TOM TIFFANY

STATE SENATOR • 12TH SENATE DISTRICT

Testimony on Senate Bill 387
Senate Committee on Insurance, Housing, and Trade
October 17, 2017

Thank you members of the Senate Committee on Insurance, Housing, and Trade for listening to my testimony on Senate Bill 387 (SB 387). SB 387 is one of two pieces of legislation that I have worked on with Representative Adam Jarchow related to property rights. We've named these bills the Homeowner's Bill of Rights.

Having well-defined and enforced property rights are very important in developing long-term economic growth and having a prosperous society. SB 387 addresses seven different issues related to private property rights in attempt to protect an individual's use of their property. Having a clear understanding of what you can or cannot do with your property is important. The government should not stand in the way of a reasonable use when possible.

Substandard lots/Merging Lots

This provision was included to address a recent Supreme Court decision, *Murr v. Wisconsin*. Specifically, the proposal would protect the ability of property owners to develop and sell all substandard lots that were legal when they were created, but do not currently meet lot size requirements. It also prohibits local governments from requiring adjacent, substandard lots in common ownership to be merged – there are over 40 counties with lot-merger ordinances in effect.

Conditional use permits

We believe that if a local unit of government allows a specific use under a conditional use permit (CUP), and if a property owner satisfies or agrees to satisfy all CUP conditions and requirements, the local unit of government should grant the CUP. Our proposal creates a statutory framework for CUPs to protect property owners from being subjected from subjective decision making and uncertainty during the CUP process. The legislation does not prevent a local unit of government from using their zoning powers to prohibit a specific use.

Variances

Codifies current law by defining "area variance" and "use variance" and stating the burden of proving "unnecessary hardship" can be met by demonstrating that strict compliance with a zoning ordinance would either unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdenosme or leave the property owner with no reasonable use of the property without a variance.

Nonconforming Structures

This allows property owners to repair, maintain, renovate, rebuild, or remodel a non-conforming structure. Specifically, it prevents a political subdivision from prohibiting, or limiting, these activities. Individuals should not be hindered when they want to fix up their property.

Office: Post Office Box 7882 • Madison, WI 53707-7882 • (608) 266-2509 • Fax: (608) 282-3552
Sen.Tiffany@legis.wi.gov • www.senatortiffany.com

Private Ponds

This provision allows a property owner to maintain a small, private pond without having to go through the permitting process. They would be allowed to remove material from the bed of the pond as long as the pond is not hydrologically connected to a natural navigable waterway, does not discharge into a natural navigable waterway, less than five acres in size, has no public access, and entirely surrounded by land privately owned by the same person.

Regulatory Takings/Eminent Domain

We wanted to make it clear that a regulatory takings can occur if a regulation eliminates most, but not all, reasonable use of a property. Our bill also allows a property owner to bring an action under the inverse condemnation law to allege that a restriction has deprived the property owner of all or substantially all practical use of the owner's property. If the court agrees, the municipality has to pay the equivalent reduction in fair market value of the property and rescind the restriction that resulted in the regulatory takings.

Right to Fly the Flag

Everyone should have a reasonable right to fly the United States flag. We wanted to codify federal law that prohibits condo associations, housing cooperatives, or homeowners association from preventing individuals from flying the flag.

Thank you again to the committee chair and members for hearing testimony on SB 387. I would ask for your support to help protect private property rights while limiting potential government encroachment.

Ohly, Mitchel

From: Jay Verhulst <verhulst@frontier.com>
Sent: Monday, October 16, 2017 3:42 PM
To: Sen.Tiffany
Cc: Ohly, Mitchel
Subject: AB479

Senator Tom Tiffany
Room 409 South
Madison, 53707-7882

Dear Senator Tiffany,

I chair the zoning committee in Vilas county and deal with numerous issues where Regulatory Takings and Eminent Domain are often issues alleged by the public. After reading the various sections of the bill it seems to me that the bill;

A. makes it clear that regulatory takings can occur if a regulation eliminates most, but not all reasonable use of a property.

B. Allows a property owner to bring an action under the inverse condemnation law alleging that a restriction imposed by a governmental unit deprives the owner of all or substantially all practical use of the owners' property.

If the court finds the governmental unit has effected a regulatory taking, the court must order the following:

1. Pay the owner the amount of the reduction in fair market value of the property, or
2. Rescind the restriction that resulted in the regulatory taking.

This bill along with the various changes to local government zoning authority, navigable water permits, inverse condemnation proceedings, and the right to display the flag of the United States are reasonable and give uniformity across the state without negative impact to local control.

I am, there fore, in support of AB 479.

Thank you,

Grant J. Verhulst
Vilas County Supervisor
District 5
11346 Willies Drive

Ohly, Mitchel

From: Clark Palmer <clark54409@gmail.com>
Sent: Monday, October 16, 2017 10:01 PM
To: Sen.Tiffany
Cc: clark54409@gmail.com
Subject: Property rights legislation hearing 10/24/2017

This is a message in strong support of the legislation that is the subject of today's hearing. If enacted, it is my expectation that it will correct serious loss of Individual property rights and maintain the governments capabilities to protect The health and safety of its citizens without abridging property rights.

In some ways, these bills are a proper stopgap measure reaffirming individual rights to property under the Wisconsin Constitution and will do so unless and until the time litigation is brought forward that will enable the Wisconsin Supreme Court to issue a clear and comprehensive ruling that will reveal the correct meaning and applicability of Article ONE, Sections 13 & 14 of our State Constitution which will, in turn, prevail in matters of property issues here in Wisconsin under the terms and Intents of the Ninth and Tenth Amendments to our nation,s Constitution.

CLARK PALMER
Antigo, Wisconsin 35th Assembly District, 12th Senatorial District
1302 Fifth Avenue 54409-1420
715-650-1961

N.J.P.

Ohly, Mitchel

From: Jim Wilkie <mayorofalma@gmail.com>
Sent: Monday, October 16, 2017 5:33 PM
To: Sen.Tiffany
Subject: AB 479

Dear Senator:

I urge your support of AB479, in particular the subsection on REGULATORY TAKINGS; EMINENT DOMAIN.

Jay Verhulst brought this to my attention; and I find the provisions a most reasonable method to deal with a difficult problem.

Respectfully,

Jim Wilkie
Mayor of Alma

Ohly, Mitchel

From: gstrobl@centurytel.net
Sent: Monday, October 16, 2017 5:11 PM
To: Sen.Tiffany
Subject: SB387/AB479

Senator Tiffany,
My husband and I are strongly in favor of SB387/AB479.

For far too long county and town boards have not considered the individual property owner when passing smart growth, comprehensive, sustainable development, and etc. plans. Also there has been actual loss of property use and property by regulatory taking when they changed their rules. This bill will be a great start in pulling back the damage that has been systematically done to private property rights.

Ginny Strobl
Town of Georgetown Chair

ADAM JARCHOW
STATE REPRESENTATIVE • 28TH ASSEMBLY DISTRICT

Testimony – AB 479
Assembly Committee on Housing and Real Estate
Senate Committee on Insurance, Housing, and Trade
Joint Hearing – Tuesday, October 17, 2017

As Alexander Hamilton explained, "the security of Property" is one of the "great object[s] of government." The Majority opinion from *Murr v. Wisconsin* subverts this tenet of our law by, to quote Chief justice Roberts's Dissent, "basing the definition of "property" on a judgment call...allows the government's interests to warp the private rights that the Takings Clause is supposed to secure." The Court's decision in upholding St. Croix County's ordinance, which combines adjacent properties when determining the value of a taking, harms the property rights of Wisconsin landowners.

The Murr family has felt this harm. As an investment meant to benefit their family for generations, the Murr family bought a lot on the St. Croix River and built a cabin there. A few years later, they bought the lot next door, intending to build their dream retirement home there or selling that lot in order to make improvements to the existing cabin. A place to grow old and a place to visit for the Murr Family for years to come. It sounds like every retirees' dream. A stroke suffered by Mr. Murr shortly after retirement was a setback to this dream. As many property owners intend, the property with the cabin was passed to their children. A year later, they passed the neighboring property to their children. The Murr children decided to fix up the family cabin by selling the lot next door as a funding source. Seemed pretty simple, but it was not to be. The county government had, unbeknownst to the Murrs, merged the two properties together. This meant they could not separate the properties. If they wanted to raise the money to repair the cabin by selling property, they'd have to sell the cabin as well. Had anyone else been the property owner of the undeveloped lot these properties would be separate and the owners would be free to do with their property as they please. The harm done to the Murrs came directly from the government merging ordinance. The properties, individually valued near five hundred thousand dollars each, could only be assessed as one parcel and the value dropped by over a half of a million dollars.

This ordinance prohibited the Murrs, as property owners, from using their property in a reasonable way. The property lines decided under state and local laws did not matter anymore. The restrictions they faced stopped them from using the full potential of their properties. The dreams of the Murr family became mired in governmental meddling, and ultimately succumbed to the government's intrusiveness. Our society was founded upon robust property rights, not

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Rep.Jarchow@legis.wi.gov

lands subservient to the crown. It is an injustice to deny the Murr family the full use and enjoyment of their own properties.

AB 479 will give back the rights property owners have been wrongly denied under lot-merger ordinances in over forty counties. Under this bill, local governments would be prohibited from requiring adjacent, substandard lots in common ownership to be merged. Families across Wisconsin would be able to do what is best for their family, to possibly fulfill their dreams, as the Murrs intended to do. Each individual lot will be a "property" for purposes of all government, as they were sold to property owners. This grants property owners the ability to treat their property as expected when they purchased multiple lots.

There are also many other parts of this bill that address property rights. There is currently no statutory framework for conditional use permits. This bill would create one and establish a more fair and reasonable approval process for property owners who would no longer be subject to the uncertainty that currently exists with these conditional use permit processes.

Property owners shouldn't have to ask for permission to repair, rebuild, remodel, or maintain the structures on their property. Owners of nonconforming structures shouldn't have to worry about the integrity of their structures simply because of unnecessary government interference. In addition to structures, a property owner shouldn't have to worry about the choices they make regarding anything that lies completely in their property, such as private ponds. Small ponds completely within one's property and without public access should be the concern of the property owner only, to do with their property as they please.

When property owners are deprived of their land through regulatory takings, if the taking eliminates most of the reasonable use the property owner should be able to get just compensation or have the regulation rescinded. This is a straightforward principle and codifies the Supreme Court's balancing test from the *Penn Central* case.

This bill addresses restrictions on flying the United States or Wisconsin Flag. The Right to Fly the Flag portion of this bill codifies federal law and brings Wisconsin up to date concerning property owners flying the flag within condominium associations, housing cooperatives, or homeowners associations.

