rare seizure disorders.

The Agriculture Improvement Act of 2018 (better known as the “2018 Farm Bill”) removed hemp and its byproducts from the Controlled Substances Act, as long as the hemp-based product contains no more than 0.3 percent THC on a dry-weight basis. But that does not mean the legal status of CBD is clear. To the contrary, the Food and Drug Administration maintains that the federal Food, Drug, and Cosmetic Act prohibits the addition of CBD to food products or dietary supplements sold in interstate commerce, and the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury has recently announced that it will not currently approve the use of CBD as an

ingredient in wine, beer, or liquor. That said, the FDA is actively exploring the issue in rulemaking proceedings and may provide greater clarity soon regarding federal law.

Products containing THC are not legal to sell or possess in Wisconsin, but possession of CBD is legal with a certification from a physician that the CBD is being used to treat a medical condition. And once the state follows the lead of the federal government and removes hemp-derived CBD from the list of controlled substances, anyone may then possess and use CBD products under state law. See Wis. Stat. § 961.11(4g) (stating that “if cannabidiol is rescheduled or deleted as a controlled substance under federal law, the controlled substances board shall similarly treat cannabidiol under this chapter as soon as practically possible . . .”) The state has created an “industrial hemp” program to be administered by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (“DATCP”), requiring DATCP to promulgate rules “to maximize opportunity for a person to plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial hemp to the greatest extent authorized by federal law.” Wis. Stat. § 94.55(2). Former Attorney Brad Schimel issued a statement indicating that the sale of products made from industrial hemp are lawful and will not be subject to prosecution, and current Attorney General Josh Kaul has not given any indication that he intends to take the opposite view.

This confusing legal landscape may make it difficult for municipalities to determine the best way to proceed in order to promote the public health and safety of its residents. Local public nuisance and zoning laws might be available tools that could restrict where retail stores selling CBD may be located and place other reasonable regulations on the business, but municipalities should consult with an attorney to determine the best course for their individual needs and circumstances. And this area is likely to see lots of development and change in the coming years. Rest assured, though, if the CBD craze has not landed in your home town yet, it is likely just a matter of time.

Licensing & Regulation 401

About the Author:

Barry Blonien is an attorney with Boardman Clark. Barry has substantial experience at all stages of litigation, from case analysis before filing a complaint all the way through trial and, if necessary, an appeal. He has worked on complex litigation matters involving constitutional law, civil rights, environmental justice, consumer rights, antitrust, false claims, class actions and collective actions, administrative law, and intellectual property. Contact Barry at bblonien@boardmanclark.com



Why Parliamentary Procedure for My Meetings?

Daniel Foth, J.D., Local Government Specialist, Local Government Center,
University of Wisconsin Madison - Extension

How many times have you thought about your local government meetings and how to make them better? You have a good group of elected officials and dedicated staff, but it's hard to get everyone on the same page. What can be done to make your meetings more effective?

The Wisconsin Statutes do not require governing bodies to follow a certain set of parliamentary procedure rules. Rather, village boards and common councils may determine their own respective procedural rules. Wis. Stat. §§ 61.32, 62.11(3)(e).

So, why have rules of parliamentary procedure if they're not statutorily required? The answer is simple: Procedural rules are essential for running an effective, efficient, and orderly meeting. Procedural rules also help to protect the rights of meeting participants. Robert's Rules of Order, probably the most well-known set of parliamentary rules, explains that the rules are based on a regard for rights – those of the majority, the minority, of individual members, of absent members, and of the foregoing collectively. Parliamentary procedure also helps to establish and preserve consistency – often the process to change a previous action has more requirements than the process for effecting the action in the first place.¹

Conducting a meeting without a defined set of parliamentary procedure rules, or without a good understanding of those rules, can result in confusion, inefficiency, and frustration for members of the governmental body. Typical issues that arise include negative or awkwardly worded motions resulting in confusion on how to vote, members acting out of order, chairpersons disregarding procedural rules or failing to enforce

the rules, some members repeatedly talking while others are unable to get a word in edgewise, confusion as to what is actually before the body, etc. A governmental body that has adopted clear parliamentary procedure rules and that understands how they work, will be able to conduct a much more effective meeting. Adhering to known parliamentary procedure will allow the body to function like a well-oiled machine including: facilitating discussion by the majority, while preserving the minority's voice and right to participate; providing a civil way for members to voice disagreement without being disagreeable; establishing expectations for meeting procedures, conduct, and voting; and proper use of motions and other procedural tools.

