ADAM JARCHOW
STATE REPRESENTATIVE • 28TH ASSEMBLY DISTRICT

Testimony on AB 582/SB 464 – Statewide Uniformity
Senate Committee on Insurance, Housing, and Trade
Public Hearing: Tuesday, January 5, 2016 – 11:00 a.m.
State Capitol – 412 East

One of this country's founding fathers, Thomas Jefferson said, ***"The right to procure property and to use it for one's own enjoyment is essential to the freedom of every person, and our other rights would mean little without these rights of property ownership. It is also for these reasons that the government's power to tax property is placed in those representatives most frequently and directly responsible to the people, since it is the people themselves who must pay those taxes out of their holdings of property."***

I believe in that statement and what it means. This country has been built on the freedom to own and protect one's own property. This country has been built on being able to rise up from nothing, work hard, and being able to leave something great to future generations. A person's property is likely one of the biggest investments someone can make. People do not buy property so that the government could tell them what to do with it.

Creating an environment where people want to live and raise a family is good for this state. Creating an environment where entrepreneurs see value in starting a business here is essential to the viability of this state. This bill is not just about property rights, but about jobs and the economy. The economy, certainly in Northwestern Wisconsin, is fragile. Bringing more certainty to regulations and government overreach can mean more certainty in the business climate and the economy North of Highway 29 and all across our great state.

Some of you have probably received phone calls and emails from town, county, city and village board members expressing concerns about this bill. I can't tell you how much we appreciate the hard work they do and their input. As a result of their input, we were able to work constructively with Wisconsin Towns Association, Wisconsin Counties Association, and the League of Wisconsin Municipalities. The sub you have in front of you represents weeks of very good dialogue and work. As a result of that dialogue, all three groups have officially changed their positions to neutral. We still have a bit of technical clean-up work to do, but you are looking at a bill that represents the best parts of our system. This sub represents a number of groups representing hundreds of thousands of citizens with dramatically differing points of view, getting together and working collaboratively to find common ground.

Capitol Office: Post Office Box 8952 • Madison, WI 53708-8952 • (608) 267-2365 • Toll-Free: (888) 529-0028 • Fax: (608) 282-3628
Rep.Jarchow@legis.wi.gov

Some of the provisions in the sub do the following:

Requires that a municipality notify a property owner of any zoning changes being made to their property that would change the density or change the allowable use of the property. If there are zoning changes to someone's property, the property owner should at least be notified before that happens. This provision gives property owners the peace of mind that they will know when these things are happening beforehand. It has been reworked in a manner that is palatable to the municipal groups.

This bill also gives property owners the certainty of knowing that in a contested court case, if a local ordinance is unclear and challenged in court, the ruling shall favor property owner. This means, "a tie goes to the property owner." If a local ordinance is unclear, then the property owner deserves free use of their private property.

If a property owner's property is "down-zoned" by local ordinance, then a 2/3 majority of the municipal board is required. This means that a vote on down zoning a property cannot be passed without a large majority of voting members. This is a place, again where we made changes at the request of municipal groups to make it work better.

This bill states that cities, villages, towns, and counties cannot restrict property owners from transferring or selling ownership or interest in their property. Part of being a property owner means that you are able to sell or transfer that property to someone else without the government telling you no. Property rights includes the right to sell said property, not just owning it or maintaining it. This codifies current case law.

If land that is platted and zoned as residential, commercial, or manufacturing with no improvements, this bill clarifies that that land is assessed at it unimproved value until a building permit is issued. Until there is a permit, that land is just that – land. While it is in the stage prior to building a structure, the property owner should have the right to pay taxes based on its unimproved value, not based on something that may be built there in the future. We have worked with assessors and municipal groups to improve this provision. There are likely some additional tweaks necessary to perfect this provision.

In the most recent budget, restrictions were created in regards to time of sale requirements. Restrictions were still imposed on buyers in the form of "time of occupancy" restrictions. This defeats the purpose of the statute put in place in the budget. No person who purchases a property should have to make changes to that property just because the property changed hands. This bill closes that loophole in favor of the property owner.

Finally, this bill allows for the substitution of a hearing examiner when a contested case hearing is granted. Criminal defendants and civil litigants currently have the right to a free substitution of a judge and so should property owners. Shouldn't property owners be treated at least as well as criminal defendants?

Putting the relationship between the government and property owners in balance is important. It is only right to restore the rights of property owners that have been wrongly taken away over the years. Allowing the current climate to continue will only allow the government to continue to infringe on property rights.

Philosopher John Locke said, **"The reason why men enter into society is the preservation of their property."** Here in Wisconsin, in 2016, over 300 years after John Locke said that, hardworking taxpayers are fighting for their property rights. This bill seeks to give those rights back to the people that worked so hard for that property while still protecting the environment and others access to property.

I want to thank all of the groups, including the Wisconsin Realtors Association, Wisconsin Builders Association, Wisconsin Towns Association, Wisconsin Counties Association, League of Wisconsin Municipalities, and others who have worked so hard to get this sub to the place that it is today.

I will be happy to take your questions.

Before the Senate Committee on
Insurance, Housing and Trade

Hearing on SB 464
January 5, 2016

Paul G. Kent
Special Counsel to the Town of Saratoga

My name is Paul Kent, I am an attorney at Stafford Rosenbaum LLP and serve as special counsel to the Town of Saratoga. I am here today on behalf of the Town to address the vested rights provisions in SB 464.

As originally drafted, I had significant concerns with the proposed expansion of the law of vested rights in this bill and the significant adverse impacts those changes would have to the Town of Saratoga and other municipalities throughout the state. The substitute amendment removes the expansions and removes many of those concerns. I appreciate the work of the authors in that regard. I do however have some remaining concerns on how the effective date provisions have been drafted because they appear to make the current vested rights statute retroactive in application.

Before addressing the effective date issue, I would like to comment briefly on why the vested rights provisions are of concern to the Town and the need for us to resolve the remaining technical issues.

Wisconsin Common Law of Vested Rights

Historically, local governments could change their zoning or other police power ordinances to address matters of public health, safety and welfare as issues arose. It is well established under Wisconsin law that a person has no "vested right" to existing zoning. There were only limited circumstances in which a person's rights were considered to have vested so that zoning or other regulations could not be changed. Wisconsin common law utilized a "bright line" test which allowed for rights to vest if the person filed a building permit application that conformed to the zoning and building code requirements in effect at the time of the application. *See, Lake Bluff Housing Partners v. City of South Milwaukee,* 197 Wis. 2d 157, 540 N.W. 2d 189 (1995).

Expansion of Vested Rights in 2013 Act 74

In the last legislative session, 2013 Act 74 created Wis. Stat. § 66.10015 which expanded the common law of vested rights in several respects:

- It was expanded to apply to a variety of local approvals in addition to building permits
- It was extended to applications filed in other political subdivisions
- The vesting occurred upon the filing of an application regardless of whether the application was compliant with existing requirements but allowed the local government to object to any noncompliance within 10 days of filing of the application and then allowed an applicant to cure the noncompliance.

Act 74 was however prospective in application and did not apply to non-contiguous parcels.

Original Concerns with SB 464

As originally drafted, the provisions of SB 464 further expanded the provisions of Wis. Stat. § 66.10015:

- The bill created vested rights to local approvals upon the filing of *state* permit applications.

- The bill allowed vested rights to extend to non-adjacent parcels.

- The bill expanded the definition of the term "approval" and the term "project."

- The bill gave the vested rights provisions retroactive effect.

Comments on the Substitute Amendment

The first three issues are removed in the proposed substitute amendment. However there is a technical change to the term "approval." That change in itself is not a concern. The concern is that the technical change was given a special provision on "initial applicability." Section 43 of the Substitute Amendment would make 66.10015(1)(a) apply to "any *project* for which an application for *approval* is pending on the effective date of this subsection." The term approval is not limited to local approvals. Thus if a project has any pending local, state or federal approval at the date this bill becomes law, then the requirements of 66.10015(1)(a) appear to apply to that project. If the provisions of (1)(a) apply to a pending project, then the vested rights provisions under 66.10015(2) also appear to apply:

- Under 66.10015(2)(a) a local government must approve, deny or condition "an application for an approval" based solely on existing local requirements at the time the approval is submitted.

- Under 66.10015(2)(b) if there is a subsequent application for an approval of the same project the "existing requirements …at the time of filing the application for the first approval shall be applicable to all subsequent approvals."

For example, if there is a project where there was a local approval and there is still a pending state permit approval then the provisions of 66.10015(1)(a) apply. If there is a subsequent application for a local approval for the same project from the local government, the law at the time of the first approval arguably would apply.

In effect, the bill appears to make current law retroactive where there is a pending approval. This is totally contrary to the entire concept of a vested right. A vested right is recognized to prevent prospective changes to an existing application.

I think that there are several ways in which this can be addressed, but it does need to be addressed.

Specific Concerns for the Town of Saratoga

Why is this an issue for the Town of Saratoga? The Town completed its Comprehensive Plan in 2007. Among other things, the Plan's stated intent was to limit uses that could affect groundwater because the US Geological Survey designated the Town as highly susceptible to groundwater contamination. The Town then began to develop a zoning ordinance to implement the Comprehensive Plan, but it was not yet completed when the Wysocki Family of Companies filed a building permit application with the Town in June 2012. The building permit application was for six buildings on 98 acres for a dairy production facility known as Golden Sands Dairy.