Arlin Paulson
2345 Helen St. N., Apt 309
North St. Paul, MN 55109

October 16, 2017

Wisconsin Assembly Committee on Housing and Real Estate
Attention: Rep. John Jagler, Chair
Room 316 North
State Capitol
PO Box 8952
Madison, WI 53708

RE: Assembly Bill 479

Dear Rep. Jagler and Fellow Committee Members,

My name is Arlin Paulson and I am a 91 year-old World War II veteran. I support Assembly Bill 479, but I am unable to make the trip to Madison to share my testimony.

I own two, summer cabins on Bone Lake in Polk County at 2295 and 2297 Woodland Shores. One cabin is on a lot that is .2 acres, the other is on a lot that is .6 acres. My children and their families spend summer vacations and weekends on the lake. I hope they will continue to enjoy the property for years to come.

I was alarmed when I read the story in the paper about the Murr Family, and how St. Croix County would not allow them to sell their empty lot simply because they owned the cabin next door. I did some checking, and there is no "merger" ordinance for Bone Lake in Polk County. However, I am extremely concerned that such an ordinance may be passed in the future, and my children will not have the option of selling one property without selling both cabins together.

Therefore, I am in full support of Assembly Bill 479 which will prohibit the merging of commonly owned properties without the owner's consent.

Thank you for your time and considering my remarks. I hope all of you will support this bill as well.

Sincerely,

Arlin G. Paulson

Donna Murr
3718 Tamara Drive
Eau Claire, WI 54701
651-552-8896
donnamurr@charter.net

October 17, 2017

Thank you, committee chairs and members, for listening to my testimony today and allowing me to share my story.

My name is Donna Murr, and I live in Eau Claire. I am here today in support of Senate Bill 387 and Assembly Bill 479.

Since my family and I own a non-conforming cabin on a substandard lot, I am very interested in the provisions of the bill which address several important changes regarding local government zoning authority and the issuance of variances and special use permits. However, the provision which will impact my family and me the most is the one related to the Merging of Lots.

This bill will prohibit the government from merging properties without the owner's consent. Until I experienced this for myself, I had no idea that this was even possible. It seems like such an obvious violation of property rights to force someone to merge their commonly-owned properties. I can't tell you how much I wish a law like the one proposed was on the books decades ago.

Our story started back in 1960 when my parents realized their dream of building a family cabin. They purchased a lot just south of Hudson in the St. Croix Cove subdivision, a residential community with over 60 lots. Most of the lots were about 1 acre in size like ours, and some were a little smaller and others a little bigger, and all lots were considered "standard" at that time. This area is only 15 miles from the Twin Cities, so it was an easy commute for my dad to drive back and forth to work during the summer months when we lived at the cabin. For those of you familiar with the area, if you are driving West on Interstate 94 into Minnesota, and you cross the St. Croix River, our property is three miles south – about as far as you can see. You will also notice that both sides of the river – as far up as you can see and as far down as you can see - is lined with beautiful homes and seasonal cabins.

Three years after building the cabin, the lot next door was still undeveloped. My dad called the owners, made an offer, and bought the lot. My parents felt this was a good investment and had a dream of building their retirement home on this lot and leaving the cabin to all seven kids.

In the early 1990s, my parents' dream of building their retirement home came to an end when my dad suffered a massive stroke. Since my parents were no longer able to enjoy the cabin, they gave it to my brothers and sister and me in 1994. Ever since then, my brothers and sister and I have maintained the property and paid all the expenses. A full year later, in 1995, my parents decided to give us the empty lot next door.

All through this entire time, my parents before me, and my brothers and sister after that, received two property tax statements from St. Croix County. One for each distinct parcel. The cabin was assessed as such, and the empty lot was assessed as a buildable, sellable 1-acre parcel.

And all through this time – from 1960 – 1995, the St. Croix Cove subdivision became fully developed, and our empty lot was the only undeveloped lot remaining on the river. Some neighbors built cabins and others built year-round homes. Some bought two lots and built a larger home in the center. But, we just held onto our lot as we watched the market value grow, our assessed value increase, and our property taxes surge.

Around 2002 we decided it was time to fix up and improve the modest, 40-year old, 950 square foot cabin. We put our heads together, and decided to pull the trigger and sell the empty lot to pay for all the expenses. At that time, it was appraised for around $400,000. We met with the folks at St. Croix County about the various permits and variances we would need to do the work, and that's when we learned that the county "effectively" merged our properties some decades before. The ordinance they referenced would not allow us to sell our empty lot unless we also sold the lot with the cabin. The ordinance would, however, let anyone else who owed the empty lot sell it or develop it. It was only my family that was singled-out because we owned the adjacent parcel with the cabin on it.

We were flabbergasted and dumbfounded by this news. None of this made any sense. How could this be? And, when did it happen? We didn't agree to this, and we were never notified of this so-called "merger." To this day, we have not gotten a straight answer from St. Croix County as to when the so-called merger took place. Some would tell us the merger took place in 1982 and others claimed it took place in 1995.

Today, the plat maps and St. Croix County GIS website still show two lots, they allowed mom and dad to give us the cabin one year and the empty lot the next year (so they must not have been merged together then, right?), and we kept getting two, separate property tax statements. In fact, the County continued to send us two, inflated property tax statements for 8 more years after we brought all this to their attention. Seriously, the county did nothing to indicate they had merged our property, but somehow we were just supposed to know. Does that sound fair to you?

It was not until after we filed a lawsuit with St. Croix County for a regulatory taking that they re-assessed our property. The total value of our property dropped by over $400,000 and our property taxes were cut in half. I tried to argue that we should be reimbursed for the overpayment of back taxes since the County knew for over 8 years that they were inflating our property tax values. But I was told that I should have protested my property taxes years before. I asked, "Why would I protest something that I agree with?"

Still, the county did absolutely nothing to indicate to us that they "effectively" merged our properties decades before and they put all the blame on us for not notifying *them* that we had two, adjacent lots in common ownership. However, if a law was in place like the one proposed today, the County would have had to request our consent before merging our properties together, at which point we would have said "no thank you."

The fundamental unfairness of the merging of our properties per St. Croix County's ordinance is two-fold. First is that we were given absolutely no notice of the merging of our properties, and the county did absolutely nothing to indicate to us, or anyone else for that matter, that they combined our lots together – nothing!

Second my family and I are being singled out and treated differently from all our neighbors. Everyone else in the St. Croix Cove subdivision has been allowed to build on their property, except for us. And if you look beyond our subdivision, you will see houses all along the banks of the river on both the Minnesota and

Wisconsin side. It is only my family that is forbidden from developing our lot because we happen to own adjacent properties. It is as if we are being punished for owning too much land and waiting too long.

I don't think my parents' dreams were any different from many other Wisconsin families. They wanted to create a family gathering place for all of us to enjoy for years, which we have, and will continue to do so for generations to come. I often describe the family cabin as the glue that holds our family together now that mom and dad are gone.

I am sure my parents' dreams also included the belief that their children would be allowed to develop or sell the investment property they bought in back in 1963. My mom and dad understood when they built the cabin that they owned one parcel and when they bought the empty lot they owned another parcel; two distinct parcels. If the county would have asked their permission to merge the properties, I assure you their answer would also have been "No!"

My family and I have been battling for our right to sell our empty lot for over 15 years now. We have not given up, because we feel so strongly that our property rights have been violated. My brothers and sister are with me today, and many of my other families are watching the livestream.

Our parents taught us to stick by each other and stand up for what's right. But we don't always agree on everything. We share different political beliefs – some lean left, some lean right. We have respectful arguments and disagreements at family get togethers. However, there is one thing we ALL agree on as we put our political differences aside – property rights are important, and they are worth fighting for when the government takes them away. Our property rights were taken away when the government "effectively" merged our property together without our permission and when they took away our right to develop or sell our 1-acre lot.

As a taxpayer and citizen of this state, I would be very curious to know how many taxpayer-dollars were spent and resources deployed by the state and St. Croix county to defend their case all the way to the United States Supreme Court when all of this could have been avoided YEARS ago. If this proposed law was in place back then, or had the Board granted us the variance we requested, or if the County had not reneged on their offer to allow us to sell our property, I would not be here today. We should be able to sell or develop our one-acre lot in a 60+ lot, residential community just like everyone else. Nothing has happened in the last 15 years that has made my family or me waiver or change our beliefs that we have been treated unfairly and our property rights violated.

It is my sincere hope that this bill will pass so that no more Wisconsin families or property owners will have to endure all the battle scars my family and I have had to endure in order to protect our property rights and my parent's legacy. Thank you for your thoughtful consideration of my testimony as you vote on this important bill.

I am happy to take your questions.

Donna Murr

To: Wisconsin Senate Committee on Insurance, Housing and Trade
Wisconsin Assembly Committee on Housing and Real Estate

From: Earl J. Nies

Winter:
16300 Pine Ridge Road, #T-1
Fort Myers, FL 33908

Summer:
82 206th Street
Star Prairie, WI 54026

Subject: Senate Bill 387 and Assembly Bill 479

Date: October 16, 2017

My name is Earl Nies, and I am the owner of two, contiguous, substandard lots in Polk County. I fully support Senate Bill 387 and Assembly Bill 479, but am unable to attend the hearings on October 17. Please accept my written testimony.

Enclosed are the property tax statements for my two properties on Cedar Lake, along with a copy of the printout from the Polk County GIS. One of my parcels is .27 acres and the other .29 acres. As you will see from the map, my parcels are of similar size as the surrounding, neighboring properties on the lake. One parcel has my summer home on it and the other has an outbuilding.

I have been following the story about the Murr Family in St. Croix County and how the government merged their property without their permission or consent. This greatly concerns me, and I want to be assured that Polk County or another government entity cannot merge my properties together like they did with the Murr's property. This is especially alarming to me because the Murrs own two, one-acre lots while my combined acreage is .56 acres. What is to prevent a government merger of my property? My parcels have always been separate, and I believe I have the right to keep them that way. Therefore, I support these bills which would make it unlawful for the government to merge my properties together without my consent.

I hope you will support these bills as they are important for the protection of property rights. Thank you for considering my testimony in your decision making.