In the coming months, we will explore how specific rules of parliamentary procedure can help facilitate effective meetings. Be part of the conversation; please share your questions, conundrums, or thoughts with me at: Daniel.foth@wisc.edu. I look forward to hearing from you. Also, thank you to my colleague, Philip J. Freeburg, J.D., whose input is always invaluable.

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Daniel Foth is a Local Government Specialist with the University of Wisconsin-Madison Local Government Center. His focus areas include open meetings and records, effective meetings, boards of review, parliamentary procedure, transportation, and the next generation of local government elected officials. <https://lgc.uwex.edu/>

1. Robert's Rules of Order, Principles Underlying Parliamentary Law, p. XLVII

overtime and disability benefits, claiming to be an employee under the Fair Labor Standards Act and Illinois state law.

Applying the economic realities test to the facts, the Seventh Circuit found evidence in the record indicating that DuPage had a high level of control over Simpkins' work, often telling him what to do and when to do it. There was evidence that DuPage purchased many of the tools Simpkins needed to perform his work. The court observed that Simpkins did not have any special skills, noting that employers typically hire an independent contractor because of their specialized skills. Ultimately, the court found the parties' independent contractor agreement was insufficient to overcome the other evidence in the record suggesting that Simpkins was legally an employee.

While these situations must be evaluated on a case-by-case basis, generally persons who own their own business, possess expertise in a specialized field, carry business insurance, provide their own tools and equipment, and work for multiple clients are correctly classified as independent contractors. On the other hand, as in the *Simpkins* case, workers who do not own a business, work exclusively for one entity, do not purchase the necessary equipment or carry business insurance, and have less control over when and how the work is performed, will likely be legally regarded as employees.

Wisconsin's Workers' Compensation Act

The Wisconsin Workers' Compensation Act (WCA) provides an important exception to the economic realities test. The WCA has a nine-factor

assessment, and all nine factors must be met before a worker can lawfully be considered an independent contractor. "To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements:

- Maintain a separate business.
- Obtain a Federal Employer Identification number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year. (A Social Security number cannot be substituted for a FEIN and does not meet the legal burden of s. 102.07(8) of the Act.)
- Operate under specific contracts.

► p.24

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- Be responsible for operating expenses under the contracts.
- Be responsible for satisfactory performance of the work under the contracts.
- Be paid per contract, per job, by commission or by competitive bid.
- Be subject to profit or loss in performing the work under the contracts.
- Have recurring business liabilities and obligations.
- Be in a position to succeed or fail depending on business expenses and income.²

Wisconsin Stat. § 102.16(5) specifically prohibits workers from waiving their rights under the WCA. This means that a worker who is injured in the course of performing work for the employer will be entitled to workers' compensation if all nine factors are not met, even if the parties have an independent contractor agreement. This is also true even if other state or federal regulators find a relationship to be appropriately categorized as an independent contractor arrangement.

Conclusion

Given the state's priority of detecting and enforcing against improper worker classifications,³ organizations should consider auditing any current workers

deemed to be independent contractors. The WCA's nine-factor assessment provides a solid guide for assessing a worker's classification. Employers should contact employment counsel for assistance with making the appropriate assessments under the various other laws that may apply to their organization.

Employees 353

If you'd like to suggest a topic for HR Matters or if you have a question, please email the League at league@lwm-info.org

2. Wis. Stat. § 102.07(8); see https://dwd.wisconsin.gov/dwd/publications/wc/WKC_13324_p.htm.
3. See <https://content.govdelivery.com/accounts/WIGOV/bulletins/2540de8>.



Learn More!

Lisa Bergersen will be presenting *Deep Dive HR 101* at the League's 121st Annual Conference on Wednesday, October 23 from 9:00 to 11:00 a.m.

One-Day Registration is available! Register now using the Registration Form on page 28 of this magazine or register online <https://www.lwm-info.org/731/Annual-Conference>



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Did you know? The published Legal FAQs are taken directly from the extensive library of resources on the League's website. Have a question? Try the search function on the website and get an answer. <http://www.lwm-info.org>

Powers of Municipalities FAQ 7

Does a village have the power to create a Tax Incremental Financing District under Wis. Stat. § 66.1105?

