



JOEL KLEEFISCH

STATE REPRESENTATIVE • 38TH ASSEMBLY DISTRICT

**March 5, 2014: Senate Committee on Insurance and Housing
Assembly Bill 410: Relating to: nonconforming uses and manufactured home communities**

Thank you Chairman Lasee and members for holding a public hearing today on Assembly Bill 410; AB 410 addresses instances where a manufactured home community will lose its non-conforming use status.

There are roughly 1,150 manufactured home communities in Wisconsin with about 54,000 families living in them. In many cases these communities were built 40 or more years ago in rural areas that have since been absorbed by cities and villages. As such they are now covered by zoning ordinances that did not exist when they were built.

Current law states that in instances where repairs or alterations of a nonconforming structure are made in excess of 50 percent of the structure's assessed value; the nonconforming use status will be lost.

In other words, current law says if a tenant of a manufactured home community decides to improve or replace their home, the property owner might lose the zoning status for the entire manufactured home community.

Likewise, current law says that if the community owner spends too much money to fix the water or sewer service, they could lose their zoning status.

A tenant's decision to replace an older home with a new home should not affect the zoning status of the community and the owner's ability to continue that business or the remaining resident's right to live there.

AB 410 says that a manufactured home community will not lose its legal non-conforming use status because of the replacement or repair of homes or repair, replacement or alteration of the infrastructure of the community itself.

The bill was amended in the Assembly Committee on Housing, expanding the language to include the **repair** of homes and total **replacement** of the infrastructure of the park.



258 Corporate Drive
Suite 200C
Madison, WI 53714

PHONE (608) 255-3131
FAX (608) 255-5595
EMAIL amy@housingalliance.us
WEB SITE www.housingalliance.us

March 5, 2014

RE: Support for AB410 – Relating to: nonconforming uses and manufactured home communities.

Dear Senate Committee on Insurance and Housing:

Wisconsin law has long recognized that a zoning ordinance affecting the use of land cannot restrict a use that existed prior to the adoption of the ordinance. Only when a valid, nonconforming use constitutes a public nuisance, or is harmful to public health, safety or welfare, may it be prohibited or restricted.

In *Town of Bradford v. Mirriam*, the Second District Court of Appeals complicated this legal precedent when the court ruled that the mobile or manufactured homes within a licensed manufactured home community are “structures” and, therefore, if they are abandoned for 12 months or repaired or altered by more than 50 percent of the structure’s assessed value, the home loses its nonconforming use status and must comply with the Town’s zoning ordinance.

In reality, zoning is applied to the real estate and the homes are personal property. Generally, the homes located in the community are owned by the tenant and are not owned by the community owner. A tenant’s decision to replace an older home with a new home should not affect the zoning status of the community and the owner’s ability to continue that business or the remaining residents’ right to live there.

WISCONSIN STAT. § 62.23(7)(h) lists three instances where nonconforming status will be lost:

- (1) the nonconforming use is extended;
- (2) total repairs or alterations of a nonconforming structure are made in excess of 50 percent of the structure’s assessed value; or
- (3) the use of the nonconforming structure is discontinued for a period of 12 months.

The Supreme Court determined in another case that when the old mobile home was removed and substituted with a new manufactured home, alterations were made in excess of 50 percent of the assessed value of the nonconforming structure, which resulted in the loss of the protection afforded by the nonconforming use doctrine,

meaning the new manufactured home was subject to the county's zoning ordinance. The result is unworkable with a zoning ordinance applying to individual homes and not others on a single parcel.

AB 410 stands for the principal that:

- (1) the manufactured home community will be treated as a single parcel,***
- (2) that the upgrade of individual homes will not affect the rights of others and***
- (3) repair or maintenance of the infrastructure such as water or sewer lines will not result in the loss of legal non-conforming status.***

The counter argument to the bill is that legal non-conforming uses are supposed to go away over time. Normally, we would agree but in this case, you have community owners who have an interest in continuing their business and residents who have valid leases to live there. This is much different than a rural restaurant that is subject to AG zoning. If that restaurant closes for more than 12 months, it would then be subject to the AG zoning.

For the asset protection of over 54,000 homeowners in manufactured home communities and for the community owners, we urge you to take positive action on AB410. Thank you!

Sincerely,



Amy Bliss
Assistant Executive Director