Earl J. Nies


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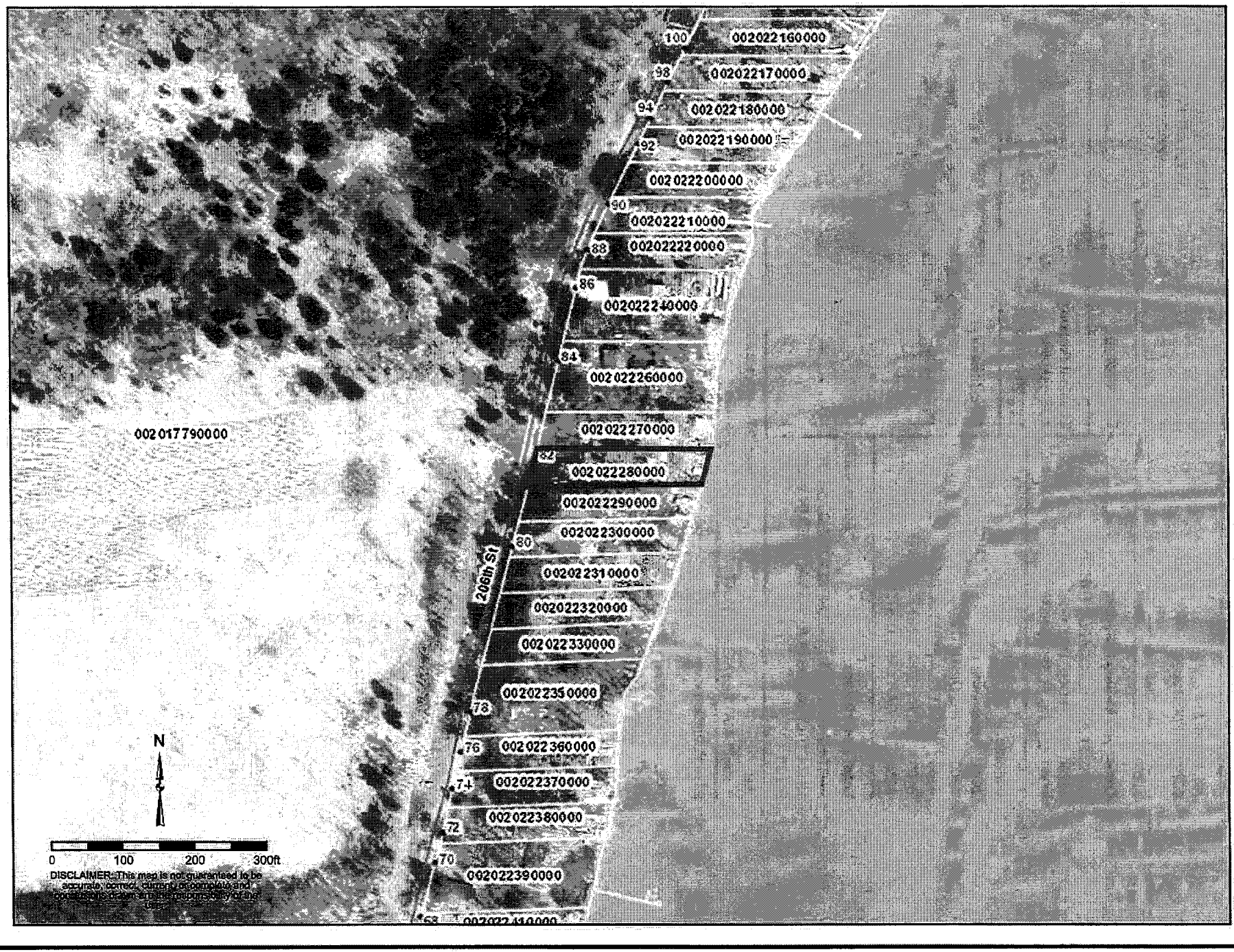
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DISCLAIMER: This map is not guaranteed to be accurate, correct, current, or complete and

Parcel #: 002-02227-0000 Valid as of 10/06/2017 04:40 PM

Alt. Parcel #:
00200831300010000

TOWN OF ALDEN
POLK COUNTY,
WISCONSIN

Owner and Mailing Address:

EARL J NIES REVOCABLE TRUST
16300 PINE RIDGE RD #T-1
FORT MYERS FL 33908-3515

Co-Owner(s):

Physical Property Address(es):

* 82 206TH ST

Districts:

Dist#	Description
1700	WITC DISTRICT
4165	OSCEOLA SCHOOL DIST
0109	NEW RICHMOND FIRE DIST
8050	CEDAR LAKE DISTRICT

Parcel History:

Date	Doc #	Vol/Page	Type
06/11/1999	584914	784/293	QC
		546/978	

Legal Description: **Acres:** 0.270

PART OF GOV LOT 1 FORMERLY DESC AS LOT 13 MATT LYNGAAS PLAT AS VACATED IN V122 PG 33

Plat	Tract (S-T-R 40¼ 160¼ GL)	Block/Condo Bldg
* MATT-MATT LYNGAAS PLAT	34-32N-18W	LOT 13

2016 Valuations: Values Last Changed on 06/06/2013

Class and Description	Acres	Land	Improvement	Total
G1-RESIDENTIAL	0.270	50,000.00	141,000.00	191,000.00
Totals for 2016				
General Property	0.270	50,000.00	141,000.00	191,000.00
Woodland	0.000	0.00	0.00	0.00
Totals for 2015				
General Property	0.270	50,000.00	141,000.00	191,000.00
Woodland	0.000	0.00	0.00	0.00

2016 Taxes

Bill #	Fair Market Value:	Assessment Ratio:
5870	214,200.00	0.8919

	Amt Due	Amt Paid	Balance
Net Tax	3,570.37	3,570.37	0.00
Special Assessments	0.00	0.00	0.00
Special Charges	290.32	290.32	0.00
Delinquent Charges	0.00	0.00	0.00
Private Forest Crop	0.00	0.00	0.00
Woodland Tax	0.00	0.00	0.00
Managed Forest Land	0.00	0.00	0.00
Prop Tax Interest		0.00	0.00
Spec Tax Interest		0.00	0.00
Prop Tax Penalty		0.00	0.00
Spec Tax Penalty		0.00	0.00
Other Charges	0.00	0.00	0.00
TOTAL	3,860.69	3,860.69	0.00

Interest Calculated For 10/06/2017

Installments

	End Date	Total
1	01/31/2017	2,075.51
2	07/31/2017	1,785.18

Net Mill Rate	0.019039887
Gross Tax	3,994.96
School Credit	358.35
Total	3,636.61
First Dollar Credit	66.24
Lottery Credit	0 Claims 0.00
Net Tax	3,570.37

Payment (Posted Payments)

Date	Receipt #	Type	Amount	Note
12/20/2016	5185	T	3,860.69	NIES 1169

Parcel #: 002-02228-0000

Valid as of 10/06/2017 04:41 PM

Alt. Parcel #:
00200831400010000

TOWN OF ALDEN
POLK COUNTY,
WISCONSIN

Owner and Mailing Address:

EARL J NIES REVOCABLE TRUST
16300 PINE RIDGE RD #T-1
FORT MYERS FL 33908-3515

Co-Owner(s):

Physical Property Address(es):

Information Not Available

Districts:

Dist#	Description
1700	WITC DISTRICT
4165	OSCEOLA SCHOOL DIST
0109	NEW RICHMOND FIRE DIST
8050	CEDAR LAKE DISTRICT

Parcel History:

Date	Doc #	Vol/Page	Type
06/11/1999	584914	784/293	QC
		546/978	

Legal Description: **Acres:** 0.290

PART OF GOV LOT 1 FORMERLY DESC AS LOT 14 MATT LYNGAAS PLAT AS VACATED IN V122 PG 33

Plat	Tract (S-T-R 40¼ 160¼ GL)	Block/Condo Bldg
* MATT-MATT LYNGAAS PLAT	34-32N-18W	LOT 14

2017 Valuations:

Values Last Changed on 06/06/2013

Class and Description	Acres	Land	Improvement	Total
G1-RESIDENTIAL	0.290	50,000.00	7,800.00	57,800.00
Totals for 2017				
General Property	0.290	50,000.00	7,800.00	57,800.00
Woodland	0.000	0.00	0.00	0.00
Totals for 2016				
General Property	0.290	50,000.00	7,800.00	57,800.00
Woodland	0.000	0.00	0.00	0.00

2017 Taxes

Taxes have not yet been calculated.

Key

* - Primary

State of Wisconsin
2017 - 2018 LEGISLATURE

LRBa1355/2
EVM:kjf&amn

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 479

At the locations indicated, amend the bill as follows:

1. Page 8, line 11: delete the material beginning with that line and ending with page 9, line 11, and substitute:

"1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a county, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use

permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board.".

2. Page 11, line 21: delete "a" and substitute "the".

3. Page 11, line 24: delete "with a" and substitute "with the".

4. Page 12, line 7: delete the material beginning with that line and ending with page 13, line 8, and substitute:

"1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.".

5. Page 14, line 1: delete the material beginning with that line and ending with page 15, line 2, and substitute:

"1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a town, but does not include a variance.

2. "Substantial evidence" means facts and information, other than personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the town ordinance or those imposed by the town zoning board, the town shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the town relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The town's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the town of a class 2 notice under ch. 985, the town shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the town may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the town zoning board.".

6. Page 15, line 8: delete the material beginning with that line and ending with page 16, line 8, and substitute:

"a. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.

b. "Substantial evidence" means facts and information, other than personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

2. a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be

supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.

3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.".

7. Page 19, line 2: delete "a political subdivision may not prohibit" and substitute "no political subdivision may enact or enforce an ordinance or take any other action that prohibits".

8. Page 19, line 12: after "enact" insert "or enforce".

(END)

Wisconsin REALTORS® Association

NAIOP COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION WISCONSIN CHAPTER

To: Members, Assembly Housing and Real Estate Committee and Senate Insurance, Housing and Trade Committee

From: Tom Larson, WRA Senior Vice President of Legal and Public Affairs and Chief Lobbyist for NAIOP-WI

Date: October 17, 2017

Re: AB 479/SB 387 – Homeowners Bill of Rights (Property Rights)

The Wisconsin REALTORS® Association and NAIOP-WI support AB 479/SB 387, legislation aimed at better protecting property rights in Wisconsin by, among other things, grandfathering all legal lots, creating a fair and reasonable framework for conditional use permits, and codifying current case law related to variances and regulatory takings.

Background – Recently, federal and state court decisions have highlighted the need for legislative action to adequately protect the rights of property owners to reasonably use and develop their property. The U.S. and Wisconsin Supreme Courts have decided three important property rights cases within the last several months against the interests of property owners – *Murr v. Wisconsin* (substandard lots/regulatory takings), *AllEnergy v. Trempeleau County* (conditional use permits), and *McKee v. City of Fitchburg* (vested rights). Among other things, these cases demonstrate the need to develop a statutory framework at the state level to address development approval processes at the local level that have become increasingly more subjective, arbitrary and unfair to property owners.