The Town enacted a moratorium to allow zoning to be completed, but a court concluded that Wysocki had vested rights to the building permit for the six buildings on 98 acres. In a separate lawsuit, Wysocki sued the Town to assert vested rights, not just to the 6 buildings described in the building permit, but to the 4660 acres scattered throughout the Town on which it intends to apply its 55 million gallons of liquid manure – a concern given the sensitive nature of its aquifer. That case is now on appeal in the Court of Appeals. The case is based on the law of vested rights applicable in June 2012 that predated the enactment of 2013 Act 74.

If the vested rights provisions of 66.10015 become retroactive, it could impact the existing and future application of the Town's zoning to protect the property values of its residents. There is no need for the legislature to interject itself into on-going litigation in this case. The technical change to the term "approval" should be prospective only.

Wisconsin **REALTORS®** Association

To: Senate Insurance, Housing and Trade Committee Members

From: Tom Larson, Senior Vice President of Legal and Public Affairs

Date: January 5, 2016

RE: Private Property Rights – AB 582/SB 464

The Wisconsin REALTORS® Association supports AB 582/SB 464, legislation aimed at strengthening private property rights by, among other things, codifying current case law, clarifying the intent of current statutes, and enhancing the due process protections for property owners who seek to use and enjoy their property in a reasonable manner.

Background

The private ownership of property is a fundamental right upon which the United States was founded. The right to use property is among the basic elements of property ownership known as "the bundle of rights," which includes the right to possess, control and dispose of the property. While state and local governments have broad authority to restrict these rights, this authority is not unlimited. State and local regulations must be fair and reasonable, and they must be enacted in accordance with due process requirements such as fair notice and public hearings. Moreover, even if created with the best intentions, regulations affecting the use of property, at some point, can go "too far."

Moreover, regulatory certainty and predictability are critical components of successful real estate markets. When regulatory uncertainty exists, real estate markets and prices become unstable. Property owners want to know how a property can be used prior to purchasing it because the allowable uses of a property will in large part determine the property's value.

Proposed Legislation

To establish a better balance between local control and private property rights. AB 582/SB 464 contains the following provisions:

1. Ambiguities in local ordinances – Property owners should be able to determine the meaning of a regulation and how it impacts the use of their property. As recognized by current case law, local regulations must be clear and specific so that inconsistent and unfair applications of those regulations do not occur. AB 582/SB 464 codifies this current case law by providing that any ambiguities in local ordinances should be resolved in favor of a property owner's free use of property. *See* Cohen v. Dane County Bd. of Adjustment, 74 Wis. 2d 87, 91 (1976). In other words, if there is confusion about how a local regulation affects the use of property, the tie goes to the property owner.

2. Right to alienate any interest in property -- As recognized by Wisconsin courts, property owners have a fundamental right to freely dispose of or alienate property, which includes the

right to sell, lease or give it away. *See* Le Febvre v. Ostendorf, 87 Wis. 2d 525, 531-32 (Ct. App. 1979). While local governments have the right to regulate how a property can be used, they should not be able to regulate how a property is owned. If all 1,800 local units of government in Wisconsin had different requirements for how property could be owned, real estate transfers would be horribly confusing. Accordingly, AB 582/SB 464 codifies current case law by prohibiting local governments from restricting the ability of property owners to freely alienate any interest in property.

3. Direct notice for zoning changes – Current law requires local governments to provide direct notice to property owners of any proposed change to zoning regulations that would change the allowable use or density of a property. However, to receive this notice, the property owner must first notify the community that they want to receive notice and agree to pay for any costs associated with sending that notice. To better inform property owners about their right to receive direct notice of proposed zoning regulations, AB 582/SB 464 requires local governments to publish information annually in a class 1 notice, community website, community newsletter, or general mailing to all property owners about a property owner's ability to receive direct upon request to a local community.

4. Supermajority vote to downzone property – When a community engages in "downzoning" of property, the allowable development density of the property is reduced (e.g., from 4 dwelling units per lot to 2 dwelling units per lot) and the property's value generally decreases. Despite this decrease in value, the property owner rarely receives just compensation. To better protect the rights of property owners to use property in the manner in which was allowed at the time of purchase, AB 582/SB 464 requires a supermajority vote (2/3) by local units of government to downzone a property.

5. Development moratoria for counties – Because a moratorium on land development (rezonings, subdivisions, and land divisions) completely shuts down development for a specified period of time, it can have a devastating impact on the growth of jobs, tax base, and economic growth in general. Accordingly, legislation was enacted a few years ago (2011 Wis. Act 144) to authorize cities, villages and towns to enact development moratoria only under certain limited circumstances. This authority was not extended to counties because of the large geographic region that could be impacted, and the fact that cities, villages and towns within the county were able to enact moratoria if necessary. Accordingly, AB 582/SB 464 clarifies current law by specifying that counties cannot enact development moratoria.

The WRA respectfully requests your support for AB 582/SB 464. If you have questions or need additional information, please contact us at (608) 241-2047.

State of Wisconsin

2011 Senate Bill 504

Date of enactment: **March 21, 2012**
Date of publication*: **April 4, 2012**

2011 WISCONSIN ACT 144

AN ACT *to create* 66.1002 of the statutes; **relating to:** limiting the authority of a city, village, or town to enact a development moratorium ordinance.

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

SECTION 1. 66.1002 of the statutes is created to read:

66.1002 Development moratoria. (1) DEFINITIONS. In this section:

(a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(b) "Development moratorium" means a moratorium on rezoning or approving any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance if the municipality has enacted a comprehensive plan, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period in which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

(b) The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity specified under sub. (4), except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health professional stating that in his or her opinion the proposed or anticipated activity specified under sub. (4) presents such a significant threat to the public health or safety that the need for a moratorium is justified.

(3) ORDINANCE REQUIREMENTS. (a) An ordinance enacted under this section shall contain at least all of the following elements:

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* Section 991.11, WISCONSIN STATUTES 2009–10 : 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 as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. A statement describing the problem giving rise to the need for the moratorium.

2. A statement of the specific action that the municipality intends to take to alleviate the need for the moratorium.

3. Subject to par. (b), the length of time during which the moratorium is to be in effect.

4. A statement describing how and why the governing body decided on the length of time described in subd. 3.

5. A description of the area in which the ordinance applies.

6. An exemption for any activity specified under sub. (4) that would have no impact, or slight impact, on the problem giving rise to the need for the moratorium.

(b) 1. A development moratorium ordinance may be in effect only for a length of time that is long enough for a municipality to address the problem giving rise to the need for the moratorium but, except as provided in subd. 2., the ordinance may not remain in effect for more than 12 months.

2. A municipality may amend the ordinance one time to extend the moratorium for not more than 6 months if the municipality's governing body determines that such an extension is necessary to address the problem giving rise to the need for the moratorium.

(c) A municipality may not enact a development moratorium ordinance unless it holds at least one public hearing at which the proposed ordinance is discussed. The public hearing must be preceded by a class 1 notice under ch. 985, the notice to be at least 30 days before the hearing. The municipality may also provide notice of the hearing by any other appropriate means. The class 1 notice shall contain at least all of the following:

1. The time, date, and place of the hearing.

2. A summary of the proposed development moratorium ordinance, including the location where the ordinance would apply, the length of time the ordinance would be in effect, and a statement describing the problem giving rise to the need for the moratorium.

3. The name and contact information of a municipal official who may be contacted to obtain additional information about the proposed ordinance.

4. Information relating to how, where, and when a copy of the proposed ordinance may be inspected or obtained before the hearing.

(4) APPLICABILITY. A development moratorium ordinance enacted under this section applies to any of the following that is submitted to the municipality on or after the effective date of the ordinance:

(a) A request for rezoning.

(c) A plat or certified survey map.

(d) A subdivision plat or other land division.

SECTION 2. Initial applicability.

(1) This act first applies to any request for rezoning, plat or certified survey map, or subdivision plat or other land division that is submitted to a municipality on the effective date of this subsection, unless the municipality and a developer agree to apply the municipality's development moratorium ordinance retroactively.

Our town Supervisor was unable to attend todays hearing. I would like to submit his testimony.

Vested Rights Provisions in SB 464/AB 582

The Town of Saratoga's zoning ordinance was designed to address legitimate concerns about land use and groundwater. Its purpose is to protect the health and property values of its 5,200 residents. This bill is an attempt by the Wysocki Family of Companies to legislatively override the Town of Saratoga's zoning ordinances.

The Town developed a Comprehensive Plan in 2007 long before Wysocki's proposed the Golden Sands Dairy. That Plan and the zoning that was subsequently implemented were designed to protect the residents' health and groundwater because the Town recognized that it is in an area highly susceptible to groundwater contamination. This legislature should not override Town zoning efforts.

1. Douglas J. Passineau, Town of Saratoga Supervisor
   7740 Greeler Lane
   Wisconsin Rapids,
   WI 54494

2. The Town of Saratoga is in an area that the US Geological Survey has designated as highly susceptible to groundwater contamination.

