ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Assembly Committee on Housing and Real Estate
Public Hearing, January 3, 2018
Assembly Bill 770
"The Development Property Modernization Act of 2017"
10:00 A.M.
Room 411 South

Representative Jagler and members of the Housing and Real Estate Committee, thank you for affording me with the opportunity to testify on behalf of Assembly Bill 770, "The Development Property Modernization Act of 2017."

"The Development Property Modernization Act of 2017"seeks to lower the cost of new development at the local level by reducing costs and regulations with regards to impact and park fees, implement housing affordability audits, incentivizing higher density and more affordable housing. This all-encompassing legislation makes much-needed changes to Wisconsin State Statutes, and seeks to create greater statewide uniformity as it relates to property development guidelines.

A recent study conducted by the National Association of Homebuilders found that an average of 24.3 percent of a home's final selling price is comprised of local, state, and federal regulatory costs. What is more, development expenses for the newly-sold homes represent 14.6 percent of the total cost of regulation, with builder outlays accounting for the remainder.

The National Association of Homebuilders, in their study, denoted that while the percentage of housing regulatory burdens remain in line with 2011 estimates of twenty-five percent, home prices have increase exponentially, resulting in a near thirty percent increase in the dollar value of those costs—from $65,000 in 2011 to $85,00 in 2016. These are just a few of the reasons why I decided to author "The Development Property Modernization Act of 2017."

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Because of Assembly Bill 770's length and technicality, I have decided to highlight a few of the most consequential sections, in my testimony: park fees; increased density incentives; and inclusionary zoning.

Assembly Bill 770 allows political subdivisions to impose park fees under Chapter 236 of Wisconsin State Statutes. Doing so brings these requirements under the same statute as impact fee requirements. Impact fees are generally paid at the time a building permit is issued. Some political subdivisions, however, have ignored this law and have begun requiring that impact fees be paid at the time a political subdivision signed a subdivision plat. There are other types of fees that are required to be paid at the time a subdivision plat is signed, such as fees in lieu of park land dedication. This inconsistency and confusion is one of the main reasons why I wanted to incorporate park fees into Chapter 236 of Wisconsin State Statutes.

This legislation authorizes cities and villages to increase their total levy by $1,000 for each unit of new housing sold on lots of no more than one-fourth of an acre and at a cost of no more than eighty percent of the median sale price in a the county, during the previous tax year.

Assembly Bill 770 codifies in state statute the Wisconsin Court of Appeals decision *Apartment Association of South Central Wisconsin v. City of Madison* (2006), which prohibits inclusionary zoning as a form of rent control. Under this provision, political subdivisions would be prohibited from adopting inclusionary zoning ordinances, which require a certain number or percentage of new housing units (rented or sold), to be "affordable," as deemed by the city.

It is imperative to denote, before answering your questions, that this bill is still fluid; amendments will be authored to address some of the concerns we will hear throughout this hearing. I will work with committee members and stakeholders to further enhance this legislation.

I would, at this time, be more than willing to answer any questions members of the committee might have. Thank you for your time and consideration.

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Wisconsin REALTORS® Association

NAIOP COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION WISCONSIN CHAPTER

To: All Legislators

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

Date: January 3, 2018

Re: SB 640/AB 770 – Development Property Modernization Act of 2017

The Wisconsin REALTORS® Association and NAIOP-WI support SB 640/AB 770, legislation aimed at making housing more affordable for Wisconsin's workforce and families.

Background – Housing affordability and commercial development costs are becoming bigger economic development issues in Wisconsin. Due to a shortage of construction labor, increased material costs, and the limited availability of financing for new residential development, the cost of housing continues to outpace the average wage increases throughout Wisconsin, which makes it more challenging for Wisconsin workers and families to own a home. Moreover, with states competing for a limited, skilled workforce, housing affordability and lower start-up costs for businesses are becoming more important considerations for businesses in deciding where to locate.

Proposed legislation – To address these housing affordability challenges, SB 640/AB 770 includes the following key provisions:

1. Housing affordability report – Requires municipalities with a population of 10,000+ to identify and analyze all fees and regulations imposed on new residential development to better understand the impact of these fees and regulations on housing affordability by analyzing:
   - The number of subdivision plats, certified survey maps, condominium plats, and building permit applications received in the prior year.
   - The number of housing units included in all development applications in the prior year.
   - The number of housing units approved/disapproved in the prior year.
   - A list and map of undeveloped land zoned for residential development. .
   - An inventory of undeveloped land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.
   - An analysis of the municipality's development regulations to determine the financial impacts on the cost of new subdivisions.

2. Development fee report – To help municipalities better understand the impacts of development fees on the affordability of new housing, SB 640/AB 770 requires municipalities to prepare an annual report that includes:
   - a list of all fees, and the amount of each fee, that the municipality imposes that are related to residential construction, remodeling, or development. Fees under this paragraph include fees are building permit fees, impact fees, park fees, land dedication or fee in lieu of land dedication requirements, plat approval fees, stormwater management fees, and water and sewer hook-up fees.

- the total amount of fees (above) that the municipality imposed for residential construction, remodeling, or development in the prior year and an amount calculated by dividing the total amount of fees under this paragraph by the number of new residential dwelling units approved in the municipality in the prior year.

3. Workforce housing TIF – Authorizes municipalities to use tax increment financing (TIF) to develop housing that is affordable to their workforce. Under the bill, a workforce housing TID must meet the following requirements:
   - Used only for "workforce housing" which is defined as owner-occupied or rental housing that (a) costs a household no more than 30% of the household's gross median income, or (b) is valued at no more than 80% of the median price for new residential construction in the municipality.
   - Maximum life of 15 years
   - Must receive unanimous support of the Joint Review Board

   The bill also authorizes municipalities to waive or reduce any impact fees for land development that provides work force housing or low-cost housing.

4. Inclusionary zoning -- Prohibits local communities from adopting inclusionary zoning (IZ) ordinances, which require a certain percentage of new housing units (owner-occupied or rental) to be "affordable." Such ordinances pervert the marketplace and result in increased housing prices for some homeowners and renters to subsidize the cost of housing prices for other homeowners and renters. Moreover, such policies push development into surrounding communities to avoid this requirement.
   a. In 2004, Madison was the first city to try IZ and it failed -- very few affordable housing units were built and development moved to the surrounding communities.
      i. In the pre-IZ period of 2001-03, developers built 3,257 housing units in Madison, compared to only 1,954 units from 2004-06 -- a 40% decrease.
      ii. In 2006, Madison issued only 143 permits for market-rate apartment units, down from 660 in 2003, the year before IZ was instituted. In the 10 years prior to the adoption of the IZ ordinance, Madison issued permit for approx.. 807 units/year, the vast majority of which were market-rate units.
   b. The Wisconsin Court of Appeals struck down Madison's inclusionary zoning ordinance as a form of illegal rent control. (Apartment Association of South Central Wisconsin, Inc. v. City of Madison, 2006 WI APP 192).

5. Workforce housing incentive -- To encourage more workforce housing, SB 640/AB 770 provides financial incentives to cities, villages and towns to increase housing densities and provide housing that is less expensive. By increasing development densities, municipalities will lower development costs, but also reduce service costs (snow plowing, EMS costs, roads, sidewalks, etc.) and create more walkable neighborhoods which are increasingly popular with millennials and other consumers.

   To provide municipalities with a financial incentive to promote workforce housing, SB 640 authorizes cities and villages to increase their total levy by $1,000 for each unit of new housing sold or rented:
   a. on lots of no more than 1/4 acre, and
   b. at no more than 80% of the median sales price in the city or village, in the preceding year.

Wisconsin REALTORS® Association

NAIOP COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION WISCONSIN CHAPTER

SB 640/AB 770 – Development Property Modernization Act
Impact of Local Regulation on The Cost of Housing

Wisconsin has a growing housing affordability issue due to, among other things, a supply shortage and excessive regulatory costs.

- Wisconsin housing inventory is low – 5.5 months statewide and much lower in metropolitan areas (e.g., Southeast – 4.3 months, South Central – 4.4 months) (Balanced market = 7 months)
- Median home prices continue to rise -- $178,000 (9/17) increase of 4.8% from 9/16
- New home starts are significantly lagging historical averages
  - From 1999-2005, Wisconsin consistently had 25,000 to 30,000 new home starts per year.
  - In 2013—2016, we had 7,000-8,500 – a 72% decrease
  - Consider the fact that people are living longer than ever before + the largest generation in our nation's history is starting to buy homes = Supply problem will become even worse

Local government regulation is a barrier to housing affordability.

> Over the past three decades, local barriers to housing development have intensified, particularly in the high-growth metropolitan areas increasingly fueling the national economy. The accumulation of such barriers – including zoning, other land use regulations, and lengthy development approval processes – has reduced the ability of many housing markets to respond to growing demand. . . . By modernizing their approaches to housing development regulation, states and localities can restrain unchecked housing cost growth, protect homeowners, and strengthen their economies.

"Housing Development Toolkit," The White House (September 2016)

Government regulation adds an estimated 25% to the cost of a new home.