Proposed legislation – In response to these court decisions, AB 479/SB 387 would better protect property rights, create a more predictable development process and encourage greater investment in real estate in Wisconsin through the following key provisions:

1. Substandard lots – Protects the ability of property owners to build upon and sell substandard lots that were legal when they were created, but do not meet current lot size requirements. In other words, all substandard lots would be grandfathered and local governments would be prohibited from requiring adjacent, substandard lots in common ownership to be merged. Currently, approximately 50 counties have lot-merger ordinances in effect. However, each of these ordinances is arguably unenforceable due to the fact that Wisconsin law already:

    a. Grandfathers all substandard lots in the shoreland zone. *See* Wis. Admin. Code § NR 115.05.
    b. Prevents local governments from prohibiting or unreasonably restricting the alienation (i.e., sale) of any interest in real property. See Wis. Stat. § 700.28.

    Finally, the proposal overturns, on public-policy grounds, the United States Supreme Court's recent decision, *Murr v. Wisconsin*, which upheld St. Croix County's lot-merger ordinance as a reasonable use of the county's policy power and declared that such lot-merger ordinances did not constitute a regulatory taking. Specifically, the proposal contains the following provisions:

a. Defines "substandard lot"
b. Grandfathers all substandard lots by allowing them to be sold or built upon according to existing building code requirements
c. Prohibits local governments from imposing or enforcing lot-merger requirements
d. Identifies each individual lot as "property" for purposes of all government actions and inverse condemnations regardless of whether the lot is contiguous and/or under common ownership with other lots.

2. Conditional use permits –Creates a statutory framework for conditional use permits (CUPs) and provide additional certainty for property owners by establishing a more fair and reasonable approval process. Currently, no statutory framework exists for CUPs. Moreover, property owners are often subjected to subjected decision making and tremendous uncertainty with respect to the CUP process. Finally, the proposal would overturn the Wisconsin Supreme Court's recent decision, *AllEnergy v. Trempeleau County*, which held that property owners are not entitled to a CUP if they satisfy or agree to satisfy all the conditions and requirements established by the local government. Specifically, the proposal contains the following provisions:

   a. A definition of conditional use
   b. Requiring decisions regarding CUPs to be based upon "substantial evidence." "Substantial evidence" means "facts and information, other than personal preference or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and which reasonable persons would accept in support of a conclusion."
   c. Requiring all conditions and standards to be reasonable and to the greatest practicable, measurable or quantifiable and may include conditions as the permit's duration, transfer or renewal.
   d. Requiring local government to grant the CUP if the property owner satisfies or agrees to satisfy all CUP conditions and requirements.

3. Variances – Codifies current law by defining "area variance" and "use variance" and stating the burden of proving "unnecessary hardship" can be met by demonstrating that strict compliance with a zoning ordinance would:

   a. Unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome (area variance), or
   b. Leave the property owner with no reasonable use of the property in the absence of a variance (use variance)

4. Regulatory takings/inverse condemnation – Makes it clear that regulatory takings can occur if a regulation eliminates most, but not all, reasonable use of a property denies. The bill codifies the *Penn Central* balancing test adopted by the United States Supreme Court in the 1978 landmark private property rights case, *Penn Central Transportation v. New York City*, 438 U.S. 104 (1978).

SUBSTANDARD LOTS

Counties That Require Merger of Contiguous, Commonly-Owned Lots

Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

NR 115.01 Purpose.
NR 115.02 Applicability.
NR 115.03 Definitions.
NR 115.04 Shoreland–wetlands.
NR 115.05 Minimum zoning standards for shorelands.
NR 115.06 Department duties.

Note: Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

NR 115.01 Purpose. Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats., for the purposes specified in s. 281.31 (1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near–shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty. Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a nonconforming building if the provision is more restrictive than the standards for nonconforming buildings under ch. NR 115; or the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

2011 Wisconsin Act 170 also created other provisions that affect how a county regulates nonconforming uses and buildings, premises, structures, or fixtures under its general zoning ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8–1–80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05–058: r. and recr. Register January 2010 No. 649, eff. 2–1–10.

NR 115.02 Applicability. The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas except as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats., applies.

Note: Under section 59.692 (7), Stats., areas annexed after May 7, 1982 and areas incorporated after April 30, 1994 were generally subject to the county shoreland zoning ordinances in effect on the date of annexation or incorporation. Effective December 14, 2013, 2013 Wis. Act 80 repealed s. 59.692 (2m) (c) and (7), amended s. 59.692 (6m), and created ss. 61.353 and 62.233. 2013 WI Act 80 is retroactive as well as prospective, and applies to all shorelands areas annexed since May 7, 1982 or incorporated since April 30, 1994.

History: Cr. Register, July, 1980, No. 295, eff. 8–1–80; am. Register, October, 1980, No. 298, eff. 11–1–80; CR 05–058: am. Register January 2010 No. 649, eff. 2–1–10; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2010 No. 649; **correction made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.**

NR 115.03 Definitions. For the purpose of this chapter:

(1d) "Access and viewing corridor" means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(1h) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(1p) "Building envelope" means the three dimensional space within which a structure is built.

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.69 (2) (a), Stats., to act in all matters pertaining to county planning and zoning.

(3) "Department" means the department of natural resources.

(3m) "Existing development pattern" means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(4) "Flood plain" means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(4g) "Impervious surface" means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

(4r) "Mitigation" means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(5) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In DeGayner and Co., v. Department of Natural Resources, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) "Ordinary high–water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion,

NR 115.05 Minimum zoning standards for shorelands. (1) ESTABLISHMENT OF SHORELAND ZONING STANDARDS. The shoreland zoning ordinance adopted by each county shall control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned unit development.' A non–riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non–riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high–water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high–water mark of any navigable waters.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694 (7) (c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 1.:

a. Boathouses located entirely above the ordinary high–water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

Note: This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high–water mark.

b. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on–site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60–inches in width.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high–water mark of any navigable waters shall be prohibited.

(c) *Vegetation.* To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

Note: In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692 (2) (a) and 59.69 (4) (a), Stats.

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

a. The county may allow routine maintenance of vegetation.

b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.

c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR–226), provided that vegetation removal be consistent with these practices.

d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.

Note: Information regarding native plants, shoreland and habitat management is available from the University of Wisconsin–Extension publications website: http://clean–water.uwex.edu/pubs/index.htm.

e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area.

State of Wisconsin

2015 Assembly Bill 582

Date of enactment: **April 26, 2016**
Date of publication*: **April 27, 2016**

2015 WISCONSIN ACT 391

AN ACT ***to renumber*** 66.1001 (2m), 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; ***to renumber and amend*** 706.22 (2) (b) and 706.22 (3); ***to amend*** 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692 (1k) (a) 4., 59.692 (1k) (b), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am), 62.23 (7) (d) 4., 66.1001 (2m) (title), 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 227.57 (10), 236.45 (2) (am) (intro.), 706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and ***to create*** 59.692 (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.1001 (2m) (b), 66.10015 (1) (as), 66.10015 (1) (bs), 66.10015 (3), 66.1036, 227.137 (3) (g), 227.445, 227.57 (11), 700.28, 706.22 (2) (a) 2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the statutes; **relating to:** government actions affecting rights to real property; the regulation of shoreland zoning; the contents of an economic impact analysis of a proposed administrative rule; the substitution of hearing examiners in Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection contested cases; the standard for judicial review of a state agency action or decision affecting a property owner's use of the owner's property; and the property tax treatment of unoccupied property.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.69 (4) (intro.) of the statutes is amended to read:

59.69 **(4)** EXTENT OF POWER. (intro.) For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the board considers best suited to carry out the purposes of this section. The board may establish mixed−use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The board may not enact a development moratorium, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium. The powers granted by this section shall be exercised through an ordinance which may, subject to sub. (4e), determine, establish, regulate and restrict:

SECTION 2. 59.69 (4) (j) of the statutes is amended to read:

59.69 **(4)** (j) ~~The~~ Subject to s. 66.10015 (3), the density and distribution of population.

SECTION 3. 59.69 (5) (f) of the statutes is amended to read:

59.69 **(5)** (f) The county zoning agency shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. Annually, the agency shall inform residents of the county that they may add their names to

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

decision restricts the property owner's free use of the property owner's property.

SECTION 32. 236.45 (2) (am) (intro.) of the statutes, as affected by 2015 Wisconsin Act 48, is amended to read:

236.45 (2) (am) (intro.) Ordinances under par. (ac) may include provisions regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to s. 66.1002, may prohibit the division of land in areas where such prohibition will carry out the purposes of this section. Such ordinances shall make applicable to such divisions all of the provisions of this chapter, or may provide other surveying, monumenting, mapping and approving requirements for such division. The governing body of the municipality, town, or county shall require that a plat of such division be recorded with the register of deeds and kept in a book provided for that purpose or stored electronically. "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter–quarter section, section, township, range, and county noted. When so recorded, the lots included in the plat shall be described by reference to "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT," the name of the plat and the lot and block in the plat, for all purposes, including those of assessment, taxation, devise, descent, and conveyance as defined in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5 parcels, shall not apply to:

SECTION 33. 700.28 of the statutes is created to read:

700.28 Prohibiting unreasonable restrictions on alienation of property. (1) In this section, "political subdivision" means a city, village, town, or county.

(2) A political subdivision may not prohibit or unreasonably restrict a real property owner from alienating any interest in the real property.

SECTION 34. 706.22 (title) of the statutes, as created by 2015 Wisconsin Act 55, is amended to read:

706.22 (title) **Prohibition on imposing time–of–sale, purchase, or occupancy requirements.**

SECTION 35. 706.22 (2) (title) of the statutes, as created by 2015 Wisconsin Act 55, is amended to read:

706.22 **(2)** (title) REQUIREMENTS TIED TO SALE, PURCHASE, OR TAKING OCCUPANCY OF PROPERTY PROHIBITED.

SECTION 36. 706.22 (2) (a) (intro.) of the statutes, as created by 2015 Wisconsin Act 55, is amended to read:

706.22 **(2)** (a) (intro.) Except as provided in par. (b), no local governmental unit may by ordinance, resolution, or any other means ~~restrict~~ do any of the following:

1m. Restrict the ability of an owner of real property to sell or otherwise transfer title to or refinance the property by requiring the owner or an agent of the owner to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

SECTION 37. 706.22 (2) (a) 1. of the statutes, as created by 2015 Wisconsin Act 55, is renumbered 706.22 (2) (a) 1m. a.

SECTION 38. 706.22 (2) (a) 2. of the statutes, as created by 2015 Wisconsin Act 55, is renumbered 706.22 (2) (a) 1m. b.

SECTION 39. 706.22 (2) (a) 2m. of the statutes is created to read:

706.22 **(2)** (a) 2m. Restrict the ability of a person to purchase or take title to real property by requiring the person or an agent of the person to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

a. Before the person may complete the purchase of or take title to the property.

b. At the time of completing the purchase of or taking title to the property.

c. Within a certain period of time after completing the purchase of or taking title to the property.