3. The Town of Saratoga has more than 5,200 residents who are dependent on private wells to provide clean, fresh drinking water and water for their businesses.

4. These and other concerns prompted Town Board and Plan Commission in the early 2000's to begin developing a comprehensive plan governing land use. That Plan was designed to protect its residents and its groundwater. The Comprehensive Plan was finalized in 2007 and stated its intent to limit industrial and agricultural uses that could affect groundwater.

5. It should be noted that this effort pre-dated the Wyscoki's proposal to develop a 5300-cow dairy in the Town by *more than 5 years* and was not targeted to this operation.

6. Shortly after 2007, the Town then began to develop a zoning ordinance to implement the Comprehensive Plan. Comprehensive zoning involves a lot of steps and time. We had several drafts prepared by early 2012, but the plan was not yet completed when Wysocki's filed the building permit application for six buildings on 98 acres for the dairy in June 2012.

7. Wysocki's have admitted under oath that they prepared their applications in secret so the Town would not be aware of their plans until the applications were filed.

8. The Town adopted a building moratorium and completed its zoning ordinance in November 2012. The zoning ordinance prohibits large-scale agricultural operations in the Town.

9. In a subsequent court case the court concluded that Wysocki's had vested rights to the six buildings on 98 acres that were part of its June 2012 application because the application was substantially compliant with existing land use regulations at the time it was filed.

10. In a separate lawsuit, Wysocki's sued the Town to assert vested rights, not just to the 6 buildings described in the building permit, but to the 4660 acres scattered throughout the Town on which it intends to apply its 55 million gallons of liquid manure. That case is now appeal in the Court of Appeals.

11. As local officials we view our job as to protect the public health and property rights of our citizens. We spent years developing a Comprehensive Plan and zoning ordinances designed to accomplish that.

12. According to the Wysocki Environmental Impact Report that is yet to be turned in, an impervious layer of clay referred to as the New Rome Layer does not exist contiguously as they have stated. Therefore their theory that they will draw from a lower aquifer and not jeopardize the resident's private drinking water wells is incorrect. It is our duty as Town officials to preserve this resource.

13. This legislature should not intervene to change the existing vested rights law and override the Town's zoning. **The vested rights provision of this bill should be removed.**

Rhonda Carrell

From: "Rhonda Carrell" <dandrcarrell@solarus.biz>
Date: Monday, January 4, 2016 10:50 PM
To: "Rhonda Carrell" <dandrcarrell@solarus.biz>
Subject: Testimony on Senate Bill 464 Assembly Bill 582

My testimony. Rhonda

Happy New Year!

I am here to testify against SB464.

My name is Rhonda Carrell. I am a salon owner, running a lifelong business that is reliant on the clean,

pure water our community currently possesses. A Comprehensive Plan protecting our groundwater, which is

rated as highly susceptible to contamination because of our permeable, sandy soils (USGS map) was

implemented when (in 2007) the State of Wisconsin asked the Towns to do so. This was a strong draw for us when

we moved our home and business to the community, as we had had serious issues with water

contamination on 3 different occasions in surrounding areas within the Central Sands. This Town was being

proactive in working on zoning to protect the water from any sort of contamination and protecting the

health of residents and their property values. We were sold!

We were living our dream in a forested, residential and recreational area on 10 acres, a parcel like

many residents in our community enjoy. On June 6, 2012, the Wysocki Family of Companies

announced (via TV, press release and binders dropped at our Town clerk's home as a formality informing

our Town Board) they had submitted application for permit to the DNR for a CAFO (Concentrated Animal

Feeding Operation) dairy consisting of 6,130 animal units (5,300 cows) producing 55,000,000 gallons of

liquid manure and 25,000 tons of solids to be spread and irrigated from center pivot irrigation systems on

8,000 acres (12 sq. miles) around our 5,200 residents homes and businesses. This is not our dream. All

residents and businesses rely on shallow private wells for their drinking water. Five hundred homes would

be bordering or within 1/4 mile the fields interspersed throughout our Town.

[redacted] USGS maps state this is the worst area in the

state for potential groundwater contamination. The Wysocki's want our legislature to change laws to make

it impossible for our Town Board to preserve our drinking water. The DNR is the permitting authority but

cannot say NO. The proposed CAFO dairy, which would mirror the Wysocki's Central Sands Dairy, directly

across the Wisconsin River in Juneau County, Town of Armenia has the same sandy permeable soils,

projected number of animal units to be the same and according to their own monitoring wells, CSD has

shown nitrate levels recently as high as 77 mg/l, nearly 8 times the state standard for health (10 mg/l).

Residents have been driven from their homes. Nothing changes the fact that sandy soils cannot protect the

groundwater from contamination, especially with the heavy loading of chemicals or manure that comes

with an operation of the proposed size.

Our community has installed 10 monitoring wells. Data collected proves our water quality and quantity. I

commend our Town Board for completing the Zoning Ordinance they had started in 2007 in order to

preserve our Town. This legislature should not intervene on behalf of Wysocki Family of Companies or another

entity to change existing law pertaining to vested rights, nor should this legislature apply its ruling retroactively

and override our Town's authority in zoning.

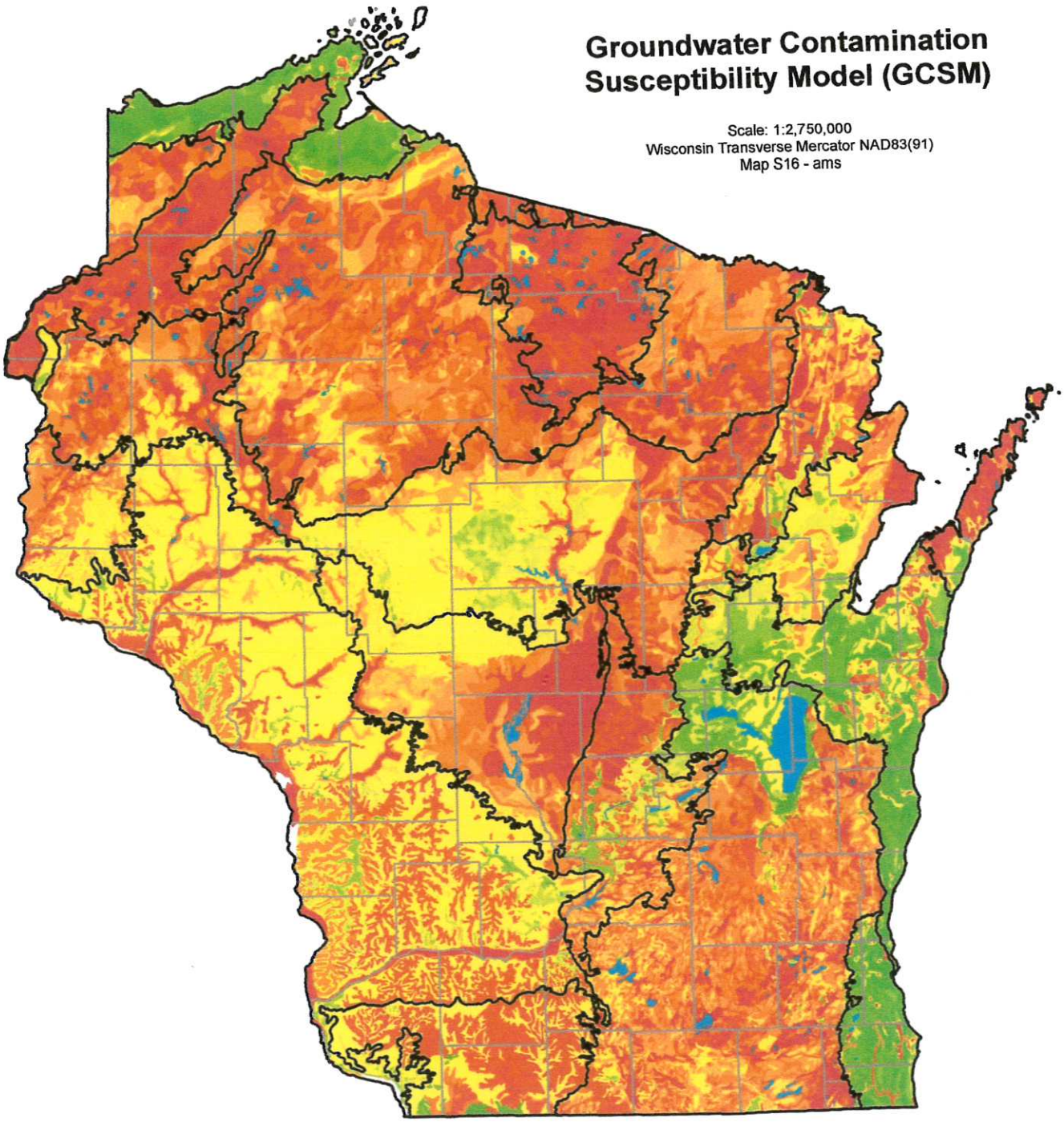
We are pleased to learn that the retroactive clause has been removed from the provision. Thank you for that. In

case you hadn't guessed, I'm from Saratoga.