Yes. Villages are authorized to create a TIF District. However, the authority is not found in the TIF law provisions of § 66.1105. Instead, the statutory authorization is located in § 66.1339 which provides, in part, that a village is to have all of the powers of a city under § 66.1105. (rev. 8/19)

Police & Fire Commission FAQ 1

When must a village establish a police and fire commission?

A village with a population of 5,500 or more that creates its own police department or fire department must establish a police and/or fire commission. Wis. Stat. §§ 61.65(1)(b) 2, 61.65(2)(b)1. A village with a population of 5,000 or more that creates a joint police department with another municipality must create a joint board of police commissioners. Wis. Stat. § 61.65(1)(b)1.b. Each village with a population of 5,500 or more that creates a joint fire department with other municipalities must create a joint board of fire commissioners with those other municipalities. § 61.65(2)(b)2.

The statutes further provide that any board or joint board created under § 61.65 is subject to the provisions of §§ 62.13(2) to (12) pertaining to the roles and functions of a board of police and fire commissioners. § 61.65(3g)(d)2. Municipalities creating a joint commission may jointly determine the number of commissioners to be appointed to the joint board by each municipality and the length of the commissioners' terms. § 61.65(3g)(d)1.b. (rev. 8/19)

Employees FAQ 13

Are municipal residency ordinances valid?

No. Although the U.S. Supreme Court has upheld the constitutionality of municipal residency requirements (*McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976)), Wisconsin law prohibits municipalities from imposing residency requirements on municipal employees. With limited exceptions, Wisconsin Statute § 66.0502, created by the legislature as part of the 2013-2015 biennial state budget and effective July 2, 2013, prohibits local governmental units from requiring, as a condition of employment, that any employee or prospective employee reside within any jurisdictional limits. Additionally, § 66.0502 invalidates and makes unenforceable any local residency requirements in effect on July 2, 2013. Section 66.0502 does not affect state laws requiring residency within the jurisdictional limits of any local governmental unit, or state and local laws requiring Wisconsin residency.

Section 66.0502(4)(b) allows a local governmental unit to require that law enforcement, fire, or emergency personnel reside within 15 miles of the local government's jurisdictional boundaries. Subsection (4)(c) allows counties to require that law enforcement, fire or emergency personnel reside

within 15 miles of the city, village, or town to which the personnel are assigned. The law does not define what constitutes "emergency" personnel. Residency requirements imposed under § 66.0502(4)(b) and (c) do not apply to any volunteer law enforcement, fire, or emergency personnel who are employees of a local governmental unit.

When the law was initially created, we believed that existing charter ordinances imposing residency requirements remained valid as exercises of constitutional home rule authority, which allows municipalities to enact laws governing their "local affairs and government." However, the Wisconsin Supreme Court held that the City of Milwaukee's longstanding charter ordinance requiring city employees to reside in the city was no longer enforceable following the legislature's enactment of Wis. Stat. § 66.0502. Section 66.0502(1) declares that public employee residency requirements are "a matter of statewide concern." In *Black v. City of Milwaukee*, 2016 WI 47, 369 Wis. 2d 272, the Court held that although a city or village may use home rule authority to create a law that deals with its local affairs, the legislature has the power to statutorily override the city's or village's law if the state statute touches upon a matter of statewide concern or if the state statute uniformly affects every city or village. The Court held that as long as a statute, on its face, uniformly affects cities or villages throughout the state, the home rule amendment's uniformity requirement is satisfied. The Court concluded that although residency requirements are a "mixed bag," meaning they are both of statewide and local concern, even when treated as a local concern the city's charter ordinance was trumped by § 66.0502 which is facially uniform in that it applies to any city, village, town, county or school district. (rev. 7/19)

PROPOSED REVISION TO THE LEAGUE CONSTITUTION

The Board of Directors is recommending the League's Constitution be modified to eliminate the position of District Coordinator. The two duties of District Coordinators were to recruit new members and to serve as the League's Resolutions Committee. With near-100% membership, recruiting new members has not been a needed League function for many decades. There have been no resolutions presented to the membership in two years. The League president has the authority to appoint a resolutions committee if needed in the future.

The three specific changes to the League Constitution are as follows:

Delete Article V, Section 7, which currently reads: *District Coordinator*. There shall be appointed after each annual conference a district coordinator from each senatorial district.