SECTION 40. 706.22 (2) (a) 3. of the statutes, as created by 2015 Wisconsin Act 55, is renumbered 706.22 (2) (a) 1m. c.

SECTION 41. 706.22 (2) (a) 3m. of the statutes is created to read:

706.22 **(2)** (a) 3m. Restrict the ability of a purchaser of or transferee of title to residential real property to take occupancy of the property by requiring the purchaser or transferee or an agent of the purchaser or transferee to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

a. Before the purchaser or transferee may take occupancy of the property.

b. At the time of taking occupancy of the property.

c. Within a certain period of time after taking occupancy of the property.

SECTION 42. 706.22 (2) (b) of the statutes, as created by 2015 Wisconsin Act 55, is renumbered 706.22 (2) (b) (intro.) and amended to read:

706.22 **(2)** (b) (intro.) Paragraph (a) does not ~~prohibit~~ do any of the following:

1. Prohibit a local governmental unit from requiring a real property owner or the owner's agent to take certain actions with respect to the property not in connection with the purchase, sale, or refinancing of, or the transfer of title to, the property.

SECTION 43. 706.22 (2) (b) 2. of the statutes is created to read:

alienation

noun | alien·ation | \ˌā-lē-ə-ˈnā-shən, ˌāl-yə-\

Popularity: Top 40% of words

Examples: ALIENATION in a Sentence

Definition of ALIENATION

1 : a withdrawing or separation of a person or a person's affections from an object or position of former attachment : ESTRANGEMENT

- *alienation* ... from the values of one's society and family —S. L. Halleck

2 : a conveyance of property to another

First Known Use: 14th century

SEE WORDS FROM THE SAME YEAR

See *alienation* defined for kids

CONDITIONAL USE PERMITS

PROPOSED MODIFICATIONS TO ASSEMBLY BILL 479

Relating Primarily to Local Zoning and Land Use Regulatory Authority

The Wisconsin Counties Association, the League of Wisconsin Municipalities and the Wisconsin Towns Association appreciate the opportunity to suggest modifications to Assembly Bill 479 (the "Bill"). The Associations oppose any modification to existing law relating to substandard lots, merging lots, nonconforming structures and regulatory takings. For this reason, the Associations oppose the inclusion of Sections 2, 3, 4, 5, 6, 8, 9, 10, 12, 17, 18, 19, 25, 26, 27, 28, 29, 30 and 31 in the Bill. The Associations take no position on Sections 1 (relating to ponds), 11 (relating to navigable waters) and 32 (relating to the flag) of the Bill. The Associations' position on the remaining sections follows.

Conditional Use Permit Procedure

Sections 7, 16, 20 and 21 of Assembly Bill 479 (the "Bill") relate to conditional use permit processes in counties, cities, villages and towns. The language is materially similar in all sections. Therefore, the modifications suggested to Section 7 below should be replicated in Sections 16, 20 and 21. Section 7 of the Bill should be modified to read as follows[1]:

59.69 (5e) CONDITIONAL USE PERMITS. (a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a county, but does not include a variance.

2. "Substantial evidence" means ~~evidence~~ facts and information , other than personal preference or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and which reasonable persons would accept in support of a conclusion. ~~Public comment based solely on personal preferenceopinion, uncorroborated hearsay or speculation does not constitute substantial evidence~~

(b) 1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in~~by~~ the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit. Any condition imposed must be related to the ~~a~~ purpose of ~~in~~ the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and to the ~~greatest~~ extent practicable, measurable~~, or quantifiable~~ and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision ~~must demonstrate that its decision~~ to approve or deny the permit ~~is~~ must be supported by substantial evidence.

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[1] The blackline edits that are highlighted represent the Associations' most recent edits. The edits that are not highlighted reflect modifications made following earlier discussions and the Associations agree with those edits as well.

(c) Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as ~~as to~~ the permit's duration, transfer, or renewal, in addition to any other ~~reasonable~~ conditions specified in the zoning ordinance or by the county zoning board.

(e) If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10).

Variance Procedure

Sections 13, 14, 15, 22, 23 and 24 of the Bill relate to changes in the statutes surrounding county, town, city and village authority surrounding variances. Sections 13, 14 and 15 apply to counties and towns (by reference) and Sections 22, 23 and 24 apply to cities and villages. The language is, again, materially similar. There are no suggested modifications to Sections 13, 14, 22 and 23. Therefore, the following changes to Section 14 should be replicated in Section 24. Sections 15 of the Bill should be modified to read as follows:

59.694 (7) (c) 3.

A property owner bears the burden of proving "unnecessary hardship," as that term is used in this paragraph, for an area variance, by demonstrating that strict compliance with ~~a~~ the zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with ~~a~~ the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

In the Associations' view, the above modifications would codify the standards set forth in current precedent evaluating zoning authority. Thank you for the opportunity to provide these proposed modifications.

Wisconsin **REALTORS®** Association

Homeowners Bill of Rights – Conditional Use Permits

Efforts to resolve concerns from local government groups (LGGs)
4/0X/17 – HOBR proposal sent to LGGs
4/5/17 – Phone call with Andy Phillips, WCA General Counsel
5/3/17 – LGGs send memo with concerns
5/4/17 -- Conference call with LGGs to discuss concerns
5/8/17 – Revised proposal sent to LGGs (modifications based upon concerns raised by LGGs)
7/26/17 – LGGs send memo with concerns (same memo as 5/3/17)
7/27/17 – Email sent to LGGs indicating memo does not address revised proposal
8/8/17 – Conference call with LGGs to discuss concerns
8/9/17 – LGGs indicate they are no longer interested in discussing HOBR
8/25/17 – Conference call with Andy Phillips, WCA General Counsel
10/3/17 – LGGs send memo with concerns
10/3/17 – Email correspondence with WCA
10/13/17 – Phone calls with the League and WCA
10/14/17 – Email correspondence with the League

Remaining issue -- "Public comment based solely on personal preference, ~~opinion, uncorroborated hearsay,~~ or speculation does not constitute substantial evidence."

§ 61:40 Issuance dependent on compliance with standards—Invalid denial—Opposition of neighbors

Cases in which a board of appeals or other zoning authority has *granted* a conditional use without adherence to the standards in the ordinance are comparatively rare. Such zoning authorities are more likely to deny conditional uses for reasons that are beyond the scope of the standards.[1] One reason frequently found for the denial of a conditional use is the opposition of those attending the public hearing upon the application. Zoning should not be allowed or disallowed on the basis of a plebiscite of the neighborhood,[2] although evidence submitted by persons living in the neighborhood who would be most familiar with it and the condi-

405 N.E.2d 1034, 1037 (1980), wherein, in upholding the refusal of a board of appeals to grant a conditional use permit for a private twenty-eight-acre park under an ordinance which specified a 100-acre minimum size, the court stated the rule to be that:

> [w]here a [zoning] board . . . is empowered to issue special permits for a named use it may not issue such a permit if a specific requirement of the zoning ordinance will be violated thereby . . . Because use of property of less than 100 acres for private parks or playgrounds is neither a permitted nor a conditionally permitted use . . . appellee's proposed use is simply a non-permitted one.

[Section 61:40]

[1]See cases cited herein at § 61:38 at N. 1.

[2]See the cases cited below.

District of Columbia. Cf., in the District of Columbia, a zoning board is required by law to give "great weight" to issues and concerns raised by an Advisory Neighborhoood Commission. D.C. Code Encycl. § 1-171i(d) (Supp. 1978). Wheeler v. District of Columbia Bd. of Zoning Adjustment, 395 A.2d 85, 89-91 (D.C. 1978). For an elaboration on the meaning of the "great weight" requirement, see Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372 (D.C. 1977), appeal after remand, 413 A.2d 152 (D.C. 1980).

Florida. See Flowers Baking Co. v. City of Melbourne, 537 So. 2d 1040 (Fla. Dist. Ct. App. 5th Dist. 1989) (fear of local residents that granting of conditional use permit would create an increase in traffic does not constitute evidence necessary to deny application for such a permit); Conetta v. City of Sarasota, 400 So. 2d 1051 (Fla. Dist. Ct. App. 2d Dist. 1981), reversing the denial of a special exception based on neighbor's objections, general unpopularity, and conjecture that the ordinance might be violated in the future, none of which objections were related to any of the relevant criteria set forth in the city zoning code.

Maryland. Neuman v. City of Baltimore, 23 Md. App. 13, 325 A.2d 146 (1974); Turner v. Hammond, 270 Md. 41, 310 A.2d 543, 550 (1973).

Minnesota. Scott County Lumber Co., Inc. v. City of Shakopee, 417 N.W.2d 721 (Minn. Ct. App. 1988); Amoco Oil Co. v. City of Minneapolis, 395 N.W.2d 115 (Minn. Ct. App. 1986).

tions therein may be considered.[3]

New York. North Shore Equities, Inc. v. Fritts, 81 A.D.2d 985, 44 N.Y.S.2d 84 (3d Dep't 1981); Cove Pizza, Inc. v. Hirshon, 61 A.D.2d 210, 40 N.Y.S.2d 838 (2d Dep't 1978); Pleasant Valley Home Const., Ltd. v. Van Wagne 41 N.Y.2d 1028, 395 N.Y.S.2d 631, 363 N.E.2d 1376 (1977); Tandem Holdin Corp. v. Board of Zoning Appeals of Town of Hempstead, 43 N.Y.2d 801, 40 N.Y.S.2d 388, 389, 373 N.E.2d 282, 284, (1977). And see Twin County Recyclin Corp. v. Yevoli, 90 N.Y.2d 1000, 665 N.Y.S.2d 627, 688 N.E.2d 501 (1997).

North Carolina. Sun Suites Holdings, LLC v. Board of Aldermen of Tow of Garner, 139 N.C. App. 269, 533 S.E.2d 525 (2000), temporary stay dissolve 353 N.C. 280, 546 S.E.2d 397 (2000) and writ denied, review denied, 546 S.E.2 397 (N.C. 2000); C.C. & J. Enterprises, Inc. v. City of Asheville, 132 N.C. Ap 550, 512 S.E.2d 766 (1999), temporary stay allowed, 350 N.C. 379, 535 S.E.2 44 (1999) and review allowed, 350 N.C. 592, 536 S.E.2d 628 (1999), related re erence, 350 N.C. 592, 536 S.E.2d 628 (1999), related reference, 350 N.C. 59 536 S.E.2d 628 (1999) and review allowed, 350 N.C. 592, 536 S.E.2d 627 (199 and review dismissed as improvidently granted, 351 N.C. 97, 521 S.E.2d 11 (1999).