Rhonda Carrell
2320 Evergreen Ave.
Wisconsin Rapids, WI 54494
715-325-2467

Groundwater Contamination Susceptibility Model (GCSM)

Scale: 1:2,750,000
Wisconsin Transverse Mercator NAD83(91)
Map S16 - ams



The Groundwater Contamination Susceptibility Model (GCSM) for Wisconsin estimates the susceptibility of the state's groundwater to contamination from surface activities. The GCSM was developed by the DNR, the US Geological Survey (USGS), the Wisconsin Geological & Natural History Survey (WGNHS), and the University of Wisconsin – Madison in the mid-1980s. The results of the GCSM are illustrated in a map published in 1987 at a scale of 1:1,000,000 (available from the Wisconsin Geological & Natural History Survey: http://www.uwex.edu/wgnhs/maps.htm).

GCSM Value

- Low susceptibility
- High susceptibility

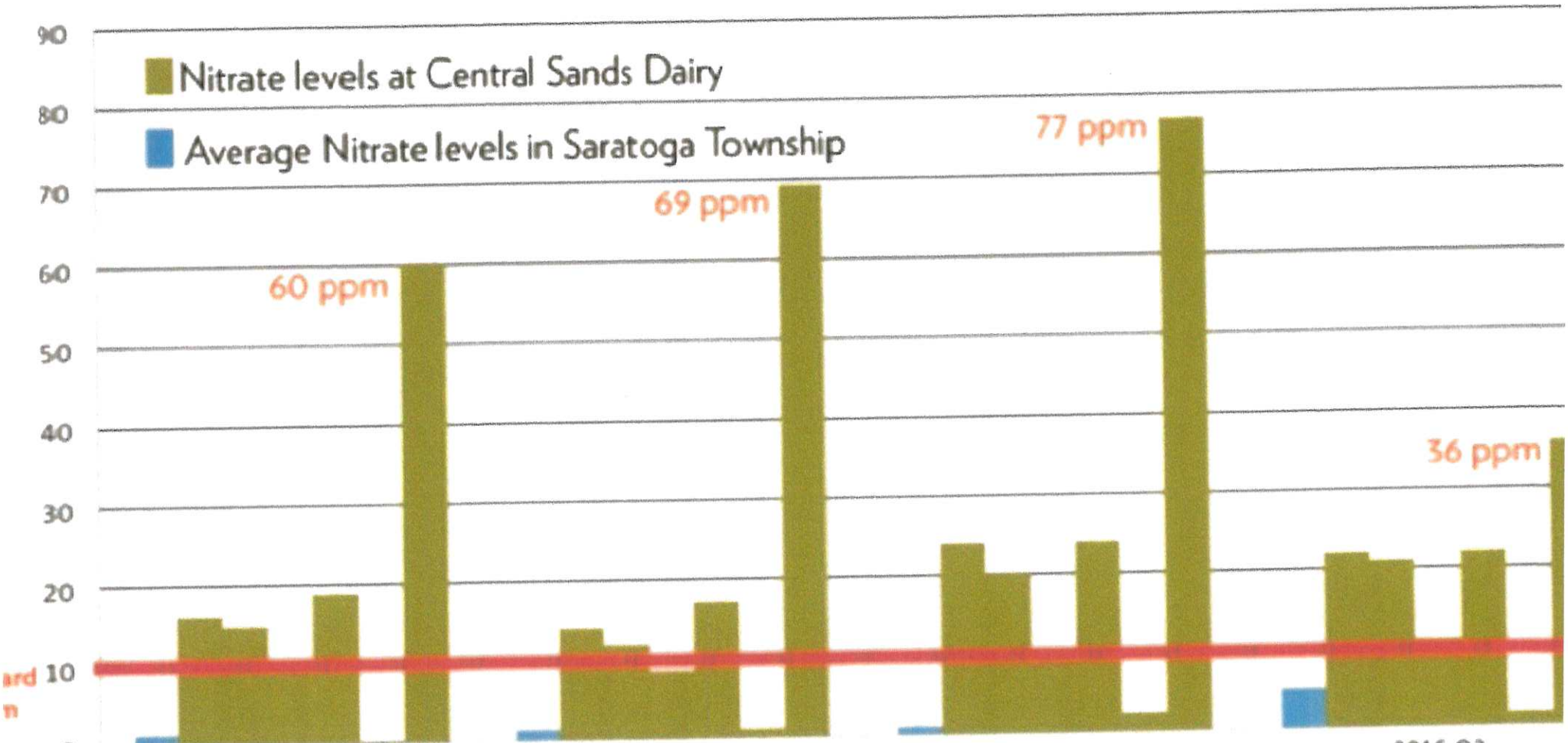
- Ecological Landscape
- County Boundaries
- Open water - not susceptible

0 12.5 25 50 75 100 Miles

0 20 40 80 120 160 Kilometers

N W S

Nitrate Levels at Central Sands Dairy Far Exceed State Standard



	2014 Q4	2015 Q1	2015 Q2	2015 Q3
STGA	1.28	1.37	1.06	5
CSD-1S	16.1	14	24	22
CSD-1D	14.9	11.9	20	21
CSD-2	10.8	8.5	9.6	11
CSD-3S	18.8	17.2	24	22
CSD-D3	0.3	1.25	2.3	1.7
CSD-4	60	69.3	77	36

Contact: Edie Ehlert,
Crawford Stewardship Project
President
edieehlert@centurytel.net, 608-734-3223

RE: AB582/SB464

Assembly Committee on Housing and Real Estate
Senate Committee on Insurance, Housing and Trade

According to the Wisconsin Towns Association the bill is "one of the most damaging bills to local control in recent memory. (The bill) significantly limits the ability to provide for public health, safety, and welfare through reasonable regulation; and, it provides for unfair taxation." The Wisconsin Farmer Union agrees. And we at Crawford Stewardship Project are opposed to AB582/SB464 as written as well.

We ask that the section on vested rights be removed. For example, the bill as written would allow someone or a corporation in Crawford County to apply for a state permit for a high capacity well for their property for any stated industrial project and be granted "vested rights" to then continue that project without regard for local regulations. Further, the land owner could apply that permit to any property he/she owns in the entire state with no notification or regard to local government regulations there. The entire reason for local zoning and ordinances is to carefully decide proper land use of a given area and regulations to conserve and properly use our resources. Each community is unique and requires local planning and regulation for present use and care for future generations.

The bill would also damage farmland preservation by modifying property tax treatment of undeveloped land. Farmers currently benefit from having their land taxed at "use value" rather than "full value". Other property owners pay for that benefit with higher taxes. And when farmland use changes, the farmer must pay a penalty for that special tax benefit. The bills would allow developers to develop that land with no tax penalty, eliminating the farmland preservation aspects of the law. We ask that you eliminate the creation of a developers discount and unfair taxation while preserving the farmland preservation aspects of use value taxation.

As a rural organization, we recognize the immense work and expense our towns and counties have done to create land use plans as suggested by the state, in addition to our zoning and other ordinances. The bill as written would bypass local regulations in favor of developers.

The bill prevents a comprehensive plan from being used to prohibit conditional uses. Comprehensive plans were developed with direct input from residents and therefore are the community's vision on how and where specific types of development are appropriate. With this provision of the bill, local governments would no longer be able to do their legally defined jobs of protecting the health and safety of their constituents.

We oppose AB582/SB464 as written.

Respectfully submitted,

Edie Ehlert
Crawford Stewardship Project President

SB464 & AB582 Testimony

Criste Greening
6451 Oak St
Wisconsin Rapids, WI 54494
715-570-8760

I am a educator, small business owner, homeowner, wife, and mother.

The township in which I live, Saratoga, is in an area the United States Geological Survey has designated as highly susceptible to groundwater contamination. Currently, the town has excellent groundwater. That was proven this past May & June when approximately 350 residents had their water tested at the University Wisconsin Stevens Point Environmental & Water Analysis Lab where results recorded showed the average nitrate level in Saratoga wells tested was 2.1.

Additional proof of our pristine water is gathered regularly from the town's groundwater monitoring wells (which have been installed throughout the township) where data has been collected throughout the past year with result again identifying our groundwater as pristine. In contrast the Wysocki Companies also own monitoring wells at the Central Sands Dairy just across the river on similar soils to that of Saratoga. However, their monitoring wells have tested as high as 77 ppm for nitrates, essentially 8 times the standard of 10 ppm.

Our water is pristine due to the town's creation & implementation years ago of a detailed Comprehensive Plan and now its current zoning. The town of Saratoga established its zoning and ordinances to protect the health and welfare of its citizens as well as its pristine groundwater and forested lands with full support of its residents.

This bill is clearly and directly an attempt by the Wysocki Companies to legislatively override the Town of Saratoga zoning ordinances. This bill causes significant concerns about land use and groundwater protections that were designated to protect the Town & the health, safety, and welfare of its residents.

Saratoga has more than 5000 residents who are dependent on private wells to provide clean, clear drinking water for their homes and businesses. I am one of them. I live on the 10 mile creek which is a class A trout stream. I and my husband are living in our dream home and raising our three beautiful children. We are also small business owners and our business depends on clean, pure water in order to have our chemical processes work correctly and effectively. I have a vested interest in my home and our business both of which rely on clean water.