Delete Article X, which currently reads: *District Coordinators Section 1 Eligibility*. District coordinators shall be municipal officials of member municipalities. *Section 2 Duties*. District coordinators will serve as the resolutions committee at the annual meeting of the League. In addition, all district coordinators will assist in seeking new members of the League. District Coordinators shall also perform such other functions as shall be determined by the president and the Board of Directors.

Renumber Articles XI, XII and XIII.

A proposal to amend the Constitution of the League must be published in the League magazine prior to the annual conference and approved by 2/3 of the member municipalities voting.

If you have any questions about this proposed revision, please contact Jerry Deschane, League Executive Director, at 608-347-1792 or email jdeschane@lwm-info.org



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121st League Annual Conference Registration

KI Center/Hyatt Regency, Green Bay

October 23-25, 2019

Registration deadline October 16, 2019

Name _____ Title _____
 The Municipality/Company You Represent _____
 Street Address _____
 City _____ State _____ Zip code _____
 Phone number _____ email _____

I need arrangements to accommodate a disability or dietary need. (We will contact you to make those arrangements.)

	Member*	Non-member
Full Conference Registration _____	<input type="checkbox"/> \$260	<input type="checkbox"/> \$305
Wednesday Only Registration _____	<input type="checkbox"/> \$90	<input type="checkbox"/> \$110
Thursday Only Registration _____	<input type="checkbox"/> \$150	<input type="checkbox"/> \$180
Friday Only Registration _____	<input type="checkbox"/> \$90	<input type="checkbox"/> \$110

Bringing a guest? No Yes Name: _____ \$50

Please note: Guest registration covers both Conference Receptions and Thursday's Run/Walk. There is no Guest Program this year.

Please tell us which of the of the following events you'll be attending:

- Wednesday Deep Dive #1 Northern Renewal—Tour of Green Bay and Ashwaubenon
- Wednesday Deep Dive #2 Human Resources 101
- Wednesday Deep Dive #3 Innovative Housing Solutions
- Wednesday Mini Bar** A New Round of *FUN*damentals for Municipal Attorneys
- Thursday morning WEA Trust Walk/Run (7:00 a.m. start)

Please circle the Walk/Run t-shirt size you would like: **S M L XL XXL**

If you are bringing a guest to the Walk/Run, please circle your guest's size: **S M L XL XXL**

- Thursday Municipal Networking Reception (4:30 p.m.)
- Friday Scrambled Eggs & Politics Breakfast (7:30 a.m.)

Total Due: _____/Payment information:

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THE FINE PRINT:

**Staff members and officials from cities and villages that are currently members of the League, League Business Partners and representatives from organizations exhibiting at this conference may register at the member rate.*

***The Mini Bar workshop is geared towards newer municipal attorneys but seasoned attorneys are likely to find value as well.*

The workshop is anticipated to provide 4 CLE credits. Anyone may attend, but content will be presented with the assumption that participants have a law background.

Registration fees, minus a \$10 processing fee, are refundable if the League is notified of the cancellation by October 18, 2019.

Online Registration: www.lwm-info.org

Mail: League of Wisconsin Municipalities

Fax: 608-267-0645

131 West Wilson Street, Suite 505

Questions? Call 608-267-2380

Madison, WI 53703

Wednesday, October 23

- 8:00 a.m. Registration Opens!
- 8:30 a.m. Mini Bar: A New Round of **FUN**damentals for Municipal Attorneys
 - Public Construction and Competitive Bidding
 - Takings
 - Municipal Liability/Immunity
 - Tips for Good Drafting
- 9:00 a.m. Deep Dives (2-hour workshops)
 - Deep Dive 1 – Bus Tour: Northern Renewal - Tour of Green Bay and Ashwaubenon
 - Deep Dive 2 – Human Resources 101
 - Deep Dive 3 – Innovative Housing Solutions
- 10:00 a.m. Exhibit Hall Opens!
- Noon Light Lunch Buffet in the Exhibit Hall
- 1:00 p.m. League Annual Business Meeting
- 1:30 p.m. Running an Effective Meeting (Mock Meeting)
- 3:30 p.m. **EPW TRACK:** Engineering & Public Works Roundtable
- 4:45 p.m. President’s Reception (hors d’oeuvres and drinks in the Exhibit Hall)
- 5:30 p.m. Raffle Drawings for Exhibit Hall Gift Baskets
- 6:30 p.m. Table for 10 Networking Dinner (each person pays his/her own dinner tab; sign up at registration)