Ohio. Adelman Real Estate Co. v. Gabanic, 109 Ohio App. 3d 689, 67 N.E.2d 1087 (11th Dist. Geauga County 1996), dismissed, appeal not allowe 76 Ohio St. 3d 1473, 669 N.E.2d 856 (1996).

Oregon. Anderson v. Peden, 284 Or. 313, 587 P.2d 59 (1978).

Pennsylvania. Com. of Pa., Bureau of Corrections v. City of Pittsburg Pittsburgh City Council, 516 Pa. 75, 532 A.2d 12 (1987) (noting that objectors prerelease facility for state prisoners had burden of proving that conditional u permit for some would harm the community absent ordinance provision to t contrary).

South Dakota. Schrank v. Pennington County Bd. of Com'rs, 1998 SD 10 584 N.W.2d 680 (S.D. 1998), reh'g denied, (Oct. 29, 1998) and related referenc 2000 SD 62, 610 N.W.2d 90 (S.D. 2000), reh'g denied, (June 19, 2000).

Tennessee. Hoover, Inc. v. Metro Bd. of Zoning Appeals, 924 S.W.2d 9 (Tenn. Ct. App. 1996), appeal after remand, 955 S.W.2d 52 (Tenn. Ct. Ap 1997).

Utah. While the consent of neighboring landowners may not be made a c terion for the issuance or denial of a conditional use permit, there is impropriety in soliciting and relying upon advice furnished by neighboring lan owners at a public hearing. Thurston v. Cache Cty., 626 P.2d 440 (Utah 198 And see Ralph L. Wadsworth Construction, Inc. v. West Jordan City, 2000 U App 49, 999 P.2d 1240 (Utah Ct. App. 2000).

Washington. Washington State Dept. of Corrections v. City of Kennewic 86 Wash. App. 521, 937 P.2d 1119 (Div. 3 1997), as amended on denial reconsideration, (June 26, 1997)).

[3]E.g. Triomphe Investors v. City of Northwood, 49 F.3d 198, 1995 FED Ap 81P (6th Cir. 1995); Stumpf v. Jefferson Parish Council, 663 So. 2d 871 (La. App. 5th Cir. 1995); BBY Investors v. City of Maplewood, 467 N.W.2d 6 (Minn. Ct. App. 1991); Sutey Oil Co., Inc. v. Anaconda-Deer Lodge County Pla ning Bd., 1998 MT 127, 289 Mont. 99, 959 P.2d 496 (1998); City of Las Vegas Laughlin, 111 Nev. 557, 893 P.2d 383 (1995); Southwest Paper Stock, Inc. Zoning Bd. of Adjustment of City of Fort Worth, 980 S.W.2d 802 (Tex. App. F Worth 1998), reh'g overruled, (Nov. 12, 1998) and review denied, (Mar. 1

The Supreme Court of Oregon has cogently expressed the reasons for this position:

> [However], apart from constitutional objections there are good reasons why lawmakers do not make the preferences of a class of private persons a factor to be counted in deciding upon individual applications of public policy. The class whose wishes count on a question such as a conditional use has no self-evident contours (who is within the relevant 'neighborhood), nor is it obvious how to weigh their preferences (does one purporting to speak for a household of six carry three times the weight of a childless couple?); the risk is that those with the strongest views, or the greatest personal interest, will count disproportionately to the larger number of those who are content to entrust the decision to the responsible officials. Thus the ordinance places on the planning commission and the board members themselves the responsibility for determining the community's interests in plans and developments that will fix the use of land for a period of years, a period during which there will be normal, continual turnover in the persons immediately concerned. This is equally so whether there is objection or absence of objection or even affirmative support for the proposal.Petitioner is correct that the ordinance makes neither support nor objection a factor to be considered in a conditional use decision. But, of course, this does not preclude a commission or board from considering the evidence submitted by the persons most familiar with the neighborhood insofar as it bears on the objective factors important to the future of the area affected by the proposed use.[4]

However, zoning authorities are not totally precluded from lenying a use for reasons beyond the standards imposed by the oning ordinance. If a zoning board finds that a use is not desirble at a particular location, a permit for that use can be withield, despite the fact that the use conforms with legislated

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999).

But see Market Square Properties, Ltd. v. Town of Guilderland Zoning Bd. f Appeals, 66 N.Y.2d 893, 498 N.Y.S.2d 772, 489 N.E.2d 741, 30 Ed. Law Rep. 246 (1985) (upholding denial of permit but noting that expert opinion on traffic natters may not be disregarded in favor of generalized community objections).

And see Cummings v. Town Bd. of North Castle, 62 N.Y.2d 833, 477 [.Y.S.2d 607, 466 N.E.2d 147 (1984) wherein a town zoning board granted a pecial use permit to a wholesale nursery under an ordinance requiring the oard to find that "[o]perations in connection with any special use will not be nore objectionable to nearby properties by reason of noise . . . than would be ne operations of any permitted use not requiring a special permit," and the oard determined that the nursery "can produce higher noise levels" than would e found if the parcels were developed residentially, the board was held not to ave exceeded its discretion since its determination did not constitute a finding nat the nursery would "be more objectionable."

[4]Anderson v. Peden, 284 Or. 313, 587 P.2d 59, 67-68 (1978).

INVERSE CONDEMNATION

Wisconsin **REALTORS®** Association

Homeowners Bill of Rights – Inverse Condemnations

Inverse condemnation -- the statutory process a property owner must go through in order to obtain just compensation when the government takes private property but fails to pay the compensation required by Article I, Section 13 of the Wisconsin Constitution.

Three Tests for Regulatory Takings

1. **Physical Invasion Test** (Per se) -- Regulatory actions that bring about some form of "physical 'invasion" of private property. (Example -- *Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987) (declaring a state-imposed easement across private property to be a 'permanent physical occupation' requiring compensation))

2. **All or Substantially All Test** (Per se) -- Regulatory actions that deny "all or substantially all economically beneficial or productive use of land." (Example -- Lucas v. South Carolina Coastal Council, 112 U.S. 2886 (1992) (regulations prohibited any development on two privately owned lots))

3. ***Penn Central* Balancing Test** -- Regulatory actions that "fall short of eliminating all economically beneficial use." Requires a balancing test that examines the following three factors: (1) the character of the government action, (2) the economic impact of the regulation as applied to the particular property, and (3) the property owner's investment backed expectations with respect to the property. *See Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

Most Regulatory Takings Cases Require A *Penn Central* Balancing Test

- Most regulatory takings claims are evaluated based upon the *Penn Central* analysis. *See Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 539 (2005) ("Outside these two relatively narrow [*per se* takings] categories . . . , regulatory takings challenges are governed by the standards set forth in *Penn Central* . . .").

- In fact, the *Penn Central* analysis is considered the "polestar" in takings cases. *See Palazzolo v. Rhode Island*, 533 U.S. at 636 (O'Connor, J. concurring).

- As the Supreme Court observed in *Tahoe-Sierra*, "the categorical rule in *Lucas* was carved out for the 'extraordinary case' in which a regulation permanently deprives property of all value; the default rule remains that, in the regulatory takings context, we require a more fact specific inquiry." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 332 (2002).

The problem – Wisconsin courts consistently apply only the "all or nothing" standard to regulatory takings cases and, in doing so, fail to consider whether a taking occurs when a regulation takes most, but not all, practical use of their property. As a result, most regulatory takings claims are never considered by Wisconsin courts.

Most recent example – *McKee Family I, LLC v. City of Fitchburg*, 2016 WI App 1, 366 Wis. 2d 329, 244 Wis. 2d, ¶ 32, fn. 6.

> McKee uses a variety of labels for its "vested rights" theory, including one stated in terms of the law governing regulatory takings. McKee argues that it could or does prevail under **Penn Central Transportation Co. v. City of New York**, 438 U.S. 104 (1978) (even when government interference falls short of completely eliminating use or value of private property, a partial regulatory taking may have occurred, when evaluated under a multi-factor framework). However, although McKee recites the Penn Central factors, it does not explain how we should apply the factors to the circumstances here. We conclude that McKee's constitutional argument based on Penn Central is undeveloped, and we decline to consider this undeveloped argument. See State v. Pettit, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). If McKee intends to make any other constitutional arguments not addressed in this opinion, we deem the arguments to be insufficiently developed.
>
> We also observe that, even if we were to consider McKee's constitutional arguments, we would likely conclude that the rezoning is not unconstitutional, based on the City's argument that, while the rezoning cuts into profits that McKee expected to enjoy from use of the property, McKee "did not suffer the loss of substantially all of the beneficial uses of [its] land." See Zealy v. City of Waukesha, 201 Wis. 2d 365, 380, 548 N.W.2d 528 (1996) (no taking despite the fact that rezoning resulted in depreciation of property value because the property remained useable and developable); see also **Eberle v. Dane Cty. Bd. of Adjustment**, 227 Wis. 2d 609, ¶25, 595 N.W.2d 730 (1999) ("The rule applied by Wisconsin and federal courts is that a regulation or government action 'must deny the landowner all or substantially all practical uses of a property in order to be considered a taking for which compensation is required.'" (quoted source omitted)). As a result of the rezoning, McKee may still develop 48 units, even if it would have preferred to develop the 128 units that would have been allowed under the PDD zoning classification.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2014AP1914	McKee Family I, LLC v. City of Fitchburg Does the building permit rule announced in Lake Bluff Housing Partners v. City of South Milwaukee, 197 Wis. 2d 157, 540 N.W.2d 189 (1995), apply where the government has actively, knowingly and directly induced developer expenditures, including the installment of public improvements and dedications of land to the public in exchange for land use approvals? Did Planned Development District (PDD) Zoning granted by a city for the subject property create private rights of a contractual nature where the city actively induced developer investments in reliance on zoning including maintaining an ordinance that expressly states that the zoning obtained constitutes an "agreement" between the property owner and the city? Is the sole test for regulatory takings whether the owner has been deprived of all or nearly all economically productive use of the property?	04/07/2016 REVW **Affirmed** **04/12/2017** **2017 WI 34**	4 Dane	Unpub.
2014AP2236	Carolyn Moya v. Healthport Technologies, LLC Whether a person authorized in writing by a patient may obtain the patient's medical records without having to pay the certification or retrieval fees set forth in Wis. Stat. § 146.83(3f)(b).	04/06/2016 REVW Oral Arg 10/20/2016	1 Milwaukee	01/27/2016 Pub. 2016 WI App 5 366 Wis. 2d 541 874 N.W.2d 336
2014AP2278/ 2014AP2279	Ricardo M. Garza v. American Transmission Co. Whether an easement grants the right to change, replace, and upgrade use of the easement area to take advantage of technological developments. Whether an easement grants the right to cut brush and trees on the owner's property to prevent interference with the operation of a transmission line in the contiguous highway right-of-way.	04/06/2016 REVW **Reversed** **04/13/2017** **2017 WI 35**	4 Waupaca	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

Wisconsin Towns Association Testimony on SB387/AB479

Chair Lasee, Chair Jagler, members of the committee, thank you for the opportunity to testify today. Representative Jarchow and Senator Tiffany announced their intention to introduce this package over a year ago. For the last 9 months, they have worked with us to develop a compromise. Along the way they have been stern negotiators, as have we. They have stuck to their principles, as have we. They have been collegial and professional, and we thank them for that.