The town's land use and zoning is designated to protect the residents not just from the Wysocki's and their proposed dairy and the potential pollution it would cause but from ANY operation that poses legitimate threats to its groundwater and the health and welfare of its citizens. There are 500 residential wells in proximity to the fields on which Wysocki's Golden Sands Dairy proposes to apply 55 million gallons of liquid waste and an additional 25,000 tons of solid waste each year on highly susceptible and permeable soils which cover a shallow water table.

This legislation should not intervene to change the existing laws of vested rights and definately not apply the ruling retroactively to the Town of Saratoga or any township override its zoning. I have heard that the retroactive piece has tentatively been removed and if that is true, I thank you.

The vested rights provision however of this bill in my opinion should be completely removed.

Wisconsin Farmers Union
UNITED TO GROW FAMILY AGRICULTURE

TO: Members of the Senate Committee on Insurance, Housing, and Trade
DATE: January 5, 2016
RE: Senate Bill 464
FROM: Kara O'Connor, Wisconsin Farmers Union,
koconnor@wisconsinfarmersunion.com; 608-514-4541

Wisconsin Farmers Union appreciates the opportunity to testify today on Senate Bill 464.

On behalf of the farm families that make up our organization, I am testifying in opposition to Sections 24 and 25 of the Substitute Amendment, which provide a discounted tax rate for developers converting farmland to residential, commercial, or manufacturing uses. This "Developer's Discount" will create an incentive to convert agricultural land to other uses by creating a lower-tax category for the period after agricultural use has ended, but before the alternate use actually commences. Under the terms of the Substitute Amendment, there is no limit on the length of time that this reduced tax rate would apply.

As a farm organization, our chief concern with this provision is that it will negatively impact farmland preservation. From 1992 to 2010, Wisconsin lost a total of 396,583 acres of farmland to urban development. Agriculture is a $88 Billion industry in Wisconsin, but stated quite simply, without farmland, there is no agriculture. The sheer size of agriculture's economic impact in the state is amplified by the fact that the agricultural sector is often counter-cyclical, offsetting the booms and busts in other sectors such as manufacturing and real estate. Our state benefits from agriculture's leveling effect on the economy.

As an organization representing rural residents, Wisconsin Farmers Union is also concerned that the reduction in property taxes paid by developers will be shifted to other taxpayers. For a given municipality, especially in rural areas, the loss of tax revenues as a result of this tax change could be significant. The budgets for rural roads and schools are already at a breaking point; giving a year or more of property tax discounts to real estate developers will place local governments in the difficult position of deferring local road maintenance even further, or imposing a commensurate property tax increase on residential ratepayers.

I do want to acknowledge that the Substitute Amendment restores the conversion fee for converting ag land to other uses, which applies after ag land has been converted to another use. But on behalf of the farmers that make up our organization, we would urge that the state would be better served by proactively preserving the farmland acres we have left.

My name is Don Ystad. I live in Rome, WI, a recreational community in northern Adams County. The lakes in our community are manmade, built in the late 60s, following all state, county and local guidelines in place at that time. As our area grew, ordinances and zoning was put in place to protect the recreational nature of our community. 5,400 properties surround our lakes today and our community has expanded as more and more people sought a lakes lifestyle. We are now home to the two 4 ½ star Arrowhead Lakes and Pines golf courses, the home site of the Wisconsin Trap shooters, the Dyracuse Recreational Area, TriNorse ski jump facility and home to the new Sand Valley Golf Resort development, said to be the future "golf Mecca of the Midwest" by Golf magazine.

Adams County is said to be #4 in per capita tourism revenue. Our Rome community is a major contributor to that tourism economy, as well as to the revenue of southern Wood County

Our community was built on a solid footing with gradual development supported by reasonable ordinances and zoning regulations which we thought would preserve our recreational area and the tourism it supports. Our Town Chairman, Zoning Administrator and Town Clerk tell me they are concerned with what appears to be the intent to limit local control. SB 464 limits a community's ability to protect itself from development inconsistent with the community. The bill provides a shortcut to unwanted development and industries that have little regard for the community that they seek to invade.

The vested rights portion of this proposed bill is especially dangerous in that it provides a loophole for companies like Wysocki to circumvent Saratoga's ability to protect itself from non fitting development. Our Town of Rome sits directly next door to the proposed Wysocki CAFO development. With 3 lakes, a municipal water utility and nearly 1,500 private drinking water wells within the cone of depression of the proposed CAFO's 33 high capacity wells, and within the influence of its 55 million gallons of manure, this area is far too densely populated for a CAFO such as the one proposed. Nitrate levels at nearly 8 times the legal limit at its sister CAFO 20 miles away are an example of what we can expect. In fact, it's caused the towns of Rome and Saratoga to spend nearly $100,000 to place monitoring wells in the area of the proposed CAFO. This proposed development puts the well being of thousands of residents at risk, and the vested rights portion of this bill makes it easier for them to force fit this CAFO into our existing residential /recreational area.

While special interests use their power and money to induce you to weaken local protections, your constituents, the voters who elect you, end up on the short end of the stick. When the League of Municipalities, nearly every environmental group in the state, and citizens such as I speak out against this proposal, the message should be clear. This bill benefits a very few and creates hardship for the very people you are sworn to protect. While I appreciate that progress is being made regarding the retroactive clause, I urge you to pull back this bill or at least remove the vested rights portion.

Kitt Belanger
2630 Evergreen Avenue
Wisconsin Rapids, WI 54494
(320) 224-7188

My name is Kitt Belanger I have been a resident of Saratoga Wisconsin for the past 3 years. I have a Bachelor's degree in Health Care and a Master's degree in Vocational Rehabilitation. My husband has a Bachelor's degree in Engineering. When my husband, Tony and I moved to Wisconsin, we chose Saratoga because of its beauty - many forested areas, lakes, clean air and water. We purchased a home on 10 acres in Saratoga. We enjoy nature walks and cross country skiing as well as raising a few chickens right in our own back yard.

My husband and I have serious concerns about the quality of our community and the decrease in local property values if the Wysocki factory farm is allowed to start production very close to our home. Property values have already experienced a significant decline since the announcement that there was a possibility of the factory farm moving in to Saratoga.

I must commend the Saratoga Town Board for fighting Central Sands and the high capacity wells - Thank you for the steps they have taken so far - including the addition of 10 monitoring wells in the town of Saratoga to establish a baseline. They have also established a comprehensive plan - zoning ordinance to protect me and my neighbors from legitimate threats to our ground water and our health. The plan was established not just for the Wysocki operation, but for any legitimate threat to our quality of life and the environment. Additionally, there has been community water testing of the private wells of residents. At this time, Saratogas ground water is very good. Our nitrate levels are well below the state drinking water standard of 10 ppm.

It is hard to imagine a concentrated animal feed operation known as a - CAFO, starting business in Saratoga. Their operation would require - 1000s of acres of irrigated crop land. The proposed operation that is proposed would be situated in an area that the USGS has designated **as highly susceptible to**

ground water contamination; this is because of our sandy soil. It is Outrageous to me that this proposal would even be considered, much less possible laws changed to accommodate such an operation!

I am one of 5200 residents in Saratoga who depend on private wells for my drinking water. I am concerned about the hazards to my health if the ground water is polluted with chemicals and/or liquid manure from the Wysocki Company's proposed plan.

The Wysocki Company plan intends to use the land for Golden Sands Dairy, a proposed farm that would house 4,000 milking cows, 300 heifers and 1,000 calves. The operation would generate approximately **55 million gallons of liquid manure and 25 thousand tons of solid manure <u>every year</u>**, Wisconsin state Department of Natural Resources records show.

My fears are not unfounded - the Central Sandy dairy just across the river from Saratoga, has soil that is similar to Saratogas. This dairy has demonstrated **nitrate levels as high as 77 ppm** - Nearly 8 times the standard of 10 ppm! These levels were reported by the professional Geologist, retained by the Wysocki Company as they are self-regulated and self-reporting operations, as with all CAFOs.

Saratoga has the 2nd highest population density in Wood County, 500 residential wells are within close proximity to the proposed fields of the Wysocki Golden Sands dairy. Plans to apply 55 million gallons of liquid chemicals and manure as well as 25,000 tons of solid waste each year, leaves very little chance for our water quality to remain intact. Just the possibility of the Wysocki CAFO has drastically reduced property values in Saratoga.

The town of Saratoga's zoning ordinance was designed to address legitimate concerns about land use and ground water. Its purpose is to protect the health and property values of its 5200 residents. This bill is an attempt by Wysocki Company to legislatively override the Town of Saratoga's zoning ordinances.

My name is Mary Wright and I am a Saratoga resident. I am presenting Tom Grygo's report as he is quite ill and cannot be out in the public. Tom is the Secretary of the Saratoga Plan Commission.

SB 464

This bill is a legislative attempt to preempt local authority, and appears to have been written for a select few.

Prohibiting counties from enacting a development moratorium may be helpful to some industries but does not help the counties review and study the consequences, either good or bad, of that industry. Moratoriums have been useful in allowing counties and towns to develop plans and regulations to protect the local residents and the environment.

The individual notice requirements will only add an unnecessary burden to town clerks, since substantial zoning ordinance changes such as, use, density, or size requirements are already regulated by 60.61(4)(b) which requires a Class 2 notice and a public hearing.