> Nationally, almost 25 percent of the cost of a typical new single-family home is the result of government regulation. The compounding of myriad local, state, and federal requirements has a profound impact on housing affordability and homeownership. The cost of regulations on a 2016 new home valued at $348,900 would be approximately $84,671.

National Association of Home Builders, ConstructionDIVE (5/6/16)

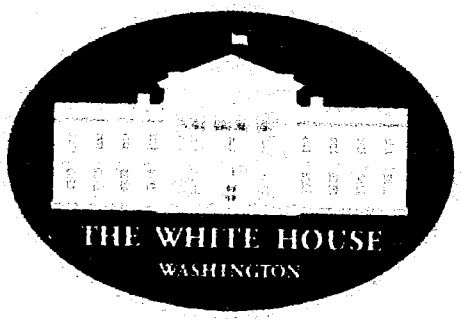
Most government housing programs don't work because they don't address housing supply issues.

> "Many housing programs — vouchers, rent control and inclusionary housing — attempt to make housing more affordable without increasing the overall supply," the report said. "This approach does very little to address the underlying cause of California's high housing costs: a housing shortage."

"California's High Housing Costs, Causes and Consequences, "California Legislative Analyst's Office (March 17, 2015).

HOUSING DEVELOPMENT TOOLKIT

September 2016



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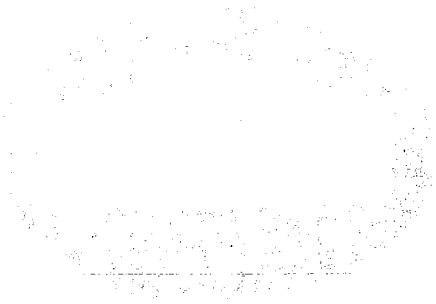


Executive Summary

Over the past three decades, local barriers to housing development have intensified, particularly in the high-growth metropolitan areas increasingly fueling the national economy. The accumulation of such barriers – including zoning, other land use regulations, and lengthy development approval processes – has reduced the ability of many housing markets to respond to growing demand. The growing severity of undersupplied housing markets is jeopardizing housing affordability for working families, increasing income inequality by reducing less-skilled workers' access to high-wage labor markets, and stifling GDP growth by driving labor migration away from the most productive regions. By modernizing their approaches to housing development regulation, states and localities can restrain unchecked housing cost growth, protect homeowners, and strengthen their economies.

Locally-constructed barriers to new housing development include beneficial environmental protections, but also laws plainly designed to exclude multifamily or affordable housing. Local policies acting as barriers to housing supply include land use restrictions that make developable land much more costly than it is inherently, zoning restrictions, off-street parking requirements, arbitrary or antiquated preservation regulations, residential conversion restrictions, and unnecessarily slow permitting processes. The accumulation of these barriers has reduced the ability of many housing markets to respond to growing demand.

Accumulated barriers to housing development can result in significant costs to households, local economies, and the environment.

- Housing production has not been able to keep up with demand in many localities, impacting construction and other related jobs, limiting the requisite growth in population needed to sustain economic growth, and limiting potential tax revenue gains.

- Barriers to housing development are exacerbating the housing affordability crisis, particularly in regions with high job growth and few rental vacancies.

- Significant barriers to new housing development can cause working families to be pushed out of the job markets with the best opportunities for them, or prevent them from moving to regions with higher-paying jobs and stronger career tracks. Excessive barriers to housing development result in increasing drag on national economic growth and exacerbate income inequality.

- When new housing development is limited region-wide, and particularly precluded in neighborhoods with political capital to implement even stricter local barriers, the new housing that does get built tends to be disproportionally concentrated in low-income communities of color, causing displacement and concerns of gentrification in those neighborhoods. Rising rents region-wide can exacerbate that displacement.

- The long commutes that result from workers seeking out affordable housing far from job centers place a drain on their families, their physical and mental well-being, and negatively impact the environment through increased gas emissions.

- When rental and production costs go up, the cost of each unit of housing with public assistance increases, putting a strain on already-insufficient public resources for affordable housing, and causing existing programs to serve fewer households.

Modernized housing regulation comes with significant benefits.

- Housing regulation that allows supply to respond elastically to demand helps cities protect homeowners and home values while maintaining housing affordability.

- Regions are better able to compete in the modern economy when their housing development is allowed to meet local needs.

- Smart housing regulation optimizes transportation system use, reduces commute times, and increases use of public transit, biking and walking.

- Modern approaches to zoning can also reduce economic and racial segregation, as recent research shows that strict land use regulations drive income segregation of wealthy residents.

Cities and states across the country are interested in revising their often 1970s-era zoning codes and housing permitting processes, and increasingly recognize that updating local land use policies could lead to more new housing construction, better leveraging of limited financial resources, and increased connectivity between housing to transportation, jobs and amenities.

This toolkit highlights actions that states and local jurisdictions have taken to promote healthy, responsive, affordable, high-opportunity housing markets, including:

- Establishing by-right development
- Taxing vacant land or donate it to non-profit developers
- Streamlining or shortening permitting processes and timelines
- Eliminate off-street parking requirements
- Allowing accessory dwelling units
- Establishing density bonuses
- Enacting high-density and multifamily zoning
- Employing inclusionary zoning
- Establishing development tax or value capture incentives
- Using property tax abatements

"We can work together to break down rules that stand in the way of building new housing and that keep families from moving to growing, dynamic cities."
-- President Obama, remarks to the U.S. Conference of Mayors, January 21, 2016

A stable, functioning housing market is vital to our nation's economic strength and resilience. Businesses rely on responsive housing markets to facilitate growth and employee recruitment. Construction workers, contractors, and realtors depend on stable housing markets to fuel their careers. And the availability of quality, affordable housing is foundational for every family – it determines which jobs they can access, which schools their children can attend, and how much time they can spend together at the end of a day's commutes.

Our nation's housing market was in crisis when President Obama took office. In the first quarter of 2009, national home prices had fallen roughly 20 percent since mid-2005, leaving nearly 13 million households underwater. Today, the market nationwide has made tremendous strides, as the recovery helped households regain $6.3 trillion of the real estate equity lost during the recession and lifted 7.4 million households out of negative equity since 2011, more than cutting in half the number of homeowners underwater.

This national recovery, while central to our broader economic recovery, has occurred during a period of increasing awareness of underlying regional challenges in housing markets. The recovery has been measured in home and property values but new production starts have not kept pace with historic levels we saw before the recession. In a growing number of metropolitan areas, the returning health of the housing market and vibrant job growth haven't led to resurgent construction industries and expanding housing options for working families, due to state and local rules inhibiting new housing development that have proliferated in recent decades. In such regions, these rules have resulted in undersupplied markets, reducing options for working families and causing housing costs to grow much faster than wages and salaries. And as Matthew Desmond recently documented in *Evicted*, families facing extreme rent burden often suffer lasting trauma resulting from their housing insecurity, destabilizing their lives and marring their prospects for upward economic mobility.[1]

As fewer families have been able to find affordable housing in the regions with the best jobs for them, labor mobility has slowed, exacerbating income inequality and stifling our national economic growth. But this hasn't happened everywhere. In more and more regions across the country, local and neighborhood leaders have said yes, in our backyard, we need to break down the rules that stand in the way of building new housing – because we want new development to replace vacant lots and rundown zombie properties, we want our children to be able to afford their first home, we want hardworking families to be able to take the next job on their ladder of opportunity, and we want our community to be part of the solution in reducing income inequality and growing the economy nationwide.

This toolkit highlights the steps those communities have taken to modernize their housing strategies and expand options and opportunities for hardworking families.

ConstructionDIVE

BRIEF

NAHB: Regulatory costs account for 24.3% of new home price

By **Kim Slowey** • May 6, 2016

Dive Brief:

- A National Association of Home Builders study found that an average of 24.3% of a home's final selling price is made up of local, state and federal regulatory costs.
- Development expenses for the homes represent 14.6% of the total cost of regulation, with builder outlays accounting for the remainder.
- The NAHB said although the percentage of housing regulatory burdens are still fairly in line with its 2011 estimates of 25%, home prices have skyrocketed, resulting in a near 30% rise in the dollar value of those costs — from $65,000 in 2011 to $85,000 in 2016.

Dive Insight:

In stark contrast to the 30% rise in the dollar amounts of U.S. regulatory costs, average income has increased only 14.4%, not even half the jump in regulatory costs for homes.

During development of building lots, the NAHB study said costs like impact fees, utility hookups and stormwater regulations come into play, as well as the cost of regulatory delays — such as additional interest payments on loans and extra overhead. Building regulatory costs include building permits, the expense of implementing new worker safety regulations — like OSHA's new silica rule — tariffs on materials, and additional requirements

in the home, such as fire sprinklers and carbon monoxide alert systems.

In March, NAHB officials appeared before the House Financial Services Subcommittee on Housing and Insurance to testify about the regulatory burden facing the building community. The NAHB told Congress that the "regulatory burden" has contributed to the ever-tightening inventory of rental and for-sale residential units.

Another area of contention for the NAHB is the U.S. Department of Housing and Urban Development Federal Flood Risk Management Standard, which opponents say will result in invalid flood maps, thus leaving construction companies uncertain as to where they should build. The NAHB is also targeting the Davis-Bacon Act, which mandates prevailing wages on federal projects. The association told Congress that this added cost prevents small construction companies from taking part in many projects and said it raises the costs on what is supposed to be affordable housing.