As of yesterday morning, we still had several issues with the package. In fact, I had to limit the number of town officials that wanted to come and testify to 25 because we thought more would be too many. They were very frustrated with Section 16 of the bill, which made significant and in our mind negative changes to the public input and conditional use processes. They are not here today because we were able to come to an agreement that satisfies everyone's interests. It took until late in the process, but we are neutral on this bill with one exception.

We request that the inverse condemnation portion of the bill be taken out.

In the 5th amendment to the US Constitution, government is given the ability to take property for public use if they pay just compensation. Until 1922, the 5th amendment takings clause was only applied to situations when the government physically occupied the land. In 1922, the US Supreme Court recognized that there could also be a "taking" if a government regulation goes too far. When a regulation goes too far, we have inverse condemnation.

For the last 95 years there have been hundreds of cases that have produced current common law interpretation of the US Constitution. Common law has defined that there are two automatic takings: 1) when the government physically occupies the property; and, 2) when the government takes all economic use.

The courts have also said that there can be a taking even if these two automatic taking thresholds are not met. They have resisted a bright line test in this case and instead applied an ad hoc analysis based on three factors: 1) the nature and character of the government action; 2) the severity of the economic impact from the restriction; and, 3) the extent to which it interferes with investment backed expectations. This ad hoc analysis was created by the *Penn Central* case at the Federal level and the *Zealy* case at the state level.

We agree with the court's interpretation of the US Constitution. This bill attempts to codify constitutional law. We feel this is a bad idea for a variety of reasons.

The bill proponents will argue that we need to codify it because the Wisconsin Courts have not

adopted the *Penn Central* tests. We, however, point to the Wisconsin Supreme Court decisions on *Zealy* and *R.W. Docks.*

> *"We are left then, with the ad hoc factual, traditional takings inquiry of Penn Central and Zealy. This involves an analysis of 1) the nature and character of the governmental action; 2) the severity of the economic impact of the regulation on the property owner; 3) and the degree to which the regulation has interfered with the property owner's investment backed expectations." - RW Docks and Slips v. State*

Bill proponents have pointed out to us that they feel the *McKee* case did not apply *Penn Central*, however, this was not a takings case. This was a vested rights case, and thus *Penn Central* need not be applied. In fact, the Wisconsin Supreme Court stated,

> *"...we do not need to reach McKee's constitutional taking claims because McKee conditioned its takings claims on its claim for vested rights." – McKee Family I, LLC v. City of Fitchburg*

Prior to the *McKee* finding, the McKee's also argued that the court needed to finally apply Penn Central. The Attorney General wrote an Amicus brief indicating that *Penn Central* is already applied in Wisconsin.

> *"Taking no position on the merits of this case...the State submits this brief to clarify that (1) this court already has held that Penn Central claims are cognizable under the Wisconsin Constitution, see R.W. Docks and Slips v. State, 2001 WI 73, 2444 Wis. 2d, 268 N.W.2d 781, and (2) R.W. Docks remains good law." - Attorney General Schimel*

Again, proponents of the bill have stated to us that this needs to be codified because the court has not adequately recognized common law; however, both the Wisconsin Supreme Court and Attorney General have a different opinion.

In addition to this already being common law and, thus, not requiring codification we have four additional issues with codification.

First, takings claims are a constitutional issue. Interpretation of the constitution belongs in the courts and not the legislature. It is a simple separation of powers issue.

Second, even if one can get past the separation of powers issue, by codifying takings law, the legislature is limiting the categorical and ad hoc balancing tests. What if there are three or four automatic takings factors? What if there are four, five, or six factors to the balancing tests? By codifying the tests, we are potentially limiting the tests.

Third, we get nervous when we place the outcome of 95 years of land use jurisprudence into statutes. When the courts interpret takings, they rely on 95 years of foundation. If we codify it, that foundation does not exist in the same way. And, we question whether or not we can capture the essence of 95 years of common law into several paragraphs in the statutes.

We worry about that, and we think for good reason. For example, on page 8, lines 5 – 8, the bill provides two options of relief for property owners if a court finds a taking occurred: 1) compensate the property owner for the decrease in value; or, 2) repeal the law that created the taking. The Supreme Court has already found this to be unconstitutional in *First English Evangelical Lutheran Church of Glendale vs. County of Los Angeles.* In *First English,* the court found that even if you remove the regulation you still have to pay compensation for a temporary taking. It would be in government's own best interests not to highlight this problem in the bill; however, we feel obligated to do so.

Fourth, we feel there might be another constitutional issue. The judiciary has sole responsibility for interpreting the constitution. This bill spells out specifically how and when a government regulation goes too far. This is something that the courts have determined for 95 years. It only makes sense that the courts would interpret when the legislative branch has gone "too far". We feel it is against the separation of powers clause to have the legislature set its own limits for when it has gone too far with its own laws on constitutional matters. This is not a role for the legislature, but for the court.

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Housing and Real Estate and Senate Committee on Insurance, Housing, and Trade

FROM: Daniel Bahr, Government Affairs Associate

DATE: October 17, 2017

SUBJECT: Opposition to Assembly Bill 479

The Wisconsin Counties Association (WCA) opposes Assembly Bill 479 (AB 479), which preempts local authority and eliminates years of work by local communities in establishing the balance between property owners and communities when it comes to local land use decisions.

AB 479 makes significant changes to local land use authority, processes, and procedures. As the bill is currently written, the conditional use permit process would be transformed into a judicial proceeding lacking any resemblance to the citizen-driven approach that Wisconsin has long cherished. Specifically, the ability of local decision-makers to exercise discretion in deciding whether to grant or deny a permit application would be significantly curtailed as both ordinances and decisions under those ordinances would need to be drafted with legal precision. Under current law, local zoning boards comprised of elected and appointed officials weigh the pros and cons of a particular land use proposal and determine whether a proposed use conforms to what the community would find acceptable. This process is no different than the typical legislative process in a representative democracy. WCA has worked long and hard with the bill authors to address the issues with the legislation relating to the Conditional Use Permit (CUP) process and it appears as though amendments to address our concerns will be introduced. If that is the case, we would like to thank all stakeholders for their efforts in this regard.

In addition to conditional use permit changes, counties are concerned with the bill's proposed changes to inverse condemnation procedures. AB 479 attempts to codify court decisions on constitutional matters into state statutes. Unfortunately, the bill does not simply codify past court decisions but instead restricts a court's flexibility in deciding a property rights case based on the merits of the individual case. The constitutional boundaries on takings law are incapable of precise statutory definition. The rights of property owners and the community at large cannot be adequately delineated in legislation. There is a reason that so many condemnation or takings cases find their way

to the Supreme Court – each case depends upon a set of facts unique to the property, property owner and community in question. This is definitely a situation where one size cannot fit all.

Finally, AB 479 seeks to overturn a U.S. Supreme Court decision issued this summer after 11 years of litigation involving a landowner's challenge to St. Croix County's zoning regulations, adopted under state statute, that required the merger of contiguous nonconforming lots under common ownership. The U.S. Supreme Court upheld St. Croix County's ability to regulate in this fashion. The County's ability to regulate within constitutional limitations should not now be undercut by state statute.

Wisconsin has long cherished the role of local government in safeguarding the interests of its citizens. AB 479, as currently written, takes this role away from local government. People that make decisions that impact a community should answer to their community – not to Madison.

WCA respectfully requests the committees oppose AB 479.

Thank you for considering our comments. Please feel free to contact WCA for further information.

LEAGUE OF WISCONSIN MUNICIPALITIES

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To: Senate Committee in Insurance, Housing, and Trade
Assembly Committee on Housing and Real Estate

From: Curt Witynski, J.D., Assistant Director, League of Wisconsin Municipalities

Date: 10/17, 2017

Re: AB 479/SB 387, Conditional Use Permits, Variances, Substandard Lots, Non-Conforming Structures, and Inverse Condemnation Proceedings

Good morning. My name is Curt Witynski. I'm the Assistant Director of the League of Wisconsin Municipalities, a non-profit association representing 189 cities and nearly 400 villages.

I'm testifying this morning in opposition to AB 479/SB 387, but I want to emphasize that the League's opposition to this bill is soft and leaning towards neutral if a few more changes are made to the bill. I also want to express appreciation to the authors and proponents of the bill for reaching out to local government groups early in the process of developing this bill and agreeing to make several specific changes to earlier versions of the bill that we requested. These changes addressed several of our major concerns and we continue to have conversations about making additional technical and other changes to the bill. We very much appreciate the approach the authors have used with regard to this bill.

In particular, the League is comfortable and satisfied with a compromise that has been worked out regarding the process and standards for granting conditional use permits.

Our only remaining concern with the bill and the reason we remain opposed relates to the regulatory takings, inverse condemnation provision. While we understand that the bill is an attempt to codify current case law standards for determining what constitutes a regulatory taking under the Wisconsin and U.S. constitutions, we have serious concerns about attempting to place in the statutes a complex and constantly evolving concept best left to the courts to develop. We are also concerned about creating a process under the inverse condemnation law for property owners to sue local governments alleging that a local regulation has deprived the property owner of all or nearly all practical use of the owner's property. Under current law, the inverse condemnation statute only applies if the local government has physically taken or occupied private property without exercising eminent domain.

We will continue to urge the authors to remove this item from the bill and if they do we will remove our opposition.

Thanks for considering our comments.

WISCONSIN LAKES

We Speak for Lakes!

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October 17, 2017

TESTIMONY TO ASSEMBLY COMMITTEE ON HOUSING & REAL ESTATE AND THE SENATE COMMITTEE ON INSURANCE, HOUSING, AND TRADE ON AB479/SB387

Thank you for the opportunity to testify today on AB479 and SB387. My name is Michael Engleson, and I am the Executive Director of Wisconsin Lakes. Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For 25 years, Wisconsin Lakes has advocated for the conservation, protection, and restoration of Wisconsin's lake resources.

I am testifying today for information only, and my comments will be limited to only the section of the bill regarding lakes or "ponds" of 5 acres or less. I hope to draw your attention to several considerations that you should be aware of as you deliberate on this section.

