



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Assembly Bill 271

**Assembly
Amendment 1**

Memo published: January 14, 2004

Contact: Mark C. Patronsky, Senior Staff Attorney

Under *current law*, a city, village, town, or county (political subdivision) that proposes a new zoning ordinance or proposes to amend an existing zoning ordinance must first hold a public hearing and provide notice that the hearing will be held.

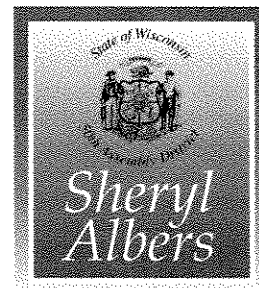
The *bill* allows any person who owns property within the boundaries of the political subdivision to request personal notice of any zoning ordinance or zoning amendment that may affect the allowable use of the property owned by the person. The bill requires the political subdivision to notify each person whose name appears on the list, and to include with the notice a map showing the property affected by the ordinance or amendment. The political subdivision may substitute for the map a description of the property affected and a statement that the map may be obtained from the political subdivision. The bill authorizes the political subdivision to charge a fee that is no more than the approximate cost of providing the notice. If the political subdivision fails to comply with the bill's notice requirements, the ordinance may nevertheless take effect.

Assembly Amendment 1 adds language to clarify that the political subdivision's obligation to send a notice is to each person whose allowable use of the property may be affected by the proposed ordinance or amendment. The amendment simply repeats language that is already used elsewhere in the bill.

Legislative History

Assembly Amendment 1 was offered by Representative Albers on November 13, 2003 and, on the same day, the Assembly adopted Assembly Amendment 1 on a voice vote and passed the bill on a vote of Ayes, 69; Noes, 27.

MCP:tl;wu



December 1, 2003

Senator Ron Brown
Chairman, Senate Committee on Homeland Security,
Veterans, and Military Affairs
104 South, State Capitol
Madison WI 53707
Hand-Delivered

Sen. Brown,

I am contacting you to respectfully request that you schedule, at your earliest convenience, Assembly Bill 271 for a public hearing in your committee. This bill was passed by the Assembly and referred to your committee on November 13th.

AB 271 is a bill that helps to protect the property rights of those we represent by creating voluntary registries by which landowners can be notified of proposed changes to zoning ordinances that would affect the allowable use of their property. To avoid imposing additional costs on local governments, those who wish to receive these notices can be charged for the cost of producing them.

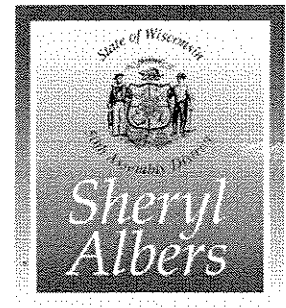
It has become difficult, if not impossible, for landowners to seek compensation for a loss once an ordinance affecting their property use has passed. As such, this bill is designed to allow landowners to be informed ahead of time when their land might be affected by a change in ordinance. This allows them to contemplate what, if any, changes they might wish to encourage their local government officials to make.

AB 271 was unanimously recommended for passage in my committee and enjoyed broad bipartisan support on the Assembly floor. Your prompt action will help to ensure that this bill can come before Governor Doyle before the conclusion of our legislative session.

If you or your staff has any questions regarding the bill, please let me know. I will provide whatever information or assistance might be needed. Thank you in advance for your consideration.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District



2003 Assembly Bill 271 – Notice For Proposed Zoning Changes
Testimony of State Representative Sheryl K. Albers before the Senate Committee on
Homeland Security, Veterans and Military Affairs, and Government Reform
January 14, 2004

With the advent of comprehensive land use planning, communities around Wisconsin will begin to take a new look at the value of land use planning. Ultimately, the design of the new comprehensive planning law is to provide optional tools for municipalities to protect the interests of both the private landowner and the public.

As with any public process, participation by individual citizens is essential. At the same time, some individuals – regardless of how well the planning process works – will bear a disproportionate share of the burden that results from the planning process. As a legislature, we can ensure that individuals have as much access to information as reasonably possible. We can and should encourage their involvement. To that end, we should provide more opportunities for landowners and local units of government to work closely together to plan responsibly, while mitigating any unconscionable results of the planning process. I seek to make the process a fair one, with just results. Assembly Bill 271 is part of that effort.

Generally, under current law, municipalities that wish to propose a new zoning ordinance must first publicize and hold a public hearing on the proposal and provide notice of that hearing. However, the notice need not include a map showing the affected property. In addition, unlike variance request hearings, specific notice to individuals on these new proposed ordinances are not required. Finally, there's no specific statute that requires town zoning committees to notice the public before a public hearing on a proposed ordinance.

Citizens cannot participate in the process unless they know what's going on. Assembly Bill 271 works to ensure that every level of government will provide notice on proposed zoning changes, and requires all municipalities to provide a more detailed notice to those members of the general public that wish for one. I would like to see municipalities provide an example of how the proposed regulation would impact an affected piece of property; however, I've refrained from incorporating such a requirement into this bill.