Recommended Reading:

NAHB Classic
Government Regulation in the Price of a New Home

Eye On Housing
Regulation: 24.3 Percent of the Average New Home Price

ANDREW BURTON FOR THE NEW YORK TIMES

In Cramped and Costly Bay Area, Cries to Build, Baby, Build

An activist who calls her group BARF is pushing for more housing, pitting cranky homeowners and the political establishment against newcomers who want the region to make room for them, too.

By CONOR DOUGHERTY APRIL 16, 2016

San Francisco does not have enough places to live. Sonja Trauss, a local activist, thinks the city should tackle this problem by building more housing.

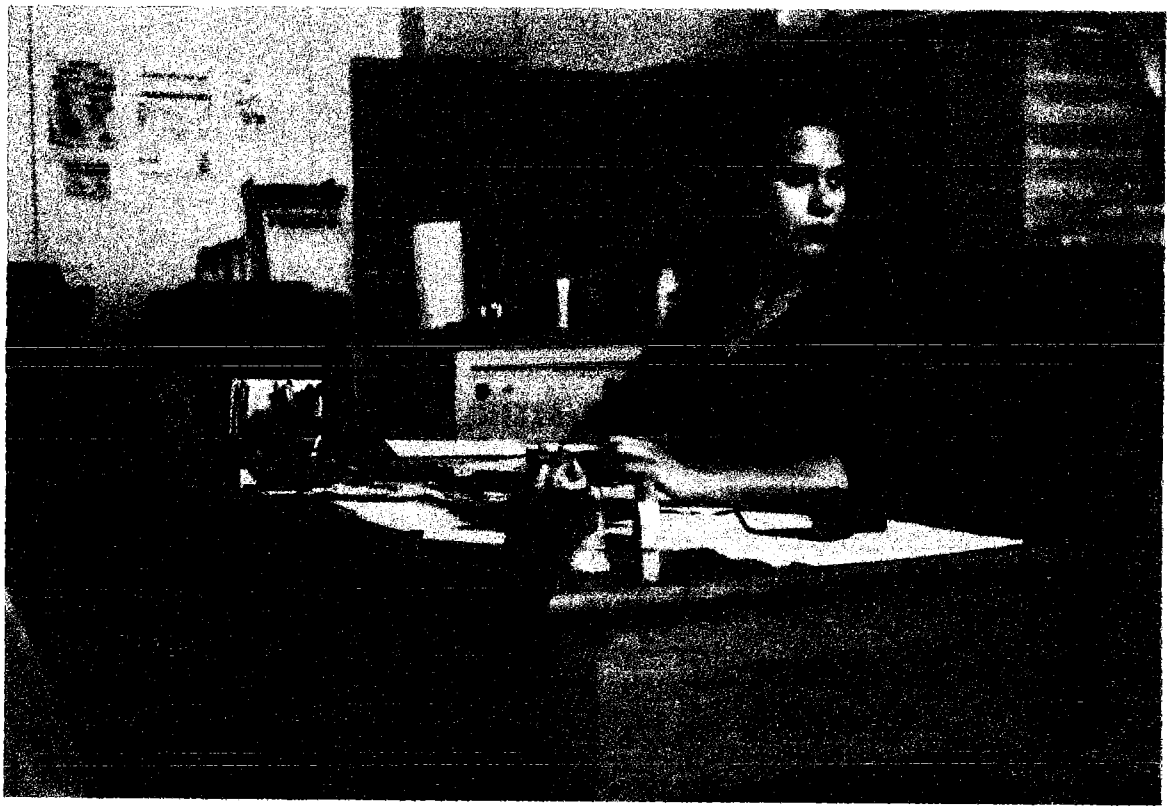
This may not sound like a controversial idea. But this is San Francisco.

Ms. Trauss is a self-described anarchist and the head of the SF Bay Area Renters' Federation, an upstart political group that is pushing for more development. Its platform is simple: Members want San Francisco and its suburbs to build more of

every kind of housing. More subsidized affordable housing, more market-rate rentals, more high-end condominiums.

Ms. Trauss supports all of it so long as it is built tall, and soon. "You have to support building, even when it's a type of building you hate," she said. "Is it ugly? Get over yourself. Is it low-income housing? Get over yourself. Is it luxury housing? Get over yourself. We really need everything right now."

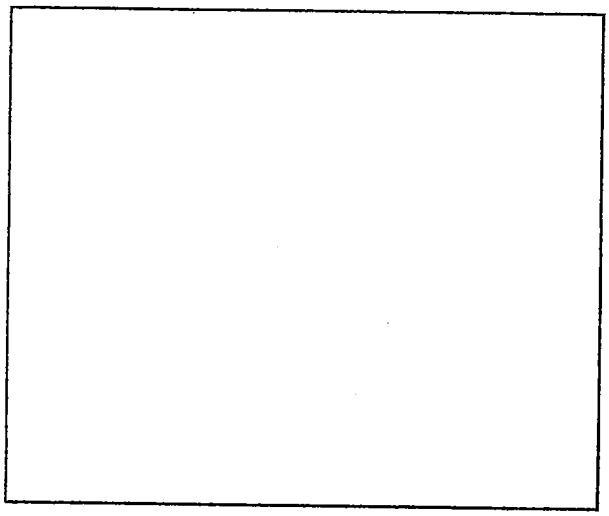
Her group consists of a 500-person mailing list and a few dozen hard-core members — most of them young professionals who work in the technology industry — who speak out at government meetings and protest against the protesters who fight new development. While only two years old, Ms. Trauss's Renters' Federation has blazed onto the political scene with youth and bombast and by employing guerrilla tactics that others are too polite to try. In January, for instance, she hired a lawyer to go around suing suburbs for not building enough.



0:40 "It's very easy to get people to agree we need more building. . . . But when it comes to someone actually building housing — on your block or on a block near you — people don't want it."

Andrew Burton for The New York Times

The organization also inflamed Sierra Club volunteers in San Francisco by trying to elect its own pro-development candidate to the environmental group's executive committee. That effort failed, and last week her candidate, Donald Dewsnup, was arrested and charged with voter fraud — a move that Ms. Trauss claims is political retaliation. "There's no other explanation for why the district attorney of a major city would investigate and charge one person for registering at an inaccurate address," she said.



In an interview, Mr. Dewsnup said he was homeless and simply used an address near the place where he was sleeping at the time.

Across the country, a reversal in urban flight has ignited debates over gentrification, wealth, generational change and the definition of the modern city. It's a familiar battle in suburbs, where not-in-my-backyard homeowners are an American archetype.

In San Francisco, though, things get weird. Here the tech boom is clashing with tough development laws and resentment from established residents who want to choke off growth to prevent further change.

Ms. Trauss is the result: a new generation of activist whose pro-market bent is the opposite of the San Francisco stereotypes — the lefties, the aging hippies and tolerance all around.

Ms. Trauss's cause, more or less, is to make life easier for real estate developers by rolling back zoning regulations and environmental rules. Her opponents are a generally older group of progressives who worry that an influx of corporate techies is turning a city that nurtured the Beat Generation into a gilded resort for the rich.

Those groups oppose almost every new development except those reserved for subsidized affordable housing. But for many young professionals who are too rich to qualify for affordable housing, but not rich enough to afford $5,000-a-month rents, this is the problem.

Adding to the strangeness is that the typical San Francisco progressive and the typical mid-20s-to-early-30s member of Ms. Trauss's group are likely to have identical positions on every liberal touchstone, like same-sex marriage and climate change, and yet they have become bitter enemies on one very big issue: housing.

"We have liberal Democrats, and very liberal Democrats, and yet we are as polarized as the rest of the country," said Tim Colen, executive director of the San Francisco Housing Action Coalition.

Birth of an Acronym

Ms. Trauss is smart and energetic and unpolished. She called her group the Bay Area Renters' Federation because "federation" reminds her of "Star Trek" and because her roommate thought it would be funny if her group's acronym spelled "BARF."

Jennifer Fieber, policy director at the San Francisco Tenants Union, likened the group to the Tea Party, because it lacks nuance ("Just build!") and can be rude. BARF's public message board does in fact veer into strident libertarianism and juvenile ribbings, like pictures that equate its opponents to Adolf Hitler.

This might make it tempting to dismiss Ms. Trauss as just another colorful activist in a place where activism is a local sport. But the anger she has tapped into is real, reflecting a generational break that pits cranky homeowners and the San Francisco political establishment against a cast of newcomers who are demanding the region make room for them, too.

To befriend a certain kind of techie on social media is to be bombarded with angry Facebook posts and retweeted news articles about how San Francisco doesn't build enough housing or how it is also the suburbs' fault and isn't Seattle great?

Every few weeks, when a company like Zillow puts out a new price report, both sides hold up the numbers as an example of how San Francisco has failed the middle class. Zillow puts the city's median home price at $1.1 million, neck and neck with Manhattan. The region's rent, at $3,500 a month for an average apartment, is the highest in the nation.