The first is a bigger picture issue. While waterbodies of 5 acres or less are not particularly large, they remain under Wisconsin law to be navigable waters, and that means they are waters held in trust by the state for the general public under the Public Trust Doctrine of Article IX, Section 1 of the state Constitution, as well as the lakebed of those lakes is owned by the State of Wisconsin. As such, tinkering with the level of state oversight and management of those waters should not be done lightly.

Second, a sense of the size of these lakes should be taken into account. A five acre lake is roughly the size of the Capitol building - not huge, but not insignificant either..

It is also important to have some sense of how many lakes or ponds are impacted by this bill, and while I hope there is some sense of this given by others at today's hearing, a review of the Department of Natural Resources "Lake List" indicates roughly 7,000 lakes of 5 acres or less that do not have a listed public access or public park. The majority of those are less than 1 acre, and the list does not indicate whether their shoreline is entirely owned by the same person or in most cases whether it is hydrologically connected to another waterbody. Information obtained from the DNR indicates that last year the agency permitted just under 800 "private ponds" for herbicide applications, which is a good indicator of the scope of the bill because that permit defines "private ponds" using similar language. Assuming that not all owners of private ponds apply for herbicide permits in a given year, the number of small lakes here must be around if not above 1,000.

Now let me turn to the text of the bill, and a couple additional concerns and comments.

The bill seems to seek to do two things for someone who owns all of the shoreline of a lake 5 acres or less that is not hydologically connected to a "natural navigable waterway":

- Exempt the landowner from obtaining a permit to dredge the pond under Wis Stat. 30.20
- Exempt the surrounding shoreland from shoreland zoning ordinances under Wis Stat 59.692

It is my assumption that for a lake this size, the vast majority of dredging requests would be more closely related to a recreation purpose (e.g. fishing, swimming, etc) than for navigation (boat traffic). Still, the recently enacted DNR general permit for small scale dredging in lakes and streams would probably cover most of the dredging going on in these waters. That permit has limitations on where the dredging can occur - for instance, dredging cannot occur under that permit in designated Areas of Special Natural Resource Interest (ASNRI). The exemption in the this bill does not contain similar language, and would allow dredging if the pond is or contains an ASNRI. We recommend writing ASNRI protection into this bill.

Other considerations should be taken into account regarding the impact of dredging include whether the dredging will impact endangered or threatened species, its impact on habitat and food sources for migrating waterfowl, whether the dredging leads to the spread of an invasive species, its impact on connected wetlands, and even potential impacts on the underlying groundwater that feeds the lake. While dredging is a seemingly simple act, especially in such a small, unconnected waterbody, digging in water remains a complex activity that inevitably has consequences.

The bill also exempts the private ponds as defined from shoreland zoning ordinances and standards. Shoreland zoning standards are in place not only to control development on a waterfront as it impacts the use and enjoyment of multiple landowners, it also, primarily, aims to protect the water quality of the lake or stream itself. While here we do not have multiple landowners when the exemption would apply, at sometime in the future the shoreline could be subdivided, suddenly resulting in the application of shoreland zoning, and the shoreland area has structure that are not in compliance.

The bill accomplishes the shoreland zoning exemption by removing the ponds as defined, for the purposes only of the shoreland zoning statute, from the definition of "navigable waters." To my knowledge, this is the only instance in the statutes that a waterbody would be exempted from the "navigable" definition for the purpose of a single statute. Wisconsin Lakes believes a cleaner method to do this that eliminates any confusion as to whether the waterbody is still, in general, a navigable water, would be to simply exempt those defined "navigable waters" from 59.692.

Finally, I will end with a general thought on the entire provision. My inclination is that in many instances, individuals wishing to dredge the ponds on which they live do so to "clean up" the water for better fish habitat, or perhaps for nothing more than reasons of aesthetics. Ironically, dredging, building close to the water's edge and removing shoreland vegetation, inevitably lead to lower water quality, especially in a small lake less likely to be able to handle increased runoff.

I hope you will take my comments under consideration as you contemplate the bill, especially the ideas of not exempting dredging in ponds that have ASNRI designations and, if ponds must be exempted from shoreland zoning, changing the statutory language to remove any confusion over the status of those waters as navigable.

Thank you for your time and the opportunity to present our views on this issue.

Joint Legislature Hearing
AB 479 and SB 387
October 17, 2017

My name is Glen Schwalbach. I reside at 1090 Moonriver Drive, De Pere. I am speaking for myself but I have served as a town board member for four years and am a town planning commission member for seven years now.

At first glance, I thought these bills were more of the same from this legislature--that being an assault on local government and private property rights. Such legislation included eliminating local considerations for siting of wireless communications towers, wind turbines, and high-capacity water wells. But, after reviewing the bills' language, I feel the proposals are generally reasonable.

Each proposal seems to enhance property owner rights in a specific way while allowing the political subdivisions to continue to apply their related ordinance provisions.

Zoning ordinances should satisfy two most important objectives: protect public safety and welfare and preserve property rights. What is often missed is that preservation of property rights includes not only the rights of an owner of the subject property but the rights of the neighbors of that property. Preservation of property rights includes preserving or enhancing of property values. Where has previous legislation ignored the rights of neighbors? I already mentioned them-siting of towers, turbines and wells.

So, I looked at these proposals in the light of safety and property rights.

In regard to SUBSTANDARD LOTS - this proposal seems to satisfy both objectives since all other ordinances still apply. I assume this includes current building setbacks requirements.

In regard to MERGING LOTS - I personally got blind-sighted after I bought a cottage from my family which was on an adjacent lot to the cottage I already owned. So, I was subjected to a loss of value because I could never sell the cottages separately with their own lot but could only sell two cottages together with one lot. In my case, the county later saw the light to repeal their ordinance.

The proposal should be modified to require that previous lot mergers could be undone if the property owners desire such.

In regard to VARIANCES - this proposal should require consideration for the impact to neighboring property values.

In regard to PRIVATE PONDS - the words "has no public access" is not sufficiently clear for safety reasons. Ponds are attractive nuisances. They should be designed to have a three-foot deep shelf around their perimeters so that if a child falls in, they have a chance to get out. An exception could be for fenced-in ponds.

In regard to EMINENT DOMAIN - current law includes anyone who possesses the power of eminent domain yet the proposal only addresses government entities. Utilities, electric transmission companies and pipeline companies should be included. Also, compensation should include impacts to neighboring property owners.

Glen R. Schwalbach, P.E. Phone: 920-680-2436 Email: glenschwalbach@netzero.com

TO: Honorable Members of the Senate Committee on Insurance, Housing, and Trade
Honorable Members of the Assembly Committee on Housing and Real Estate

FROM: Eric Bott, State Director
Americans for Prosperity-Wisconsin

DATE: October 17th, 2017

RE: Support Assembly Bill 479/Senate Bill 387, The Homeowners Bill of Rights

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On behalf of more than 130,000 Americans for Prosperity activists in Wisconsin, I would like to thank Senator Tiffany and Representative Jarchow for authoring the Homeowners Bill of Rights (HOBOR) as well as Chairmen Lasee and Jagler for holding a joint hearing on the legislation today.

For many families, owning a home remains their version of the American Dream. For others, it's starting a small business. Unfortunately, a handful of local governments in Wisconsin have overstepped their bounds, trampling the private property rights of citizens. Actions ranging from capricious denials of permits even when all legal requirements have been met to the effective taking of property without due compensation threaten the dreams of countless Wisconsinites and damage our economy generally.

Complicating matters further, both state and federal courts have bungled critical property rights cases in recent years creating confusion while failing to provide aggrieved citizens with redress. It's time for the legislature to take action.

HOBOR stops heavy-handed government bureaucrats from arbitrarily denying essential permits to property owners who have followed the rules of the game and met all conditions asked of them by their government. The legislation clarifies protections for property owners against regulatory takings without just compensation and limits the ability of government to deny citizens reasonable use of their land.

While these reforms are critical to preserving individual liberty in Wisconsin, their benefits will be felt broadly. Property rights are the bedrock of a strong economy and society. As distinguished economist Thomas Sowell puts it, "property rights belong legally to individuals, but their real function is social, to benefit vast numbers of people who do not themselves exercise these rights."

We thank you for your consideration of the Homeowners Bill of Rights today and respectfully request your support.

For more information, please contact Eric Bott at ebott@afphq.org.

I register in strong opposition to bill SB387/AB479. Specifically the section "requiring a political subdivision to issue a conditional use permit under certain circumstances".

Democracy is sometimes a difficult and messy process. For the State of Wisconsin to take away the powers of local government officials to make definitive decisions interpreting local zoning ordinances, is a very big mistake and contributes to the destruction of our democracy. How can it be that legislators sitting in Madison know better about the particularities and larger truths of a locale like "Trout Creek Run" than the local people who have farmed there, seen the changes on the land, worked and recreated in the area, perhaps for generations?

Business interests motivated by dollars and cents, must not be allowed to subjugate the local interests balanced and argued by local people (true democracy in action).

To disregard the opinions and knowledge of people who live and work in a particular place, and say that their information only amounts to "hearsay or speculation", is to ignore the collective experience, knowledge and wisdom that people have. It's nice when information is "reasonable and measurable", but highly trained experts often disagree on which way the underground water table flows , how likely a particular kind of flood will be, what the wind patterns are, or what the risks posed by blasting might be. They certainly don't have measurable standards for aesthetic beauty, historical character and neighborly consideration.

A local committee of concerned and informed citizens, answerable to their neighbors must be allowed to "work it out". To assume that some kind of often unprovable science will always have a better answer than the collective judgement of local people, is a big mistake.

Specialty testimony that claims to be reasonable and measurable, while useful, alone is not substantial evidence and cannot be the sole basis for the county to allow or deny a conditional use permit.

I urge you to reject this ill conceived and blatantly non-democratic legislation.

Wade Britzius
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In Wisconsin, we value community, integrity, fairness and responsibility. We value caring for others in our community. We look out for each other. These values will be destroyed by SB387 / AB479. This is an immoral bill.

1 .It will destroy our democracy!

2. It destroys our freedom of speech!

3. If our local governments cannot base their decisions on "substantial evidence" from the public, then how can we "the Public" protect ourselves from corporate greed?

4. This bill says that we "the Public" are no longer capable of protecting ourselves. You think you are a higher moral authority than the people you represent.

5. Whose freedoms will you be protecting?

6. Who decides who "reasonable persons" are?

In Jackson County, residents in sand mining Towns, are now living with greedy corporations who do not care about the communities they operate in. Because their public officials betrayed the trust of the people who elected them! For 5 years residents have been testifying at public hearings showing "substantial evidence" against sand mining. Despite the "substantial evidence," their elected officials have been approving conditional use permits and rezone changes for greedy corporations. The **residents in these towns** now **have** a **poor quality of life, less personal liberty**, and **less opportunities to pursue happiness.**

This bill is anti-Wisconsin and goes against our core values.

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