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Village of Shorewood Hills

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Village Manager
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City of Wisconsin Rapids

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Executive Director
League of Wisconsin
Municipalities

OFFICER

Dennis Tweedale
Chief Executive Officer
League of Wisconsin
Municipalities Mutual
Insurance

10TH Annual LWMMI Policyholder Conference

**Chula Vista Resort and Water Park
Wisconsin Dells, Wisconsin
May 8 and 9, 2019**

The Perfect Documentation Needed to Defend a Suit in State or Federal Court

**Wednesday, May 8, 2019
1:30 PM – 2:30 PM**

Presented By:

**Joe Wirth, Attorney
Piper, Schmidt & Wirth**

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Madison, Wisconsin 53719

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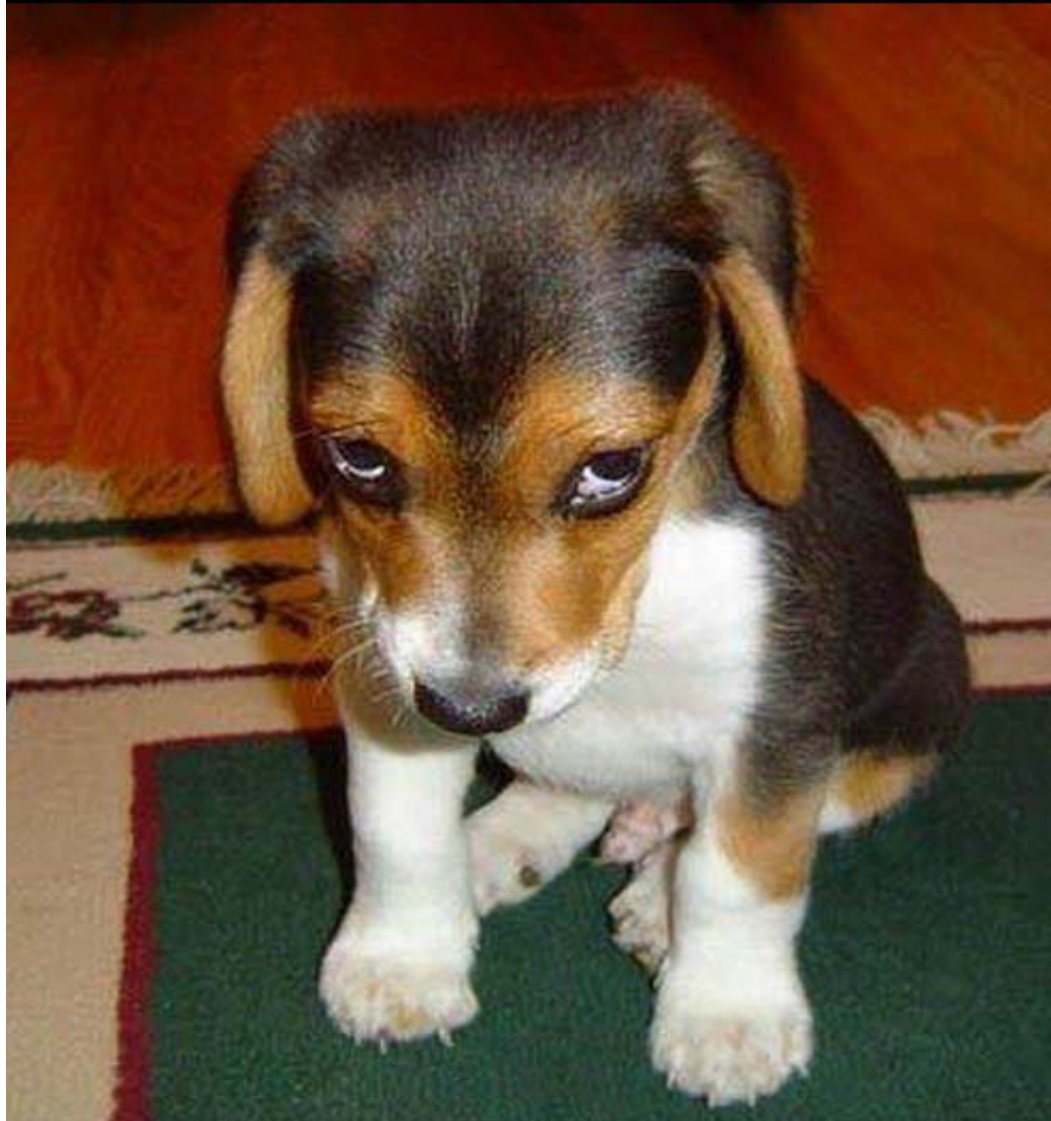
LWMMI