Today Ms. Trauss's group is one of several pro-housing organizations (GrowSF and East Bay Forward are others) that represent a kind of "Yimby" party, built on the frustrations of young professionals who feel priced out of the Bay Area. BARF has won the backing of technology millionaires — Jeremy Stoppelman, co-founder and chief executive of Yelp, is the group's largest individual donor — and the encouragement of local politicians.

"BARF is an important voice in this housing debate, and that is the voice of young people who are asking the question: 'What is my future in this city?'" said Scott Wiener, a member of the San Francisco Board of Supervisors. "And you can agree or disagree with them, but they have activated a new generation of pro-housing activists."

The group's build-more platform may be politically contentious, but economically speaking, it is anything but controversial. The Bay Area was expensive even before the tech boom. And the supply of new projects, while increasing, remains decades behind population growth.

This extends from Silicon Valley suburbs like Palo Alto, whose ratio of jobs to housing units is triple the median level in the Bay Area, to San Francisco, which despite an increase in new housing has lagged behind job growth, according to the Association of Bay Area Governments.

Much of San Francisco's progressive establishment feels the city is building too much market-rate housing. Some go so far as to argue that the appetite for real estate here is so high that supply-and-demand rules don't really apply.

To get prices down, "You'd have to, like, build another city on top of the city," said David Campos, a progressive-wing member of the San Francisco Board of Supervisors. He thinks the city should focus the vast majority of future development on affordable housing limited to people making well below the city's median income.

This thinking is at odds with a February report on housing prices from the California Legislative Analyst's Office, which said underdevelopment was the primary cause of the high prices that afflicted cities throughout the coastal part of the state, especially in the Bay Area.

"Many housing programs — vouchers, rent control and inclusionary housing — attempt to make housing more affordable without increasing the overall supply," the report said. "This approach does very little to address the underlying cause of California's high housing costs: a housing shortage."

Ms. Trauss, 34, is a born activist from Philadelphia whose father is a lawyer who defends low-income homeowners against foreclosure. She moved to the Bay Area in 2011, shortly after getting her master's degree in economics from Washington University in St. Louis, and taught math at local community colleges. She intended to live in San Francisco, but settled across the bay in Oakland.

Like nearly everyone who moves to the Bay Area, Ms. Trauss spent an inordinate amount of time complaining about rent. In 2014, after reading a 13,000-word history of Bay Area housing politics written by Kim-Mai Cutler, a reporter at the TechCrunch news site who has gone on to help found a communal-living start-up called Roam, Ms. Trauss started writing letters to the San Francisco Planning Commission in support of any new project with more than 30 units.

She graduated from writing letters to attending planning meetings, and, after registering the SFBARF website, started recruiting members by finding pro-housing voices on sites like Reddit and the comments sections of local news articles. "People say testifying doesn't do anything — but guess what definitely doesn't do anything: giving a dumb speech to your friend at the bar," she said.

Today BARF is her full-time job, allowing her the financial wherewithal to become one of those strangely persistent people who speak regularly at City Hall. To an outside observer, this can feel like watching an obscure and slow-moving sport.

This is a town with an app for everything and where people get fussy when an Uber driver takes more than five minutes to arrive. City Hall, with its Beaux-Arts architecture and government-grade wait times, can feel like an anachronism.

Ms. Trauss may be a plugged-in millennial, but she loves it. "Even in this modern era of, whatever, the Internet and people like interacting in a place that's no place at all, City Hall is still a center," she said.

One recent afternoon, she spent an hour on the hard wooden benches in the chamber of the Board of Supervisors. She was there to make a two-minute public comment in favor of a dull-but-important proposal to streamline the permitting process for some affordable-housing projects.

Three days later she was back, this time to support a "density bonus" — a proposal to let developers build taller buildings in exchange for including more affordable housing as well. When she arrived, Mr. Campos, from the Board of Supervisors, was blasting the proposal from the City Hall steps, surrounded by 70 or so supporters.

Ms. Trauss and another member of her group stood opposite and held up signs that said "Stop Affordable Housing." This was meant to be ironic. Their point was that Mr. Campos was opposing legislation that would create more market-rate housing — but also more affordable housing.

Nobody seemed to get it, so Ms. Trauss went inside City Hall to add her name to a list of people making public comments before the planning commission. Her chance to speak would be hours away, so she trekked around City Hall, past bronze busts and wedding parties, in search of a quiet place to take a lunch break. She was joined by a man whose legal name is Starchild.

Starchild is the sort of only-in-San Francisco character you end up making friends with if you spend enough time at City Hall. He works nights as an "erotic service provider." Asked if this meant he was a prostitute, he said, "'Prostitute' is O.K. as long as it's said in a respectful way." Starchild spends his days campaigning for libertarian causes and running doomed campaigns for office.

The two ate on a marble ledge and discussed police brutality, pretrial detention and whether it was possible for an anarchist to be in favor of soda taxes. A short while later, Ms. Trauss headed back to a waiting room, where she took a selfie for the @SFyimby Twitter account and began a two-and-a-half-hour wait for a few more minutes at the public-comment microphone.

"This is my life," she whispered. "It's ridiculous."

Problems With 'Progressive'

Many longtime San Franciscans view groups like BARF as yet another example of how the technology industry is robbing San Francisco of its San Francisco-ness. Far from the hippies of the 1960s, many of today's migrants lean libertarian — drawn by start-up dreams or to work for the likes of Google or Apple, two of the world's most valuable companies. They tend to share a belief, either idealistically or naïvely, depending on who is judging, that corporations can be a force for social good and change.

But BARF members are so single-minded about housing that they can be hard to label politically. They view San Francisco progressives as, in fact, fundamentally conservative. That is because, to the group members at least, progressive positions on housing seem less about building the city and more about keeping people like them out.

On a drizzly Sunday in December, Ms. Trauss hosted the SF YIMBYParty Congress, a gathering of pro-housing groups held at a Market Street co-working space full of start-up touches like mismatched furniture, a foosball table and lots of white men. Toward the beginning, a debate broke out about whether they should call themselves moderates to distinguish themselves from progressives.

Ms. Trauss joked that she liked moderate because you can shorten it to mod, and mod sounds cool. Mr. Wiener, the supervisor, disagreed, noting that in San Francisco, a moderate Democrat "might have a Bernie Sanders sticker on their car."

One man, who seemed exasperated by the discussion and the idea of using his Sunday to talk about politics, said, with more colorful language, that he did not give a hoot about progressives versus moderates — he just wanted some darn housing.

The tech boom takes much of the blame for soaring housing prices. But the pro-development movement has less to do with tech as an industry, and everything to do with newcomers as a class.

Brian Hanlon, a federation member who regularly attends Board of Supervisors meetings with Ms. Trauss, has a day job doing administrative work for the United States Forest Service. Two years ago, when he started worrying that his claim to an $835-a-month room in a rent-controlled apartment might be in jeopardy, he reacted in classic San Francisco fashion. He started marching in anti-eviction

protests next to people beating drums and signs that said things like "Tech = Death."

But he quickly broke ranks. Many of his fellow protesters also opposed building new apartments — putting him at odds with them.

"They want to be on the side of tenants, but they don't have any real plan for how do we become a welcoming metropolitan area for new people who don't have money," Mr. Hanlon said. "Their plans are only to allow current incumbent renters to stay in their place, presumably until they die and some rich person comes along."

Reaching the Renters

The progressive movement has played a guiding role in creating the quirky and picturesque San Francisco that many people love today. Progressives battled plans to crisscross the city with freeways and opposed urban renewal programs that destroyed black neighborhoods. They have fought for, and won, rent-control protections and funding for affordable housing, along with various open-space amenities that many newcomers take for granted.

The question is how to handle a long-run demographic reversal in which cities across the country have regained population following years of "white flight" to the suburbs. After losing population for two decades through the 1970s, San Francisco resumed growth in the '80s and has only accelerated from there.

"There's that book, 'What's the Matter With Kansas?'" said Gabriel Metcalf, executive director of SPUR, an urban policy research organization. "What's the matter with San Francisco? Why is it that in a city that's two-thirds renters we have adopted a housing policy that is horrible for renters?"

The challenge for groups like BARF is that, politically speaking, they have a lot of persuading to do. The free-market talk might sound great to a recent Stanford graduate, but San Francisco is in a moment when corporate buses are regarded as instruments of a tech invasion bent on turning people who can't code into a food-delivering underclass. The idea that everything would be better if only the city threw up more tall buildings is a hard sell.

Of the 11 propositions on San Francisco's ballot in November, seven were either directly or indirectly related to high home prices and the influence of the technology industry. Michael Hankinson, a Harvard Ph.D. candidate who is

studying land-use and housing prices, surveyed voters for his dissertation and found renters skeptical that new development would do anything other than raise prices.

For instance, a recent proposal to temporarily stop market-rate development in the city's Mission District, a gentrifying neighborhood popular with technology workers, failed citywide. But Mr. Hankinson found that a majority of renters favored it because they did not think that new development would do anything for them — and feared that it might, somehow, get them evicted.

"BARF has to convince renters that neighborhood change will benefit them in the long run," he said. Today, when eviction is a hot party topic, most renters are unwilling to take that gamble.