The bill allows landowners to request that their municipality place their name on a list of people who wish to receive notice of any proposed ordinance or amendment that affects the allowable use of their property. The form of the notice is subject to an agreement between the individual and local municipality (e.g. e-mail, letter, phone call, etc.), and the municipality can charge a reasonable fee to recoup its expenses. With landowners paying the price, municipalities have nothing to lose and everything to gain.

No penalty exists for communities that fail to provide notice; nonetheless, the bill meets the goal of involving more individuals in the land use planning process (especially under circumstances where their property will be directly affected), and providing more detailed pre-hearing information. Given the hectic pace of our society and advent of "information overload" on our families via e-mail, junk mail, the internet, cable TV and print media, this increased level of notice to affected property owners is a common courtesy that municipalities can provide, especially in a civil society that prides itself on public participation. I find it disingenuous for any municipality to claim that the minor additional duties this bill requires of municipal officials creates an undue burden on the taxpayers. If that is the case, then I will expect these same municipalities to suggest that public meetings should hold to strict time limits to reduce costs, or that some input should not be recorded in public meeting minutes in order to save a few sheets of paper.

Individual residents may only see the allowable use of their property change once or twice in their entire lifetime. Unfortunately, landowners often learn too late that certain uses allowed when they purchased their property – in essence, their expectations at the time of purchase – no longer exist. If a municipality proposes an ordinance change – and the individual property owner offers to pay a reasonable cost for personal notice – better notice should be available.

When one individual opts to sue another party in court, notice must be sent or delivered to the party being sued. When credit card companies opt to change their policies, the parties affected must receive notice in order for the company to impose the new policy. Were your neighbor to object to the height or health of a tree in your backyard, claiming that it has the potential of falling over onto their property and causing harm, the government has no right to act to remove the tree without giving you notice. However, under current law, governmental units can slowly erode individual property rights through regulatory takings, without providing compensation or individual notice.

A few years ago, a forum was held on the Baraboo Bluffs. While this was merely a forum, not a meeting at which government action was going to be taken, the parties involved in organizing the forum – as a common courtesy – attempted to notify all parties who might be affected by changes not yet even proposed. This amounted to approximately 1,000 landowners, and over 250 landowners attended the forum. The Nature Conservancy, which provided the notice, compiled their mailing list by reviewing local tax rolls, and the Department of Interior paid for the cost of the mailing. Given this extraordinary effort, it's not an undue burden on a municipality to provide notice to a few landowners on a list – especially when the landowners pay for the costs of the notice.

It's not enough to simply say that disgruntled or unaware landowners can request a variance from the municipality if an ordinance affects their property negatively. The Wisconsin Supreme Court made it almost impossible to obtain a variance in a 1998 opinion. Zoning boards of appeals simply do not have the power to mitigate the results of an ordinance as applied to a landowner – results that could have been mitigated by the municipality when designing the ordinance if they had known of the problems it would create.

Let's consider the intangible costs to society of not giving affected individuals notice. When a person's rights are not given the respect they deserve by government, the outcomes are less than positive. The actual effect on society is a loss of faith in the process, a loss in government accountability and credibility, and increasing animosity levied against agency personnel and elected officials.

In comprehensive planning, municipalities embraced the concept of providing notice to neighboring municipalities – or more importantly, receiving notice from other municipalities – as comprehensive plans are created. They should also embrace providing the same participation opportunities to the residents who will be directly impacted by their zoning decisions.

Current land use policies impose great expectations on property owners, but we fail to impose similar expectations on government. The ages-old attitude of, “what people don’t know won’t hurt them” simply won’t do as density increases, especially in larger cities. The confusion as to who is in charge, and who will make a final decision in zoning situations, is discouraging to citizens. We have a local tax mechanism system that provides the foundational support of our educational system. This tax system is based on the value of property, yet we allow governmental actions to impact an individuals' property value without properly informing them.

In sum, these straightforward notice provisions will benefit both taxpayers and municipalities. For comprehensive planning to be fair and effective, we must start by communicating with those who will have to abide by the zoning ordinances created by the planning process.

AB 271 passed out of my committee unanimously and was approved by an overwhelming bipartisan majority in the Assembly. I hope it meets with similar success in this house. Thank you for your time. I would be happy to address any questions you might have.

MEMORANDUM

TO: Honorable Members of the Senate Committee on Homeland Security,
Veterans and Military Affairs and Government Reform

FROM: Matthew Stohr, Legislative Associate *MS*

DATE: January 14, 2004

SUBJECT: Assembly Bill 271

The Wisconsin Counties Association (WCA) has concerns regarding Assembly Bill (AB) 271. AB 271 requires all political subdivisions to send notices, which contain a copy of any proposed ordinance or amendment and a map or description of the affected property, to all landowners who request to be contacted. Although most counties throughout the state already have a rigorous notification process, WCA recognizes this bill as an attempt to improve the provision of public notice to landowners affected by zoning actions.