Thursday, October 24

- 7:00 a.m. 6th Annual WEA Trust/League Walk/Run
- 8:00 a.m. Breakfast
- 9:00 a.m. Concurrent Workshops:
 - Practical Strategies for Dealing with More Frequent Severe Rain and Flooding Events
 - Levy Limit Strategies
 - Not with My Tax Dollars! Ethics of Budgeting
 - Liquor Licensing
 - **EPW TRACK:** The Importance of Sanitary Sewer Management Programs
- 10:15 a.m. Break
- 10:30 a.m. Concurrent Workshops:
 - Municipal Collaboration & Relationship-Building
 - Building a Strong System of Internal Controls to Prevent Fraud
 - Not with My Tax Dollars! Ethics of Budgeting (*repeat session*)
 - Current Issues in Land Use Regulation
 - **EPW TRACK:** Stormwater Mitigation Utilizing Suspended Pavement
- 11:45 a.m. Lunch
- 1:30 p.m. Concurrent Workshops:
 - Working with and Utilizing Your Municipal Attorney
 - Rethinking Special Assessments
 - How Not to Be an Ethics Case Study
 - Public Records
 - **EPW TRACK:** Compact Roundabouts/ EVP’s/ Traffic Calming Ideas

Thursday, October 24 (continued)

- 2:30 p.m. Break
- 2:45 p.m. Concurrent Workshops:
 - Small Community Roundtable
 - Large Community Roundtable
 - Legislative Update
 - TIF: The "But For" Test - Prove It!
 - **EPW TRACK:** Rethinking GIS: Informed Planning, Deeper Insights
- 4:15 p.m. Break
- 4:30 p.m. WEA Trust Local Spark Awards and Arts Wisconsin “Arts in the Community” Award presentation
- 5:00 p.m. Networking Reception

Friday, October 25

- 7:30 a.m. Scrambled Eggs & Politics
- 9:00 a.m. Concurrent Workshops:
 - Panel: Inclusivity in Small and Large Communities
 - Panel: Downtown Redevelopment
 - **EPW TRACK:** Lessons Learned about Phosphorous Compliance Options
- 9:45 a.m. Break
- 10:00 a.m. Concurrent Workshops:
 - Make Your Community a Recreation Destination
 - Municipality Utility Oversight: Governing Body Options and Responsibilities
 - **EPW TRACK:** Engineering Ethics
- 11:00 a.m. Break
- 11:15 a.m. Closing Keynote Address, Green Bay Packer Great LeRoy Butler**

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This agenda is tentative and subject to change.

Find detailed agenda, online registration and the latest information on hotel availability at: www.lwm-info.org



**2019 Police & Fire Commission
Workshop
November 1, 2019**

Holiday Inn Hotel & Convention Center, Stevens Point

\$130 Member Tuition, \$155 Non-Member Tuition
(Staff and officials from cities and villages that are currently members of the League and League Business Partners may register as members.)

Hotel Information: This program is intended to be a one-day, drive-in event. If you need a hotel room, contact the Holiday Inn Hotel & Convention Center at 715-344-0200.

Register Online: <http://lwm-info.org/802/Police-Fire-Commission-Workshop>

Registration Deadline: October 25, 2019

Workshop Agenda

- 8:00 a.m. Registration
- 8:30 a.m. The Role of the Police & Fire Commission (PFC): Duties, Powers and Responsibilities
Steven C. Zach, Attorney, Boardman & Clark, LLC
Claire Silverman, Legal Counsel, League of Wisconsin Municipalities
 - Why We Have a Commission
 - PFC Composition & Structure
 - Powers & Duties of the Commission
 - Disciplinary Hearings
 - Overview of Open Meeting & Public Records Laws
- 12:00 p.m. Lunch (included)
- 1:00 p.m. Selecting Police and Fire Personnel
Neil Strobel, Retired Chief, Merrill Police Department
 - Hiring Entry Level-Personnel
 - Promotion
 - Hiring Chiefs
- 4:30 p.m. Adjournment



**2019 Plumbing Inspectors Institute
November 6-8, 2019**

Lake Lawn Resort, Delavan

\$155 Member Tuition, \$185 Non-Member Tuition (Staff and officials from cities and villages that are currently members of the League and League Business Partners may register as members.)