So Ms. Trauss is taking her campaign to the courts. In December she sued the city of Lafayette, Calif., an East Bay bedroom community, after it took a parcel that had been set aside for higher-density apartments and office buildings and rezoned it for single-family homes instead.

She wrote the petition herself, saying the move violated the California Housing Accountability Act, a 1980s law and "anti-Nimby" statute that limits cities' ability to downsize housing developments. Recently, she hired a lawyer to litigate the case.

Asked about Ms. Trauss's lawsuit, Steven Falk, Lafayette's city manager, said the city actually faced another lawsuit over the same development. The second group is suing, he said, because they think it is too big.

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Housing and Real Estate

FROM: Daniel Bahr, Government Affairs Associate

DATE: January 3, 2018

SUBJECT: Opposition to Assembly Bill 770

The Wisconsin Counties Association (WCA) is opposed to Assembly Bill 770 (AB 770), which makes numerous changes to local government's ability to regulate development-related activities and otherwise exercise local control over those activities in the best interests of the community. WCA appreciates the ongoing dialogue with the bill authors regarding concerns raised by counties and is confident many of the issues raised will be addressed through future amendments to the legislation.

The primary concerns raised by counties regarding AB 770 relate to the prohibition on any regulation of weekend work activities, mandatory development-related reporting, the elimination of local storm water management regulations, and changes to eminent domain procedure. With regard to weekend work requirements, WCA requests amending the bill to ensure counties can continue to regulate weekend hours of operation for highly-intensive operations such as quarry or mining operations. Currently, many counties regulate hours of operation for these activities via conditional use permits, a process that should remain available to counties. AB 770 also requires local development-related regulation reports. While we understand the intent of this provision is to require municipalities to report their development fee schedules to the public on a regular basis, the term municipality should be defined as not to include counties because the fees described in the bill have limited applicability to counties. Through conversations with bill authors, WCA believes both these requests are consistent with the intent of the legislation.

Counties have also raised concerns with proposed changes to local storm water management ordinances. Under AB 770, local ordinances must strictly conform to statewide standards. This provision applies a one-size-fits-all approach to local regulation and fails to account for varying geographic features unique to individual counties, which would necessitate water and soil preservation regulations beyond the minimum state

standards. WCA requests this provision be removed or amended to account for geographic conditions that necessitate local standards in excess of state standards.

Finally, counties have raised concerns with eminent domain provisions of the bill which require new factors that must be considered when valuing property impacted by eminent domain. WCA understands the bill author's intent with this provision, but believes property must be both assessed for property tax purposes and valued for condemnation purposes in the same manner. Unfortunately, one of the strategies employed by big-box commercial retailers to reduce their property tax assessments has been to ignore income of a business when determining fair market value. To address county concerns with this provision, WCA requests this language be removed from AB 770 and instead inserted in dark store legislation currently before the legislature. This approach will provide consistency and fairness for both local governments and local taxpayers.

We respectfully request the committee amend AB 770 to address concerns raised by counties. Please feel free to contact WCA for further information.

WEDA
Wisconsin Economic Development Association

TO: Chairman Jagler and members of the Assembly Housing and Real Estate Committee
FROM: Michael Welsh, Wisconsin Economic Development Association
DATE: January 3, 2018
RE: **Assembly Bill 770** (RE: creation of workforce housing TIF districts)

The Wisconsin Economic Development Association (WEDA) would like to take this opportunity to encourage your support for a provision in Assembly Bill 770 that would authorize the use of tax incremental financing (TIF) for the development of workforce housing.

As you know, Wisconsin is facing a workforce shortage crisis. A key contributing cause to the state's worker shortage is the lack of affordable, mid-range housing in many Wisconsin communities. The absence of available workforce housing is making it especially difficult for businesses to find and retain entry level professionals. Assembly Bill 770 would help address this growing concern by allowing tax incremental financing for workforce housing developments.

Current TIF law allows for residential development as part of a mixed-use tax incremental district (TID), but limits the residential portion to no more than 35% of the area of the TID. Assembly Bill 770 would authorize the creation of TIDs dedicated entirely to workforce housing, providing communities with a significant new tool to create affordable single family or multi-family homes for workers that are in close proximity to employers.

Although WEDA supports the workforce housing TIF provision in the bill, we are advocating for two key changes we believe would significantly increase the effectiveness and use of workforce housing TIDs:

1. **Extend the life of workforce housing TIDs to 27 years** – Due to lower valuations associated with workforce housing, it will mathematically take longer to amortize project costs of a workforce housing development. As a result, a longer payback period than the 15 years included in the bill is required.

2. **Exempt workforce housing TIDs from the current law 12% TIF limit** – Many medium size and smaller communities in Wisconsin have exceeded the 12% TIF limit and are unable to create new TIDs. Therefore, under the bill as currently written, these communities would be unable to take advantage of a workforce housing TID.

Again, WEDA respectfully requests your support for the workforce housing TIF provision in AB 770 and would encourage you to consider the suggested modifications described above. If you have any questions or would like additional information, please do not hesitate to contact me.

About WEDA
The Wisconsin Economic Development Association (WEDA) is a statewide non-profit organization dedicated to expanding the economy of the State of Wisconsin. Founded in 1975, WEDA's economic development professionals and active volunteers are dedicated to making Wisconsin a better place to live and work through economic development that focuses on retaining and expanding existing businesses; facilitating investment and entrepreneurship; and attracting new companies, employment opportunities and innovation capital.

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MurphyDesmond S.C.
LAWYERS

3 January 2018

Representative John Jagler
Chairman Assembly Committee on Housing and Real Estate
Room 316 North
State Capitol
PO Box 8952
Madison, WI 53708

RE: AB 770; Public Hearing Comments.

Dear Representative Jagler:

On behalf of my client, the City of Middleton, I respectfully submit these comments for consideration in opposition AB 770. While this bill contains several items worthy of support, many provisions of this bill are ill advised or in need of significant revision.

Section 2: Condemnation commissioners and courts should not be directed to consider appraisals based on the income approach or the cost approach in all cases. Such approaches are simply not applicable to a variety of properties and can be very unreliable indicators of value in other instances. Condemnation commissioners and courts must be free to disregard such analyses where they are unreliable or inappropriate. These approaches should be considered where doing so produces a reliable result in accordance with professionally acceptable appraisal practices.

Sections 3-6: In many, if not most cases, payment of "reasonable project costs" as defined in the bill will result in double payments since some of these costs replace the property taken for which just compensation is already paid. Property owners should not be paid both for the value of property taken and for the cost of replacing what was taken. The addition of "reasonable project costs" as defined in this bill as items of relocation payments could dramatically increase the cost of public transportation, utility or other projects.

Section 7: Payment of litigation expenses for relocation benefit disputes is a significant departure from existing law. Litigation expenses are paid in just compensation cases to protect a constitutional right. Relocation payments are not constitutionally required.

Section 11: Fees cannot be paid with letters of credit or bonds. Letters of credit or bonds are called upon when obligations are not fulfilled. If the obligation in question is the payment of a fee, payment with a letter of credit or bond constitutes an automatic default on the obligation.

Section 14: Delaying payment of impact fees until 6 mos. prior to their expenditure could create a serious problem. What if the fees cannot be promptly collected? What if the plan is to build in 6 month and there is a delay?

Section 16: The public policy served by this change is unclear. Why should appropriate planning and financing periods not be established before collecting impact fees? The last time the collection and expenditure provisions for impact fees was changed caused a very difficult transition period for local government. Changing to a straight 8 year collection and expenditure period substantially upsets the status quo without any clear benefit.

Section 21: No new storm water charges for property retaining 90% of water may not be significant for small parcels (presuming no water quality issues), but 10% of a very large parcel or many parcels could create significant management costs that should be recoverable. Moreover, retention of 90% of storm water fails to recognize that storm water regulations are not necessarily concerned with quantity, per se, but run off rates as well as water quality.

Section 22: Many municipalities will not have staff time available to produce the required annual housing affordability report. This will undoubtedly increase the cost of development since municipalities will likely have to hire additional staff or outside consultants to produce such report.

Proposed 66.10013(2)(e) requires, in part, municipal analysis of the financial impact of each regulation on the cost of each new subdivision. This analysis is beyond the capability of most municipalities to produce. No standard methodology for such an exercise is known to exist to ensure consistency in the calculations and reporting. Moreover, the call for such a report seems to ignore any analysis of the value of benefits of regulations which themselves are not easily reducible to a monetary figure. In essence, this asks municipalities to expend significant resources to produce a report certain to be used to mislead and misrepresent the impact of local land use regulation.

Proposed 66.10013(2)(e)(2) seems to require that municipalities identify ways to reduce the costs to develop a subdivision, which includes many costs well beyond the control of a municipality. The 20% reduction goal lacks any benchmark, which might be construed to mean that each annual report must identify an incremental 20% time and cost reduction from the prior year. Not only is this 20% cost reduction goal arbitrary, it suggests that cost is the primary public concern with respect to land use regulation.

Section 23: Much, if not all, of the information called for in proposed 66.10014(1)(a) is typically available in local ordinances or resolutions. Since development fees may change over time, the 2019 report will, before long, become obsolete.