League of Wisconsin Municipalities Mutual Insurance

PERFECTVILLE GETS **SUED**

Supporting Your Decisions,
Your Work,
And Your Wallet

"I'm sorry."



WHAT DID I DO?

- Open Records
- Land Use and Zoning Decisions
- Police Practices
- Council/Board Votes
- Personal Injury and Property Damage
- Errors and Omissions



WHAT DO THEY WANT?

- Certiorari
- Mandamus
- Civil Rights
- Personal Injury or Property Damage
- Administrative Relief

CERTIORARI ACTIONS

- What are they?
 - Land Use
 - Zoning
 - Planning
 - Ordinance Enforcement
- To What Standard Are We Held?
- What is the Judicial Review?

THE “RECORD RETURN”

- What is the Record Return?



- What Does Perfectville Have in its Record Return?
 - Notices
 - Recordings
 - Minutes
 - Contracts, plans, change orders
 - All records presented to the voting body
 - Affidavits of mailing
 - Decisions *with* rationale
- Why?

MANDAMUS ACTIONS

- What are they?
 - Land Use
 - Open Records
 - Statutory Duties
- To What Standard Are We Held?
 - What response is owed?
 - What is “timely”?
 - What records are protected?
- What are the Defenses?



- What Does Perfectville Have in its Files?
 - Forms
 - Council/Board minutes
 - Ordinance book
 - Emails, letters, phone notes
- Why?

Civil lawsuits

- What are they?
 - Personal Injury
 - Property Damage
 - Civil Rights
 - Contract Enforcement
- To What Standard Are We Held?
- What are the Defenses?



- What Does Perfectville Have in its Files?
 - Policies, practices, and procedures
 - Contracts, notes, recordings, invoices
 - Notices of Claim
 - Black box data
 - Incident reports
 - Emails, letters, phone notes
- Why?

POLICE PRACTICES LAWSUITS

- What are they?
- To What Standard Are We Held?
- What are the Defenses?

What Does Perfectville Have in its Files?

- Standard Operating Procedures
 - Body/Dash Cam
 - Training Records
 - Incident Reports
 - Officer and Witness Statements
 - Daily logs and Notebooks
 - Employment files and Discipline records
- Why?