The vested rights portion of the bill appears to be written specifically for Golden Sands Dairy regarding their application for a CAFO in the Town of Saratoga. This single interest type legislation ignores concern for the general population, and puts partisanship and special interests front and center.

It's been said that democracy is more than two wolves and a sheep voting over what to have for dinner.

The preceding are the comments and opinion of Tom Grygo and are not to be construed as that of the Saratoga Town Board or the Saratoga Plan Commission.

Following are my thoughts on the bill:

This bill is an attempt by the Wysocki family to legislatively override local zoning in the Town of Saratoga so they can use thousands of acres of land in the town to spread 55 million gallons a year of liquid manure plus 25,000 tons of solid manure.

The Town of Saratoga's zoning ordinance ws adopted in 2012 to implement its 2007 Comprehensive Plan. That plan was designed to limit land uses that had the potential to impact groundwater resources.

The concern over groundwater stemmed from the fact that the Town of Saratoga is listed on the U. S. Geological Survey map as an area highly susceptible to groundwater contamination. The main aquifer consists of glacial sands and gravels resting approximately 20 feet below the land surface.

Currently, the town's groundwater is relatively pristine. A recent testing of 300+ wells in 2015 shows nitrate levels are well below the state standard drinking water standard of 10 ppm so it provides good water for the private wells of its 5000 residents and for organic cranberry and other operations. Our local groundwater quality data: Number of wells tested – 342; Average total nitrates - 2.10 ppm versus an EPA upper limit of 10 ppm; Median total nitrates – 1.1 ppm versus an EPA upper limit of 10 ppm; Average ph – 7.61.

Wysocki's propose to develop Golden Sands Dairy in the town. In conjunction with the dairy it proposed to clear cutting 4,660 acres of pine plantation throughout the town, convert those areas to agriculture and spread the manure from the dairy on those sandy soils.

This is a real concern given that the monitoring wells at Wysocki's Town of Armenia operation with similar soils to Saratoga has demonstrated nitrate levels as high as 77 ppm – nearly 8 times the standard of 10 ppm.

It is also a real concern given that there are nearly 400 residential wells in proximity to the fields on which Golden Sands Dairy proposes to apply its liquid and solid waste – including mine. My recent groundwater test came back – 0.0 ppm and I want it to stay that way!

This is precisely the reason the town adopted zoning so that its residents and its resources can be protected.

This legislature should not intervene to change the existing law of vested rights and apply its ruling retroactively to the Town of Saratoga.

WISCONSIN BUILDERS ASSOCIATION

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

DATE: **January 5, 2016**

TO: **Members of the Senate Committee on Insurance, Housing, and Trade**

FROM: **Brad Boycks**
Executive Director
Wisconsin Builders Association

SUBJECT: Wisconsin Builders Association Support for **Senate Substitute Amendment 1 (SSA 1) to Senate Bill 464 (SB 464)** relating to government actions affecting rights to real property, the regulation of shoreland zoning, the substitution of hearing examiners in contested cases, and the property tax treatment of unoccupied property

On behalf of the 4,500 members of the Wisconsin Builders Association (WBA), we ask for your support of **SSA 1 to SB 464** authored by Senator Frank Lasee and Representative Adam Jarchow to address a number of important property rights issues and to provide greater statewide uniformity to the development and taxation of property in Wisconsin.

WBA members have been working on a number of issues contained in SSA 1 to SB 464 during this and previous sessions, and we are hopeful that this bill can advance and be passed by this committee and the full state assembly before the end of this legislative session.

The highlights of SSA 1 to SB 464 for the WBA are:

1. **Clarification that counties are not authorized to enact county-wide development moratoria.**
2. **"Tie goes to the property owner"** – Codifies current case law by stating that if a local ordinance is challenged in court, and the ordinance is unclear, the ruling shall favor the property owner's free use of private property.
3. **If a professional land surveyor, in measuring a setback from an OHWM of a navigable water, relies on a map, plat, or survey that incorporates or approximates the OHWM, the setback measured is the setback with respect to a structure constructed on that property. This provision only applies if the map, plat, or survey relied upon is prepared by a professional land surveyor and DNR has not identified the OHWM on its internet site at the time the setback is measured.**
4. **Clarification that land that is platted and zoned for residential, commercial, or manufacturing use is assessed at its unimproved value until a building permit is issued.**

Point number four above is something that has been discussed for a number of years in various forms by WBA members. The provision would create a new "tier" of taxation for land that was in agriculture use value for at least two consecutive years but is not yet fully developed.

SSA 1 to SB 464 will add land that that is platted and zoned for residential, commercial, or manufacturing use until such time that a permit is issued for constructing a building or other structure on the land. This land will be assessed at its unimproved value and would still be subject to a conversion charge when changing from "agriculture" to "undeveloped land". Only land that "was in agricultural use for 2 consecutive years immediately prior to being converted to residential, commercial, or manufacturing use" falls into this category. Finally, all "undeveloped land" would then be taxed at "50 percent of its full value" because homes under construction that do not yet have families living in them do not require the same municipal services as when the home is completed and occupied.

We look forward to the testimony and debate on SSA 1 to SB 464 and look forward to working with committee members.

We ask for your support of this important piece of legislation.

Phone: 608-242-5151 | Fax: 608-242-5150 | **www.wisbuild.org**

City of Milwaukee

Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Jennifer Gonda
Director of Intergovernmental Relations

City of Milwaukee Testimony on Senate Bill 464
Senate Committee on Insurance, Housing, and Trade
January 5, 2016

The City of Milwaukee is opposed to SB 464, relating to: to government actions affecting rights to real property; the regulation of shoreland zoning; the substitution of hearing examiners in contested cases; and the property tax treatment of unoccupied property. The changes proposed in this legislation would restrict a local government's ability to maintain the overall health of its tax base.

The City of Milwaukee's Department of Neighborhood Services (DNS) is the agency charged with protecting the value of investments in neighborhoods and commercial properties by enforcing standards for buildings, property, and land. Over the last several years DNS has implemented inspections and enforcement programs which help support the stabilization and integrity of safe and healthy neighborhoods.

The proposed legislation will impede DNS' ability to enforce our Code Compliance program, which is designed to forewarn and protect buyers of one-and two-family dwellings against dangerous or unsatisfactory housing conditions. The program allows the City to ensure that its housing stock is well-maintained and meets applicable building safety codes. The program has helped maintained the integrity of the City's housing stock by assuring the condition of rental property does not negatively impact surrounding areas.

In addition, this bill would preempt portions of the City's current Vacant Building Registration (VBR) and Residential Rental Inspection (RRI) program ordinances. Established in 2010, the RRI program was created to address the higher than average number of complaints received in the neighborhood surrounding the UW-Milwaukee. The targeted area has a high number of rental units that often have constant turn-over of occupancy by new tenants. The program has help improve unsafe conditions and reduce nuisance behavior. Several municipalities across the State have seen the value of the program and expressed interest in the Residential Rental Inspection program to implement locally.

These are valuable tools necessary to support neighborhood stabilization and increase investment and economic vitality. Prohibiting local governments from imposing application of various programs would have a detrimental effect on the property values in neighborhoods.

Under this bill, granting vested rights to existing zoning regulations when applying for a permit is problematic due to the local government unit in which the property is located being unable from that point forward to adjust zoning or other land use regulations applicable to the parcel. The inconsistency of applying different regulations for different properties at different times would create administrative confusion. Zoning regulations should be made with a site specific development plan; otherwise, property owners cannot plan developments with reasonable certainty and cannot carry out the development they begin.

Also, if a local land use ordinance is challenged in court and the ordinance is unclear, under this bill the ruling shall favor the property owner's free use of private property, which could diminish the local government unit's ability to legally prohibit any undesirable projects that arouse neighborhood opposition. This bill significantly interferes with the ability of communities to protect residential property owners against incompatible uses occurring next door. For the reasons stated above, the City of Milwaukee opposes Senate Bill 464 and respectfully requests the committee deny its passage.

Thank you for your consideration in this matter. If you have any questions please feel free to contact me at 414-286-8564.

Respectfully submitted,

Kimberly Montgomery

Before the Senate Committee on
Insurance, Housing and Trade

Hearing on SB 464
January 5, 2016

Bruce E. Dimick
Citizen – The Town of Saratoga

My name is Bruce E. Dimick, a retired citizen of the Town of Saratoga, Wisconsin. Except for the two years I spent in the US Army, my career was as a scientist and technical manager in the paper industry. I did my graduate work at the Institute of Paper Chemistry in Appleton, Wisconsin.

With a few exceptions I have grown up and lived in small rural communities. My mother was on the town council of Aurora, Ohio for many years. One thing I learned over the years was that local governments are best suited for making local decisions whenever possible. I am a firm believer in local control as are most of the people I know, and I imagine most of the people in this room.

Therefore, it was with considerable dismay when I read and began to understand the implications of SB 464, especially when it comes to vested rights. This bill essentially transfers many of the rights, particularly zoning rights, from local governments to individuals, businesses, LLCs, and corporations if they are clever.