Proposed 66.10014(1)(b) requires the calculation of a figure that seems designed to be misleading. Not all fees for "residential construction, remodeling, and development" are for new construction. Dividing the total of these fees by only the number of new residential dwelling units imputes all of these costs to new construction thereby inflating the cost of new construction.

No clear public policy rational appears to exist in requiring an entire web page to be dedicated to what is likely to amount to a link to a pdf document. Nor does it seem wise to put the validity of otherwise lawfully adopted fees published in local ordinances in jeopardy by requiring a completely separate publication of these fees. The proposed statutory language could trigger a total reprieve from payment of thousands in fees otherwise needed to offset municipal costs solely because the municipal web page was down on the day a developer wishes to submit an application.

Section 26: Putting a blanket prohibition on PDD expiration dates less than 5 years seems contrary to the flexibility that underlies the purpose for the existence of planned development zoning. Five years may be reasonable for most proposals, but it is presumptuous to conclude it is appropriate for all circumstances. Lacking the flexibility to impose shorter time periods, a municipality may be forced to deny approval.

Section 27: Regulations limiting local authority to impose public improvement requirements for something as specific as a water meter station seems entirely out of place in Section 66.10015. Nor does this topic seem to relate to the exercise of zoning authority.

Further, the limitations proposed on the construction of water meter stations, while perhaps appropriate for meter stations serving seasonal water distribution (*i.e.*, parks, pools and splash pads), are totally inappropriate for meter stations serving subdivisions and improved property for the following reasons:

(1) Water meter facilities in an unheated utility box will freeze in winter cutting off water service.

(2) If any significant repairs are necessary, the ability to conduct such repairs in severe weather will be substantially compromised leading to long delays in restoring water service to homes or businesses.

(3) While air conditioning is not necessary, per se, some dehumidification is necessary in order to protect sensitive electronic equipment from corrosion caused by the inevitable condensation that will develop from cold water pipes.

Bathrooms for a water meter station, at first blush may seem frivolous, but where water meter stations are at some distance from any available restroom, major repairs to water meter stations can be substantially delayed if service personnel have to stop work to drive back to the shop to relieve themselves. While certainly not as crucial an issue, it is not frivolous to seek to minimize interruptions in water service.

Finally, the proposed provisions permitting a state inspector to perform inspections for local zoning provisions are ill-advised. State inspectors are likely to know little to nothing about local zoning codes.

Section 34: The proposed preemption of regulations relating "construction site banners" is very problematic. The term "banner" suggests this preemption applies to construction signage. When this limitation is combined with local sign codes, preferential treatment would be bestowed upon a particular class of commercial signage potentially invalidating all sign regulation under the US Supreme Court rulings in Reed and Metromedia.

Section 50: Regulations relating to construction work on weekends are typically enacted in order to preserve citizens' reasonable expectations of quiet enjoyment of their property at reasonable hours on weekends. Neighbors typically respect one another enough to avoid lawn mowing and other noisy activities in the early morning hours of the weekends, these basic social norms should not be sacrificed for developer profits.

Section 44: Adding "workforce housing" to the last sentence of s. 66.1105 (4) (gm) 6. seems inappropriate. A district cannot be called a "workforce housing district" if it is only "predominately" workforce housing. The other provisions of the bill says that a workforce housing district must be 100% workforce housing.

Section 52: The purpose of this section is unclear. Rather than provide protections to developers, it seems more likely that it will restrict the ability of government and developers to enter into agreements that would allow development to proceed where it might otherwise be rejected.

The UDC must already be uniform. If a municipality has reason to enter into an agreement with a developer that requires meeting standards above and beyond the UDC (provided they are requirements imposed by contract and bargained for) why should they be invalid just because they may reference an ordinance containing terms that could not otherwise be enforced? It is possible this limitation might be evaded by simply placing the specific

standards in the contact rather than incorporating them by reference to an ordinance thereby preserving the parties' ability to bargain. In that case, however, the statute inserts uncertainty that the developer could later undo that part of the deal by arguing the language of the contract is doing indirectly what the statute directly prohibits.

Section 53: It is important that local government have security at least 120% in excess of actual estimated costs. If local government is required to step in to make improvements after a developer defaults, costs may have changed dramatically since first estimated. Public bidding may be required at potentially unfavorable times of the year or on a compressed time frame which may also dramatically increase costs. This commonsense protection for local taxpayers and purchasers of lots should not be further weakened.

Section 55: The proposal makes amount of "total costs" to be subject to security requirements subject to agreement between developer and city absent bids establishing the cost. It is unclear what this is meant to accomplish. As a practical matter this already occurs, but final authority must exist to establish this number and that authority should rest with the local government. Municipalities should also have the ability to question the amount of contractor's bids.

The fees and costs eliminated from "total costs" under proposed Section 236.13(2)(ad)3. represent real costs of installing the improvements. Even permit fees are a cost that should be secured since, as a fee, it is designed to recoup municipal costs. These costs should be reflected in the total costs that must be secured.

Section 56: Local government should not be required to accept any "standard bond form." What are acceptable and practical bond terms for the administrative apparatus of the federal government and what is suitable for local government are probably not the same at all. There are some pretty bad provisions in many of these "standard form" bonds that are inappropriate or unworkable for dealing with security for public improvements.

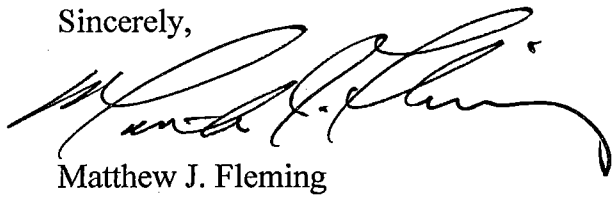
Section 57: Proposed 236.13(2)(am)3.b. requires release of all building permits upon substantial completion of public improvements. This might inadvertently require building permits to be issued just because the lower layer of pavement is installed, which may on some projects occur prior to completion of storm water management features, certain utility improvements, or other public improvements that may need to be completed prior to starting construction of habitable structures. To protect the public and meet this proposed requirement, a municipality may need for city/developer agreements to include a construction schedule with a sequence showing road pavement to be placed last which may not represent the most efficient or practical sequence for the developer.

In the event of developer default of public improvement construction, proposed 236.13(2)(am)3.c. may result in basement foundations that are open and exposed for a prolonged period of time.

Section 59: Parkland fees in lieu of land and park improvement fees should not be subject to all of the same rules as other impact fees. Doing so is likely to discourage allowing the payment of fees in lieu of land dedication which provides flexibility for both developers and local governments to respond to whatever challenges a particular development may present with respect to parkland needs. Further, it is important to have park improvement fees paid up front rather than as building permits are issued so that parks can be improved so new residents can enjoy them as they move in rather than wait until subdivisions are substantially built-out and all fees collected.

Thank you for your consideration.

Sincerely,



Matthew J. Fleming

MJF:daz
150060

4828-5299-5674, v. 1

Testimony of Mark Rohloff, City Manager, Oshkosh
Re: AB 770 – Developer Bill

- Chairman Jagler and Members of the Committee, thank you for the opportunity to speak on AB 770, which will limit the ability of municipalities to regulate development in subdivisions and also significantly impact how communities regulate pre UDC homes.
- As it stands, AB 770 will swing regulations away from protecting the rights of taxpayers to protecting the financial interests of developers.
- AB 770 would return regulations back to pre-2008 levels, which led to taxpayers holding the bag on unfinished developments because developers had not fulfilled their responsibilities, specifically…
- AB 770 proposes to shift the risk and cost of newly installed infrastructure from developers to unsuspecting new home buyers, or worse, to taxpayers who have already paid their costs of development for their own subdivisions. We had instances leading up to 2008 in which developers went broke prior to them fulfilling their development responsibilities, leaving the cost to the property owners who had thought they had already paid for this infrastructure. AB 770 will return us to the days that caused the 2008 housing crisis and the Great Recession. We can't let taxpayers assume the risks of developers.
- AB 770 also proposes to redefine substantial completion of a project to when binder course is in place. While this seems OK on the surface (no pun intended), this could result in incomplete infrastructure before a home is finished. Not all infrastructure is beneath the road.

- I have always tried to accommodate developers and home builders to let them get early starts whenever possible. However, in some cases, a developer can suddenly slow down work on infrastructure once their buyers can begin work on a home. If utilities are not beneath the road, the home could be done before the infrastructure. In some cases, the developer walks due to financial issues, leaving the city to explain why a homeowner could not move into a house because the curb and gutter, or utilities, are not complete. I have seen situations in which homeowners literally carried in their belongings several blocks because infrastructure was incomplete. The city is left to explain why we did not hold the developer accountable. I don't want to give an excuse that some state legislation allowed this to happen.
- There are unclear proposals in AB 770 regarding storm water management that would transfer responsibility for storm water/flood control requirements from developers to cities. Specifically, the state standard of managing a two year storm for water quality would be the only requirement of developers. Meanwhile, the federal standards for larger storm events would be shifted entirely to cities, rather than having new development pay for its impact on our storm water system. For a city like Oshkosh with decades of storm water management issues, this is a shift to our rate payers. We need to move forward on stormwater management, not backwards.
- AB 770 also proposes to prohibit a city from enforcing an ordinance that does not conform to the Uniform Dwelling Code (UDC), which generally applies to homes built since 1980.

