

September 19, 2020

## SWPA Insurance Review

### Present Insurance Coverage:

**General Liability Insurance** – Covering liability exposure of South Woods Park Association

Current annual cost: \$420 Coverage Year: September through August

Current Provider: West Bend Insurance Company through Diedrich Insurance

**Directors & Officers Liability Insurance** – Covering the liability exposure of the SWPA’s Directors and Officers as they make decisions and set policy for the organization.

Current annual cost: \$450 Coverage Year: September through August

Current Provider: West Bend Insurance Company through Diedrich Insurance

### History of SWPA Insurance Coverage:

For many years, SWPA carried General Liability Insurance but up until 2019 has never carried Directors & Officers Liability Insurance.

In 2015 and early 2016, concerned that the cost of general liability insurance was greater than the organization’s annual revenue, the SWPA Board began looking at their options. In the course of their study, Wisconsin’s Recreational Immunity statute, Wis. Stat. § 895.52, came to light. It provides owners of private property with broad protection from liability by limiting their legal responsibility for persons who may be injured while using the land for recreational purposes. A recreational activity is defined as nearly every outdoor pursuit except organized team sports. Based on the Board’s study, a motion was proposed to the SWPA Membership to discontinue the General Liability Insurance and rely on Wisconsin’s Recreational Immunity Statute. Membership approved the motion at the Spring Membership Meeting.

In 2019, with a change in the make-up of the SWPA Board, the issue was reopened for review. The process included the review of articles on the subject and best practices outlined by Gathering Waters, the Wisconsin association for land trusts; discussion with Attorney John Blazel, who represents the Green Lake Conservancy, and an opportunity for the Board to thoroughly discuss the matter with Attorney Tom Moniz; and a presentation to the Board by Drew Diedrich on the scope and coverage of General Liability and Directors & Officers Liability Insurance.

The SWPA Board discovered that:

1. Wisconsin’s Recreational Immunity Statute has done a good job of protecting owners of recreational properties, like SWPA, by effectively limiting their liability.
2. While the Statute limits liability exposure, it would not protect SWPA and the Board from the cost of having to defend themselves in a lawsuit.
3. This cost may be significant but can be covered with General Liability Insurance for the organization and a Directors and Officers Liability Insurance for the Board.
4. Gathering Waters “Best Practices” for the legal protection of land trusts recommends having General Liability Insurance for the organization and D&O Liability Insurance for the Board.
5. Both attorneys recommended that the SWPA and Board be insured for liability, if the organization could afford the cost.

In August 2019, following the review and the request for bids from 3 insurance agencies, the SWPA Board voted to proceed with securing a General Liability Insurance Policy and a Directors and Officers Liability Insurance Policy with West Bend Insurance Company through the Diedrich Agency. The vote was not unanimous for several reasons. The dissenting votes disagreed with the need for the insurance; were concerned that SWPA could not afford the ongoing cost of insurance; and that Board Members would benefit personally from the organization covering the cost of their Directors & Officers Liability Insurance.

To allay the concerns about cost, several members of the Board contributed funds to cover the full cost of the first year's insurance. We have subsequently conducted a very successful new membership and fund-raising campaign that has put the organization into a position where it can afford the cost of insurance. We also looked into a less expensive option for General Liability Insurance through the National Woodland Owners Association. Unfortunately, SWPA did not fit their policy parameters.

In regard to Board members benefitting from SWPA paying for their Directors & Officers Liability Insurance, there are several issues to consider. While some Board members appear to have homeowners' policies that provide protection from their activities on non-profit boards of directors, most policies do not have this coverage and it is difficult to get individual protection. D&O Liability Insurance policies are most commonly generated through the organization to offer protection to its directors and officers for the service they are providing the organization.

Another consideration is attracting and keeping people to serve on the SWPA Board. We lost one SWPA Board member because we did not have D&O Liability Insurance in place. Keeping some of the remaining Board members and attracting new ones may be difficult, if they are unwilling to take on the personal risk without some level of protection.

It was expressed that the insurance issue be brought before Membership at the October 2019 Annual Meeting. It was brought forward at that time and discussed with no resolution. Further discussion was deferred to the spring Membership Meeting. Due to COVID-19 the spring meeting was postponed to the fall Annual Meeting. In the interim, the insurance policies came due and the SWPA Board voted to renew the two policies and pay the premiums for this year.

The SWPA Insurance Review is intended to give you an overview of what has been done in the past, how previous Boards have addressed the issues and both the majority and minority positions of the current Board. Please review and submit comments to Rich Diemer by September 30, 2020.

The Board will be asking you to formally vote on this issue in a ballot that will be sent out in early October. What the SWPA Board will be asking on the ballot is for Members of SWPA to provide the Board direction by voting to support, or not, the current Board position on insurance.

Voting "Yes" will support SWPA maintaining and paying for General Liability Insurance for the organization and Directors & Officers Liability Insurance for the Board members. (The board will continue to monitor the situation in an effort to mitigate the budget impact of insurance costs.)

Voting "No" will indicate that the Board should rely on the efficacy of the Wisconsin Recreational Land Immunity Statute and drop current insurance coverage.