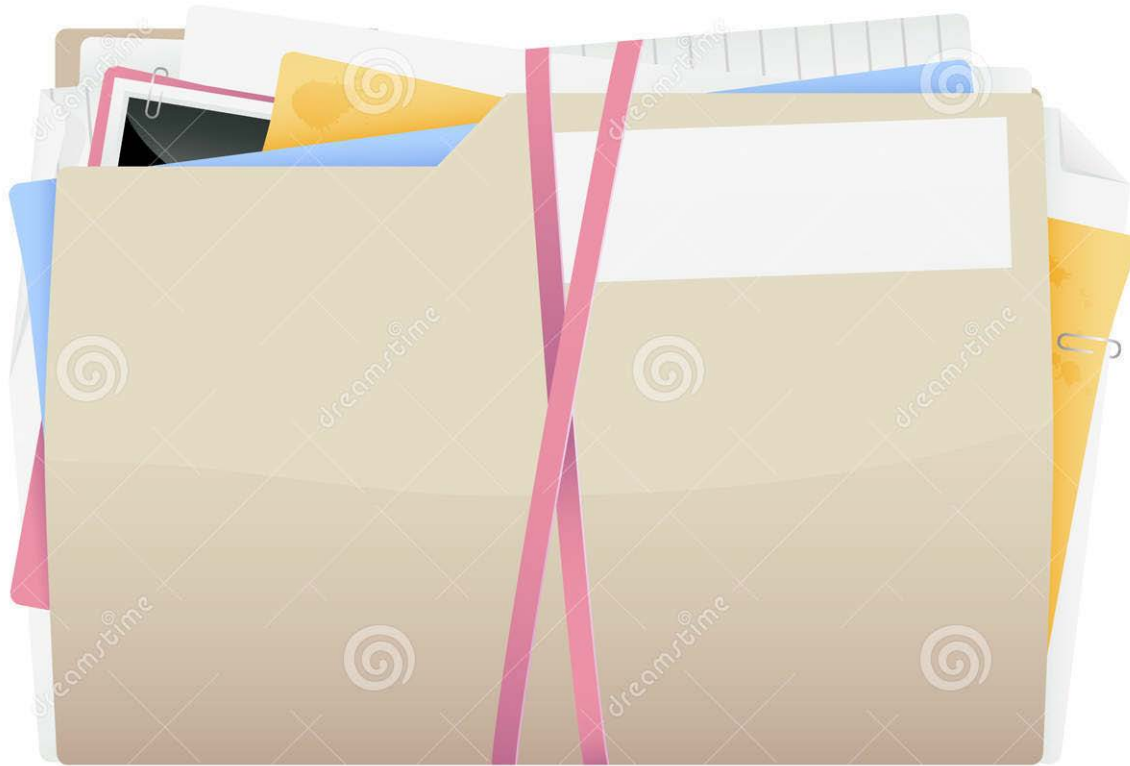
ADMINISTRATIVE PROCEEDINGS

- What are they?
 - EEOC
 - ERD
 - Officer/Fire employment
 - Utility rates or services
- To What Standard Are We Held?
- What is the Judicial Review?



- What Does Perfectville Have in its files?
 - Employment history, warnings and evaluations
 - Due process records
 - Receipts, notes, contracts
 - Emails, letters, phone notes
 - Witness statements
- Why?

ImperfectVille has a file folder with papers shoved into it



Perfectville Has:

- Retention policy
- Notice policy
- Closed session primer
- Open session primer
- Email policy
- Intergovernmental agreements in writing
- Personnel policies
- Written police policies
- A working knowledge of may, can, should
- A working knowledge of will, shall, must
- Training manuals
- Electronic data preservation

There's always a catch.

- Beware Of:

- » having checklist ordinances

- » failing to have checklists

- » failing to retain documents

- » retaining documents

- » emails – basically, in general

- » saying too little

- » saying too much

- What is spoliation
 - Documents
 - Data
- Deviations are ok, when the reasoning is documented
- Whenever possible double-down on the record



- **Courts don't want to second-guess you; they just don't want to have to guess at all.**

PERFECTVILLE GETS SUED

Supporting Your Decisions, Your Work,
And Your Wallet

“A Competent Record is Both a Sword and a Shield”

Joseph M. Wirth is a partner in the Milwaukee law firm of *Piper, Schmidt & Wirth*, and for more than 30 years has represented and defended licensed professionals, municipalities, insurance companies, corporations – as well as their officials, insureds and employees, in the evaluation of, and defense against, civil lawsuits, licensing actions and claims for damages. Joe earned his Bachelor of Science degree from the University of Houston, and he is a 1987 graduate of the University Of Wisconsin Law School. Joe has represented his clients in state administrative proceedings, before licensing boards, in state and federal circuit and district courts, as well as in state and federal appellate courts. His office is in Milwaukee, and he practices in administrative, state and federal courts throughout Wisconsin.

From Which Direction Does
Perfectville Usually Get Sued?

- Open Records

- Land Use and Zoning Decisions

- Police Practices

- Council/Board Votes

- Personal Injury and Property Damage

- Errors and Omissions

What Types of Legal Actions
Can Perfectville Anticipate?

- Certiorari

- Mandamus

- Civil Rights

- Personal Injury or Property Damage

- Administrative

Certiorari Actions

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