- The majority of homes in Oshkosh were built prior to 1980; therefore, no standard would apply to these homes.

- Oshkosh inspectors use common sense approaches to address issues related to pre-1980 dwellings. AB 770 will remove the ability of our inspectors to adopt common sense solutions to pre-1980 dwellings. The UDC may work for pre-1980 homes in some cases; in most cases, pre-1980 dwellings would fail to comply at an alarming rate. This makes no sense for families who purchase pre-1980 homes as their first homes.
- AB 770 attempts to eliminate regulations on bedroom sizes or number of bedrooms in a rental unit. This is a major problem in Oshkosh. We have found numerous instances in which "so-called" bedrooms exist in a basement or attic with no means of exit in the event of a fire. These fire traps would effectively be legalized with AB 770.
- More bedrooms mean a bigger loan and more income for landlords. I know that our Fire Chief would not want to see safety compromised in order to give a landlord the ability to qualify for a larger loan. If the property can't turn a profit with the original number of bedrooms that existed when it was a single family house, then perhaps it should not be used as a rental unit.
- If we are incorrect on any of the presumptions of this bill, it is because it has been introduced so late in the legislative session and we have not had sufficient time to review the depth of the bill, its impact, and in some cases, its inconsistency with other regulations.
- If development related issues related to municipalities need to be addressed, we encourage members of the development community to work with cities, villages and towns to find ways to mutually address issues.
- There are also proposals in AB 770 related to the regulation of TIFs and unfunded mandates to create reports on housing

affordability and development fees. There seems to be a hodge podge of things in this bill that are unnecessary if we just talked through our concerns that led to these proposals.

- I request that the Committee respectfully ask the groups advocating for this legislation to work with the League of Municipalities and its members to develop common sense solutions to their concerns that will improve the development process for the benefit of developers, municipalities, and taxpayers alike.
- Thank you for the opportunity to address the committee today.

larger than Green Bay, La Crosse and many others. This position translates that Brookfield is an economic engine for the region and the State of Wisconsin. Let us do our job.

Incidentally, we also reside in Waukesha County- one of the hotbeds for the conservative leadership and we should not be taken for granted. Conservatives typically want less government and paperwork.

It seems that the legislature these days wishes to exert state controls over local government- for example, the recent *Homeowner Bill of Rights* usurps local controls signed by the Governor late last year. This bill was intended to help homeowners but it effects the regulation of all properties. What might be appropriate to assist a cottage owner needing relief from shoreline restrictions in the north woods resulted in gutting some local controls that are needed in urbanized areas. Some of the local controls lost under the *Homeowners Bill of Rights* make it more challenging to foster good quality business development. It breeds the less desirable businesses in some cases. Wee get it- it was needed principally to help those with lake properties -but the impacts to all cites was too far reaching and resulted in unintended consequences. Greater outreach to local experts should have been engaged in crafting that bill. The same outreach should be engaged in a more meaningful way with AB 770. Something similar to the Tax Increment District workgroup in the last legislature.

Let me cite a few concerns with the specific of AB 770. In the interest of time I only mention a few as it is a lengthy bill:

- Requires refunding of impact fees not used in 8 years and requires annual impact fee reporting. *Comment: Likely is duplicative of an existing statute. Creates an accounting challenge of whom to refund. Annual report is an unfunded mandate- whom receives this report? Sounds like another responsibility added to the State to check if reporting is completed. Most communities are very fair with imposing impact fees.*

- Changes the process and requirements for security instruments related to new infrastructure in subdivisions. *Comment: State should not dictate how cities obtain performance on construction of infrastructure. Do Cities tell the State how to perfect performance on State highway projects? No.*

- Allows parkland fees in lieu of parkland dedication in new subdivisions. *Comment: If a parcel is identified for acquisition in a legally adopted element of the Comprehensive Plan, absolutely no- the City should have the decision to acquire or fee-in-lieu- not the developer or the State. This is the State getting in the business of how to create recreational opportunities in local communities.*

- Prohibits stormwater management ordinances that don't comply with statewide standards. *Comment: Strongly oppose as cities best know the regional nuances of flooding and local resources to protect property.*

- Requires preparation and posting of reports detailing development fees charged. *Comment: Annual report is an unfunded mandate- whom receives this report? Sounds like another responsibility added to the State if the State is verify this requirement.*

- Includes an unfunded mandate requiring an annual Housing Affordability Report.

Comment: Likely a meritorious goal, but an annual report is an unfunded mandate- whom receives this report? Sounds like another responsibility added to the State if the State is verify this requirement.

General: For a legislature that wishes to promote business, AB 770 adds local requirements that divert City staff attention to paperwork versus assisting business. "*Wasted resources*" is the theme of some of AB 770.

I did brief Brookfield Mayor Steve Ponto on AB 770 and here are his thoughts:

"I am concerned about this bill as constituting a further erosion of local control. I believe this is bad government. Local government should be given the latitude to deal with their specific situations and reflect the concerns and priorities of their residents. Time and again Brookfield's surveys show that residents have the most confidence in their local governments to deal with local issues".

Again, as a representative of Brookfield, we ask that you reject AB 770 and go back and work with local governments including those in urbanized areas to rework the bill as there are some valuable components that we support.

Daniel F. Ertl, A.I.C.P.
Director of Community Development
City of Brookfield

C: Mayor Steve Ponto

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To: Assembly Committee on Housing and Real Estate
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities
Date: January 3, 2018
Re: AB 770, Limiting municipal regulatory authority and ability to impose impact fees; New reporting mandates.

The League of Wisconsin Municipalities opposes AB 770 as introduced. While we appreciate the authors' willingness to meet with us and to make changes to earlier versions of this bill that we recommended, we continue to have concerns about many provisions in the bill. Discussions with the author and the proponents of the bill are ongoing and we are encouraged that additional changes addressing our concerns are under consideration. We will continue to work with the author.

Our top concerns are:

1. Section 61 – **Deleting Sec. 281.33(6), Prohibiting municipalities from enacting storm water regulations stricter that statewide standards**. This provision repeals a compromise provision inserted into state law three years ago allowing communities to exceed state standards if necessary to address storm water quantity issues (i.e., flooding) or to comply with federally approved and state imposed total maximum daily load (TMDL) water quality standards. The increased intensity of storm events has elevated not diminished the need to manage stormwater quantity. State stormwater standards in NR 151 may be adequate to address erosion control and normal stormwater quality concerns; but they were not designed to be comprehensive stormwater quantity controls. Many communities have stormwater quantity standards that have been in effect for more than 10 years. Eliminating these options will only increase potential flood damage to developed areas.

   Regarding TMDL standards, currently state stormwater standards in NR 151 only require a 20% reduction of pollutants in redeveloped areas. If municipalities are limited to 20% in redeveloped areas they will not be able to comply with state imposed and federally approved TMDL limits. Communities in the Rock and Fox watersheds, for example, are required under their municipal stormwater permits to comply with TDML waste load allocations requiring in some cases sediment load reductions in excess of 70%. Since new development is already at 80%, reaching compliance necessarily requires increased controls in redeveloped areas along with other more stringent requirements, which this bill as introduced would disallow.

2. Section 59 – **Requiring that park fees imposed as a condition of subdivision approval comply with impact fee law standards and requirements**. State law has always distinguished between park fees imposed as a condition of subdivision approval under Ch. 236 and impact fees imposed on new development under sec. 66.0617. Impact fees are used to help cover the capital costs of public facilities necessary to serve new development. Park fees under ch. 236 are used to acquire land for parks necessary to serve the new development. The park fee enabling legislation is longstanding and was treated outside of and separate from impact fees when the impact fee enabling legislation was enacted. There is no need at this time to

apply the impact fee law standards to park fees imposed as a condition of subdivision approval.

3. Section 21 – **Prohibiting new and additional charges for services rendered by a storm water system against properties retaining at least 90% of storm water.** We are concerned that this provision as drafted will prohibit a municipality with a stormwater utility from charging utility fees against properties that retain at least 90% of stormwater. This would be inconsistent with prior PSC decisions on this issue. Most storm water fee ordinances give properties that retain and treat 90 percent of their water onsite a credit against their fee. All properties benefit from municipal storm water systems when streets don't flood regardless if they retain 90 percent of the water that falls on them. Even though a property may retain 90% of the water on site, the municipality still incurs costs associated with the property due to MS4 permit compliance requirements. For example, the municipality must monitor the site yearly and ensure on-site facilities are being inspected and maintained by the property owner. If the inspections aren't being done, the City will have to perform the inspections. Other costs associated with storm water utilities extending beyond just a single site include funding of leaf collection throughout the city.

4. Section 11 and Section 14 – **Allowing developers to pay impact fees by bond or a letter of credit; and making impact fees payable 6 months before costs to construct public facilities are incurred.** We don't understand how a bond could work in lieu of fees paid at the time a building permit is issued. Also, regarding the time of payment, it's typically not possible to know precisely when a public facility for which the impact fees are collected will be constructed let alone six months prior to construction. This provision makes an easy to understand and apply provision confusing and impractical.