Hotel Information: Make reservations directly with Lake Lawn Resort at 800-338-5253. \$113-\$133 depending on room type. Use booking ID *Plumbing Inspectors Institute* to receive the block room rate. Deadline for room reservations at the block rate is October 16, 2019, or until group block is sold out, whichever comes first. 72-hour cancellation policy. Check-in is at 4:00 p.m. Check-out is at 11:00 a.m.

Agenda and Registration Online at: <http://lwm-info.org/800/Plumbing-Inspectors-Institute>

Registration Deadline: October 30, 2019

2019 League Workshops, Institutes, and Conferences

EVENT	DATES	LOCATION	LODGING	REGISTRATION FEE
Annual Conference and Engineering & Public Works Institute*	October 23-25	Green Bay	KI Center/Hyatt Regency • 800-233-1234 \$82 single-quad ID: League of WI Municipalities	\$225 Member \$270 Non-Member
Police & Fire Commission Workshop*	November 1	Stevens Point	Holiday Inn Hotel & Convention Center 1-day workshop Usually does not require overnight stay	\$130 Member \$155 Non-Member
Plumbing Inspectors Institute*	November 6-8	Delavan	Lake Lawn Resort • 800-338-5253 \$113-\$133 depending on rm type ID: Plumbing Insp Institute	\$155 Member \$185 Non-Member

* Register now at www.lwm-info.org

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Transitions

CONGRATULATIONS

The Wisconsin Municipal Clerks Association (WMCA) awarded Village of Cambria Municipal Clerk/Treasurer Lois Frank with the prestigious Lifetime Achievement Award at their annual conference in August.

Ms. Frank is a Wisconsin Certified Municipal Clerk as well as a Master Municipal Clerk and has served the Village of Cambria since 1993. Glen Williams, Village President, states that every day Lois implements what she has learned through the association and dedicates her time and efforts to bettering her community. Lois is referred to by her clerk peers as someone that many look up to and respect due to her knowledge, involvement, dedication, and selflessness.

Aside from her professional successes, Lois is an advocate for her community. She is active in many community groups and spends much of her time volunteering.



Lifetime Achievement Award Winner Lois Frank (r) with Teri Lehrke, Chair of the WMCA Lifetime Achievement Award Committee.

RETIREMENTS

Madison. Chuck Kamp, Metro Transit's General Manager, is retiring in November. After taking the position in 2006, Kamp led Metro to a record ridership, including a peak of 15.2 million rides in 2014, and extended the system to Middleton, Fitchburg, Verona, American Center on the Far East Side, and soon, Sun Prairie. He oversees a \$56.8 million budget with about 460 employees, including 310 bus drivers. He previously managed Valley Transit in the Fox Valley.

Marquette. Village Clerk Deb Flagel retired in August after serving the village for 20 years. We wish you all the best!

Mukwonago. Clerk-Treasurer Judy Taubert is retiring after nearly 20 years with the village. Thank you for your work!

Wauwatosa. City Clerk Carla A. Ledesma, CMC, retired in August. She began working for the city (as a secretary in the clerk's office) in 1985, became deputy in 1990, and was appointed clerk in 1998.

Have an update?

Please send changes, corrections, or additions to Robin Powers at rpowers@lwm-info.org, fax (608) 267-0645 or mail to the League at 131 West Wilson Street, Suite 505, Madison, WI 53703

Buelow Vetter is Growing Stronger



From left to right: Attorneys Mary S. Gerbig, Lisa M. Bergersen and Saveon D. Grenell.

Buelow Vetter Buikema Olson & Vliet continues to lead the way among municipal law firms with the addition of three high-caliber attorneys - Lisa Bergersen, Mary Gerbig and Saveon Grenell.

- Lisa is an experienced litigator with a wealth of experience in municipal law and labor and employment law. She has represented public and private sector employers for nearly 20 years, and she most recently served as the Human Resources Director for the City of Pewaukee.
 - Mary has over 20 years of experience representing school districts, CESAs, and municipal employers throughout Wisconsin. She recently received the George Tipler Award for Distinguished Service in School Law. Her expertise in the areas of general school law and special education law is an exciting addition to Buelow Vetter's top-rated school law practice.
 - Saveon's experience as an Assistant City Attorney for the City of Milwaukee and as attorney for Milwaukee Public Schools makes him another perfect addition to our team of experienced attorneys who provide legal services to schools, municipalities and corporations throughout the state.
- Welcome to the team, Lisa, Mary and Saveon!

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