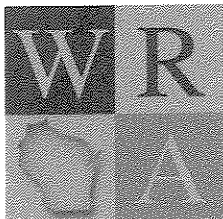
However, we believe that this bill has several implementation problems. First, notification of text amendments can potentially impact an entire county and would be impossible to describe or map. This requirement would place a significant burden on counties that might simply be trying to make a clarification within their ordinances.

Second, although maintaining a list of all those who request to be placed on a list in writing is reasonable, it is impossible to predict the cost of notification of each person that is affected on a name-by-name basis. The cost would have to be determined on an annual basis based on past records.

WCA respectfully requests that you consider the aforementioned implementation problems before you take action on AB 271.

Please feel free to contact me at the WCA office if you have any questions.

Thank you for considering our comments.



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TO: Members, Senate Committee on Homeland Security, Veterans and Military Affairs and Government Reform

FROM: Thomas Larson

DATE: January 14, 2004

RE: AB 271 -- Notice Requirements of Zoning Changes

The Wisconsin REALTORS® Association urges your support of AB 271, legislation that would provide individual property owners and members of the general public with more effective notice of proposed land use regulations in order to afford them with a legitimate opportunity to participate in the land use decisions that impact their lives.

Under current law, members of the general public generally know little or nothing about proposed land use regulations until after they become effective. In many cases, this lack of public knowledge can be attributed to the fact that most proposed land use regulations are poorly publicized and, thus, are enacted with little or no public input. In other cases, people are aware of the proposed land use regulation, but are not cognizant of what it means or how it will personally affect them.

Through more effective notice procedures, AB 271 is aimed at providing the public with information necessary to actively participate in the land use decision-making process. By generating more public input, local units of government will be able to make more thoughtful and well-informed land use decisions that accurately reflect the concerns of community members. This, in turn, will help local governments avoid the backlash caused by angry residents who learn of the land use decisions after they have been made – backlash that has resulted in the reconsideration or repeal of numerous land use decisions in the past.

Public Notice

AB271 requires local units of government to provide, as part of the public notice, either a map or a description of the property that will be affected by the proposed zoning change. Under current law, public notices are not required to state with any specificity which properties will be affected by the proposed zoning change. As a result of these substantive deficiencies, many residents, even after reading the public notice, are unaware that the proposed zoning change will affect them personally. Such inadequate public notice has resulted in limited public input before new regulations are adopted, and increased public frustration afterwards. By providing visual and written descriptions of the properties that will be affected by the proposed zoning change, local



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residents will be better informed of which properties will be affected by the proposed zoning change and, thus, will be more apt to participate in the public hearings.

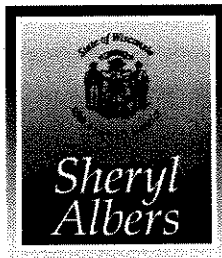
In addition, AB 271 requires town boards to give notice of the public hearing, including the time and place of the public hearing, before making any land use changes. Currently, town boards are required only to hold a public hearing, but are not required to give public notice or state the time and place of the hearing. This provision would merely make the notice requirements for towns consistent with the notice requirements for other units of government. By requiring towns to provide notice of public hearings, town residents will have the same opportunity as residents of other political subdivisions to participate in the land use decision-making process.

Individual Notice

Without creating any additional financial or administrative burdens on local governments, AB 271 also allows members of the public to receive individual notice of any proposed zoning changes (1) upon payment of a fee to cover the costs associated with providing such notice, and (2) in any reasonable form agreed to by the person and the local government (fax, e-mail, etc.). Currently, local governments are required only to give public notice, which generally results in either a notice being published in a local newspaper or a small sheet of paper being attached to a billboard located at some public building. As a result of the current notice requirements, property owners who live outside the community and other individuals who fail to check the local newspaper or billboard on a regular basis are generally uninformed of proposed zoning changes that may affect their land, business, or recreational activities.

To ensure that the land use decision-making process is consistent with Wisconsin's strong tradition of open government, this legislation will provide everyone, both property owners and non-property owners, with the opportunity to take an active role in planning their community's future.

We strongly urge you to support AB 271. Please feel free to contact me with any questions or comments.



January 15, 2004

JAN 16 2004

Sen. Ron Brown, Chairman
Senate Committee on Homeland Security,
Veterans Affairs, and Government Reform
104 South, State Capitol
Madison WI 53707

Dear Sen. Brown,

Thank you for promptly scheduling Assembly Bill 271 for a hearing in your committee. I appreciate your swift action, and hope that you will consider scheduling the bill for executive action in the very near future.

If you or any members of the committee have further questions about the bill, please feel free to direct those inquiries to my office.

Sincerely,

Sheryl K. Albers
State Representative
50th Assembly District

P.S. We may also pursue having this bill (AB 271) rolled in ^{AB} 728. Will keep you informed.

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