5. Section 50 – **Prohibiting municipalities from limiting weekend private construction work.** Whether and when to allow construction noises to occur on weekends is a quintessential issue of local determination. We researched municipal ordinances regulating construction noise on weekends. We found that communities are all over the map with regard to prohibiting construction noises on the weekend. Some limit the times construction work can occur. Some allow on Saturday, but not Sunday. Many don't regulate it all. That is the genius of local control. The level of regulation reflects the desires and character of the community. One possible compromise approach, is to require that municipalities prohibiting weekend or Sunday work must provide for a process by which a builder may request a special exception under extraordinary circumstances for doing work on weekends in those communities.

6. Section 3 – **Definition of "Reasonable Project Costs.**" This new definition, which is over a page long, is too broad and will significantly increase the cost to local governments of exercising eminent domain.

7. Sections 22 and Section 23 – **Mandating municipalities prepare an annual "housing affordability report" and an annual "development fee report.**" While we appreciate changes the authors made to earlier versions of these new reporting requirements, including applying them only to municipalities exceeding 10,000 in population, they still represent unfunded mandates. Complying with the annual reporting mandates will require municipal staff to devote time and resources better spent on economic development efforts or efficiently serving builders, developers, and citizens seeking permits.

While this bill contains an item we support, enabling workforce housing TIF districts, over all its purpose is to limit and reduce municipal powers and the ability of municipalities to recover the costs of serving new development.

The League urges you to vote against recommending passage of AB 770. Thanks for considering our comments.

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January 3, 2018

To: Members of the Assembly Committee on Housing and Real Estate
From: Nick Zavos, Government Relations Director
Re: Opposition to Assembly Bill 770

The City of Madison opposes Assembly Bill 770.

At the outset, I would like to thank Representative Brooks for the amount of time he spent listening to different groups, engaging the substantive details, and attempting to accommodate some of our concerns.

AB 770 bill covers a number of substantive areas. In the interests of time, I will focus on three areas of the bill.

Condemnation - Courts have long limited the use of the income approach because of the fluid nature of net income evidence; it is dependent upon numerous variables such as the motivation of the owner/operator, the economy and economic trends, and even the weather. Overall, the changes in AB770 will drive up the potential cost of condemnation for any non-residential property While the city is concerned about those increased costs, the bill also sets up a system that could frequently lead to paying the condemnee's attorney fees.

Governments do not have access to income-based appraisal data when going through the condemnation process. The cost and comparable sales approach use publically available information. The income approach is based on information exclusively in that hands of the private landowner. Under the bill, a court reviewing the condemnation will be required to consider an income approach. Local governments will very easily find themselves facing huge appraisals after the fact, and will likely be on the wrong side of the %15 percent trigger for attorney's fees. At a minimum, income evidence should only be allowed if an income based appraisal is submitted to the condemnor for reimbursement prior to the taking. This will put the condemnor on notice of the potential costs before actually deciding to proceed with condemning the property.

Impact Fees – letter of credit
Nothing in current law prohibits a municipality from accepting a letter of credit in lieu of the impact fees. The City of Madison already does this; for developments of 60 or more units, the city will accept half the fees at the time of building permit, and the rest as a letter of credit.

AB 770, however, would force all communities to accept a letter of credit for the full amount in all situations. This raises a number of issues -

- Even in an increasingly electronic era, the municipality will need the *original* copy of the letter in order draw on it. A lost letter of credit may mean the municipality cannot draw on it. In Madison, we store them in a safe.
- A municipality will only get paid under a letter of credit after performing specific actions and meeting the

requirements spelled out in letter. These conditions must be strictly complied with. Since municipalities currently have the discretion whether to accept a letter of credit, they can ensure there are no problematic conditions. However, if municipalities are *required* to accept them, letters of credit could include conditions such as required arbitration, venue selection in another state or country, or onerous certification requirements.

- How will refunds be handled? Current law requires refunded impact fees to go to the current land owner; the developer has factored the impact fee into the price of the house. If the municipality only holds a letter of credit, there will be no money to refund. Would this just be a windfall for the developer?

The following changes could alleviate some of these concerns

- Set a minimum development size for payments with a letter of credit. This would reduce the number of letters of credit and their associated administrative burden. Communities would not be forced, for example, to accept and track numerous small letters of credit on individual single-family homes. In addition, it will effectively exempt many smaller communities from a burden they are likely not staffed to handle.
- Require a certain percent of the fees to be paid up front with the remainder due in an established period of time. Establishing an up-front amount is fairer allocation of risk. In addition, requiring the remainder to be paid in a certain time allows for refunds to the appropriate party, and provides some budgetary certainty to communities for financial planning.
- There should be a provision allowing municipalities to ensure the conditions are sufficient to protect the public interest.
- Move the language from section 14 into section 11. As written, these two sections would prevent a municipality from *ever* getting paid. Under the bill, when a developer owes an impact fee, he or she will not have to pay the municipality until 6 months before the municipality begins construction. This leaves the municipality with the burden of tracking these fees for years, with no leverage to ensure payment because the building permit has already been issued. Payment, however, is defined as only providing a letter of credit. It is unclear when, if ever, the developer will actually have to provide the funds.

Plat approval letter of credit - We should not create barriers within these bonds that make the public's ability to collect on the bond less likely. This will ultimately only hurt the tax payer.

- Bona fide bid – Requiring a municipality to accept the bid of a developer's contractor leaves local taxpayers unprotected, and is an invitation for abuse. A bid is not binding, and the contractor has an interest in making it low. The contractor is trying to get the subdivider's business, not looking out for the public's interest. This is akin to requiring a bank to make a home loan based on the valuation offered by a homeowner's accountant. This section should be deleted.
- Requiring municipalities to accept a bond if it is "consistent with" a standard form used by federally approved sureties is problematic. The bond company itself does not need to be federally approved, nor does the company even need to be licensed to do business in Wisconsin. In addition, it removes any control over the terms of the bond. For example, the bond forms could have arbitration clauses or venue selection that places venue out of state. Municipalities could be forced to go to federal court in Delaware to get payment. This section should be deleted, or, at a minimum, the issuer should be required to be licensed do business in Wisconsin, venue and arbitration provisions should be prohibited, and the community should be allowed negotiate terms sufficient to protect the public interest.

Thank you for the opportunity to testify. I would be happy to answer any questions.

WISCONSIN BUILDERS ASSOCIATION

660 John Nolen Drive, Suite 320
Madison, Wisconsin 53713-1469

DATE: January 3, 2018

TO: Members of the Assembly Committee on Housing and Real Estate

FROM: Brad Boycks
Executive Director
Wisconsin Builders Association

SUBJECT: Wisconsin Builders Association Support for Assembly Bill 770

On behalf of the 4,000 members of the Wisconsin Builders Association (WBA), we ask for your support of **Assembly Bill 770 (AB 770)** which is authored by Senator Frank Lasee and Representative Rob Brooks. We believe that if signed into law AB 770 will help make housing more affordable for Wisconsin families.

A recent report by the National Association of Home Builders found that government regulation accounts for 24.3% of the final price of a new home, with most of that expense resulting from the development phase. In other words, three-fifths of the regulatory costs of a new home are due to government regulations in the development phase.

It is our hope that many of the provisions contained in AB 770 will help bring down costs associated with neighborhood development, and, consequently, also lower the cost of a new home.

Some highlights of the WBA-supported AB 770 are:

- The creation of a workforce housing tax incremental district (TID) which also allows a municipality to reduce impact fees to encourage this housing option.
- Park fees in state statutes are addressed only as an impact fee and not in multiple places in state statutes.
- Changes to provide clarifications and greater flexibilities for developers to use bonds in the dedication of infrastructure that is paid for by a developer and dedicated to a municipality. These are clarifications of 2013 Wisconsin Act 280 which passed the legislature on voice votes in both houses.
- Prohibiting a developer's agreement from mandating building codes that exceed the statewide uniform standards of the Uniform Dwelling Code.

-Over-

- Multiple changes to the impact fee state statutes, including refunding impact fees if not used after 8 years (current law is 10 years), municipal reporting on the usage of impact fees, allowing the use of a letter of credit to pay for an impact fee if the fee is not going to be used right away, allowing an impact fee to be paid when a permit is pulled or 6 months prior to when the fee will be used, deleting the requirement of a petition to contest an impact fee needing to be filed within sixty days of the fee going into effect, and forbidding a municipality from using impact fees for operations and maintenance of public facilities.
- Prohibits the use of inclusionary zoning ordinances.
- The income approach can be used in the valuation of property that is acquired through eminent domain.
- The regulation of storm water management systems is made statewide and uniform. Some municipalities have stormwater stay-on requirements that far exceed the state DNR standards at a detriment to housing affordability for low and middle-income families, while failing to provide an environmental or economic benefit to the municipality that would not have been achieved by using the state DNR standard.
- Protests concerning zoning require a simple majority vote to pass (current law is a supermajority vote of three-fourths).
- Asks local units of government to be more transparent with the public on fees related to housing and development that are being charged in that municipality

Thank you for your consideration of the above items of AB 770. We look forward to the testimony and debate on AB 770 as well as working with committee members.

Finally, we ask for your support of this important piece of legislation to streamline the development process in Wisconsin, which, in turn, will result in more affordable housing options for Wisconsin families.