The citizens of Saratoga, the rural town in which my wife and I reside, have been under the threat of a large CAFO for about 3.5 years. The citizens of our community, a community of 5200 residents, and our town board have been doing everything we can to preserve our town from this takeover by the Wysocki organization. It is no stretch of the imagination to see that Wysocki's lawyers may well have had a hand in writing this legislation in order to take over the pristine ground water and cheap land to further their economic dominance of the Central Sands.

The Town of Saratoga was one of the first towns to develop and adopt a comprehensive plan as a foundation for the zoning ordinance to follow. The Wysocki organization was aware of four things when they pounced on us in the spring of 2012.

- There was abundant cheap, forested land available. The paper industry was declining and Plum Creek wanted to get out of the forestry business in Central Wisconsin.
- There was plentiful clean water available for irrigation and the water table is high.
- The sandy soil would grow good crops of potatoes, sweet corn, etc; if enough water were used for irrigation and enough fertilizer and manure were added.

- While Saratoga had a strong comprehensive plan in place, the zoning was not yet completed.

So, one might ask, why are the residents of Saratoga so against this CAFO that would occupy one quarter of the total land area of the town? There are many legitimate reasons, but the primary reason is the protection of our water. All of our residents are dependent on our groundwater for drinking, cooking, and all other uses. Everyone has his own private well or wells. Many of these wells are sand points around 20 feet deep. A municipal water supply would not be feasible for a rural town of 5200.

A few key points:

- The USGS has identified Saratoga as an area highly susceptible to groundwater contamination. Right now our water is quite good with a mean nitrate level of 1.1 ppm for 342 wells sampled in the spring of 2015
- The Town's zoning ordinance, adopted in 2012, limits industrial and agricultural uses that could affect groundwater quality and safety.
- Wysocki has already demonstrated that he cannot control nitrate contamination of groundwater around his operations. His dairy CAFO in Juneau County, Town of Armenia has already registered a nitrate level of 77 ppm in the No. 4 monitoring well. The hydrogeology of Armenia is quite similar to that of Saratoga. I will remind you all that the EPA limit for safe drinking water is 10 ppm.

The Town of Saratoga developed the zoning ordinances now in place to protect the health, safety, and welfare of our residents. We would hope that the State Legislature not intervene to change the existing law of vested rights and apply the ruling retroactively to the Town of Saratoga, and other towns throughout Wisconsin, to override town zoning.

This legislation has the potential to benefit a few to the detriment of many.

The vested rights provisions in this bill need to be removed.

WEC Energy Group

Wisconsin Public Service

Senate

PUBLIC HEARING

Committee on Insurance, Housing, and Trade

Senate Bill 464

Tuesday, January 5, 2016

11:00 AM

412 East

Mr. Chairman; members of the committee, my name is Joel Haubrich and I am here on behalf of WEC Energy Group's two Wisconsin utilities, We Energies and Wisconsin Public Service. We support SB 464 because Section 10 will help reduce utility project delays and costs.

Compliance with a variety of Natural Resource regulations is a substantial part of routine utility construction, maintenance operations. Applicable environmental regulations include requirements related to wetlands, waterways, shoreland zoning, stormwater/erosion control, and endangered resources reviews. Therefore, for each individual project, several individual permits may be required, both from DNR, and, in the case of shoreland zoning, from counties and/or other local units of government.

This creates a substantial challenge for project planning and implementation, and can create delays in project schedules and cost increases. In the case of shoreland zoning, inconsistency across permitting authorities, and sometimes permit duplication

complicate routine construction and permitting activities. A single, consistent means of obtaining regulatory approvals is needed in order to simplify and expedite routine work and improve services to our residential and business customers.

The utility industry has worked over the years to create to the greatest extent possible, a single utility permitting approach. In 2003, utilities worked with Governor Doyle to create the utility siting process where we coordinate DNR and PSC permitting for large projects into a single contested case proceeding. In 2011, the DNR created a utility-specific general permit which further streamlined our permitting process. With SB 464, we can take another step to a streamlined permitting process.

Since the DNR ceded shoreland zoning ordinances to the counties, we've seen a wide variety of regulation from one county to the next creating a patchwork of regulation and making it difficult for project scoping and for proceeding with efficient and timely project implementation. In addition, county shoreland zoning generally adds no incremental environmental benefit beyond existing state and federal environmental requirements, and local permits or approvals for utility work are often duplicative of DNR permits.

Section 10 in SB 464 would exclude utilities from local shoreland zoning when performing routine maintenance and construction activities and would instead require us to follow already existing state and federal environmental standards. Simply put, if utilities have obtained a permit from the DNR or is using DNR mandated policies and procedures we would receive an exclusion from local shoreland zoning.

We hope you will support SB 464 and aid us in reducing project delays and costs for utility customers.

MICHAEL BEST STRATEGIES

MEMORANDUM

TO: Senate Committee on Insurance, Housing, and Trade
Hon. Frank Lasee, Chairman

FROM: Robert J. Marchant

DATE: January 5, 2016

SUBJECT: Support for SB-464

Thank you for the opportunity to submit this written testimony in support of SB-464. I represent Wysocki Produce Company. Wysocki Produce Company is one of the largest potato and vegetable growers in Wisconsin and prides itself on being a modern, progressive farming operation, a good steward of the state's natural resources, and a growing employer in the central region of the state. I am submitting this testimony to express Wysocki Produce Company's support for Senate Bill 464 and in particular the vested rights language in the bill.

The vested rights provisions in this bill would provide a clear statutory codification of the common law of vested rights in Wisconsin and would ensure that rural local units of government have an incentive to proactively zone their jurisdictions. Rural development projects often require approvals from state agencies, in addition to local government approvals. A company will often need to invest significant resources to identify locations for development where current land use regulations would permit the future operation of the business, obtain ownership of necessary property, develop the necessary plans and specifications, and prepare necessary applications for approval. Unfortunately, once the company has made these significant investments—often in the millions of dollars—and submits its applications for state approvals, some local governments then attempt to change the local zoning ordinances and create new restrictions prohibiting or materially limiting the project. These local governments face no risk of civil damages from such actions under current law while the company spends untold amounts in court to vindicate their rights.

Local government actions which effectively pull the rug out from under significant investments in reliance on current zoning law conflicts with the current statutory policy of coordinated approvals and proactive land use zoning. In addition, they require costly litigation, as applicants seek to protect their vested development rights. Wysocki Produce has encountered just such a process with regard to the siting of its proposed dairy in the Town of Saratoga. This has subjected Wysocki Produce to unnecessary litigation costs, as the company has twice initiated successful lawsuits in circuit court to protect its rights. Wysocki Produce is an example of the type of risk our rural employers face when they look to follow the letter of the law and grow their businesses.

Wisconsin now has a business climate which threatens future investment in rural areas of the state. The vested rights language in SB 464 will address this concern by codifying the common law and providing a clear statutory framework that allows rural governments to proactively zone but prevents them from changing the rules after a project application is submitted. The net result will be more orderly rural economic development—something our state desperately needs.

SB464/AB582

Facts to Consider; Impact to the Town of Saratoga and other municipalities

January 5, 2016

INTRODUCTION: SB464/AB582 include a provision that would retroactively apply an expanded concept of vested rights and in so doing limit a local government's ability to protect the property rights and health of its residents. These bills put at risk property values, groundwater quality and the health and well-being of more than 5000 residents in the Town of Saratoga and can have far-reaching negative impacts for municipalities across Wisconsin.

- In 2012 The Wysocki Family of Companies proposed siting a 5300-cow dairy facility in the Town of Saratoga. As proposed, Golden Sands Dairy would encompass almost 6000 acres in the Town, some 4660 of which is managed pine forest that would be clear-cut for vegetable production.

- If the proposed vested rights language passes, the original Wysocki building permit for six buildings on 98 acres could apply to thousands of additional acres in the Town.

- The Town of Saratoga's 2007 Comprehensive plan and subsequent zoning was designed to address legitimate concerns about land use and groundwater. Its purpose is to protect the health and property values of its 5385 residents. SB464/AB582 is an attempt by the Wysocki Family of Companies to legislatively override the Town of Saratoga's zoning ordinances.

- The Town's zoning was designed to protect the area's fragile aquifer and sandy soils and was initiated in its 2007 Comprehensive Plan long before Golden Sands Dairy was proposed.

- The Town of Saratoga, as designated by the U.S. Geological Survey, is 'highly susceptible to groundwater contamination,' and more than 5000 residents depend on the quality of that groundwater. The zoning was intended to protect public health and the property rights of those residents.

- The Wysocki proposal includes application of 55 million gallons of liquid manure and 25,000 tons of solid manure annually on the 4660 acres for vegetable production.

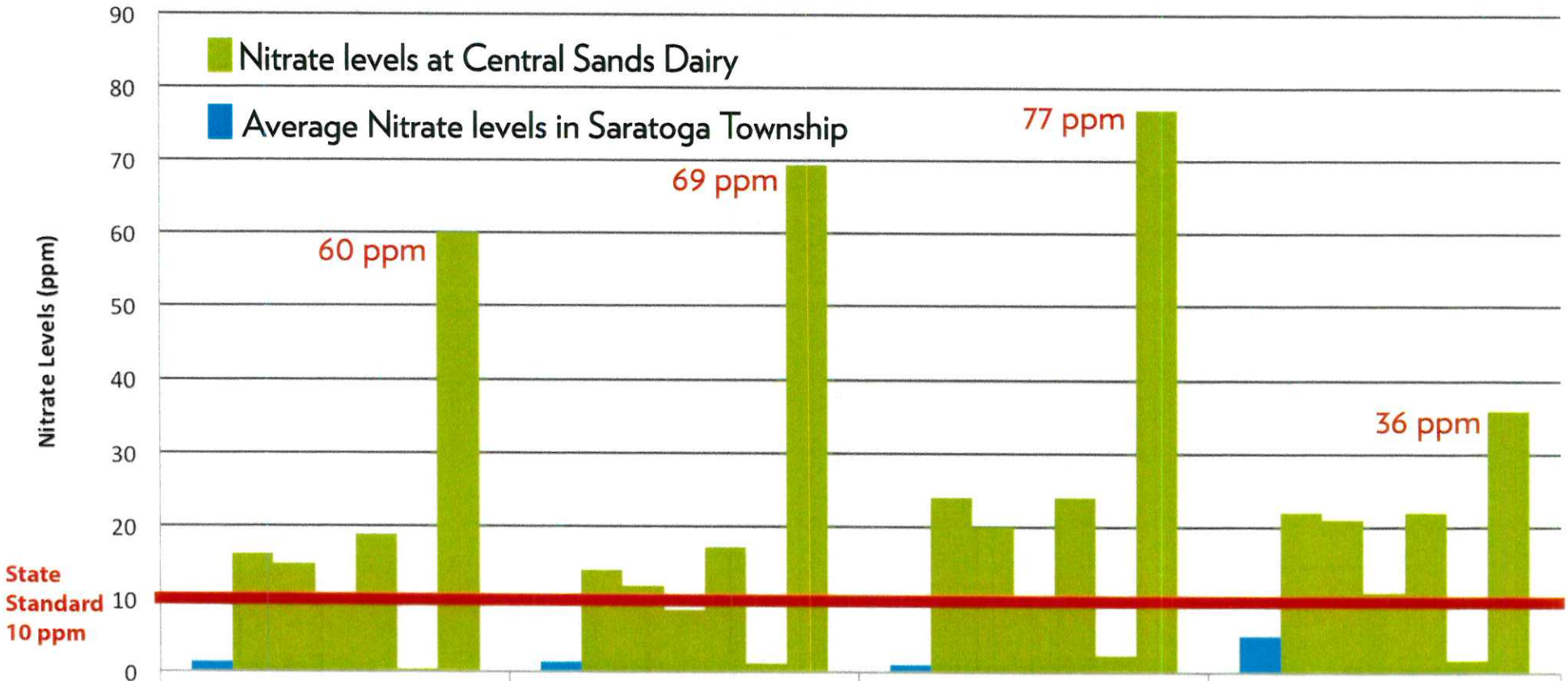
- Manure application to that extent on those 4660 acres will compromise the soil and the groundwater and threaten more than 500 residential wells in close proximity to those fields as well as the health of nearby organic cranberry bogs. Those cranberry bogs generate more than $15 million in revenue for the area each year.

- In recent months, monitoring wells at Wysocki's Central Sands Dairy, which is sited on similar soil and located just across the Wisconsin river from Saratoga, have demonstrated nitrate levels as high as 77 parts per million (ppm), or nearly eight times the drinking water standard of 10 ppm.

About the Town of Saratoga

A township in Wood County, Wisconsin, Saratoga is home to 5385 residents. It is situated in the southeast corner of the county, bordering Juneau and Adams counties and includes Ten Mile Creek, Ross Lake, a portion of Nepco Lake and Five Mile Creek. Its predominate land uses are woodlands owned by private landholders, residential subdivisions, limited agriculture (cranberry bogs), commercial developments along highways 13 & 73 and open spaces. The Town is listed on the US Geological Survey map as an area highly susceptible to groundwater contamination. The main aquifer consists of glacial sands and gravels resting approximately 20 feet below the land surface.

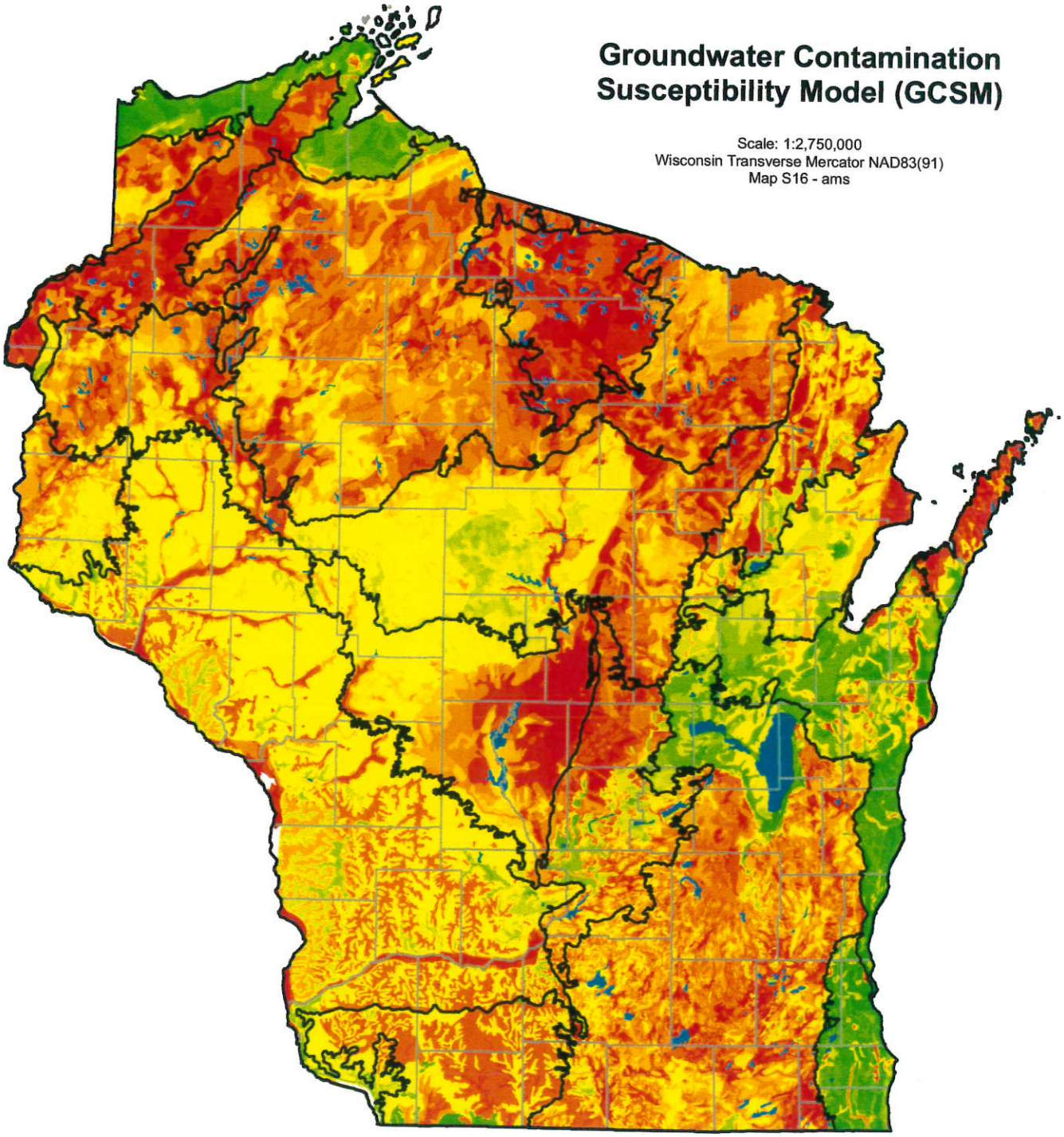
Nitrate Levels at Central Sands Dairy Far Exceed State Standard



	2014 Q4	2015 Q1	2015 Q2	2015 Q3
STGA	1.28	1.37	1.06	5
CSD-1S	16.1	14	24	22
CSD-1D	14.9	11.9	20	21
CSD-2	10.8	8.5	9.6	11
CSD-3S	18.8	17.2	24	22
CSD-D3	0.3	1.25	2.3	1.7
CSD-4	60	69.3	77	36

Groundwater Contamination Susceptibility Model (GCSM)

Scale: 1:2,750,000
Wisconsin Transverse Mercator NAD83(91)
Map S16 - ams



The Groundwater Contamination Susceptibility Model (GCSM) for Wisconsin estimates the susceptibility of the state's groundwater to contamination from surface activities. The GCSM was developed by the DNR, the US Geological Survey (USGS), the Wisconsin Geological & Natural History Survey (WGNHS), and the University of Wisconsin – Madison in the mid-1980s. The results of the GCSM are illustrated in a map published in 1987 at a scale of 1:1,000,000 (available from the Wisconsin Geological & Natural History Survey: http://www.uwex.edu/wgnhs/maps.htm).

GCSM Value

Low susceptibility

High susceptibility

Ecological Landscape

County Boundaries

Open water - not susceptible

0 12.5 25 50 75 100
Miles

0 20 40 80 120 160
Kilometers