



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0318/2
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 675**

November 29, 2005 - Offered by COMMITTEE ON PROPERTY RIGHTS AND LAND
MANAGEMENT.

1 **AN ACT to create** 895.455 of the statutes; **relating to:** compensation for the
2 reduction in the fair market value of private real property.

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

3 **SECTION 1.** 895.455 of the statutes is created to read:

4 **895.455 Compensation for public use of private land. (1)** In this section:

5 (a) "Family member" means a person who is related to another person as a
6 spouse, parent, child, brother, sister, son-in-law, daughter-in-law, father-in-law,
7 mother-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew,
8 stepparent, stepchild, grandparent, or grandchild.

9 (b) "Governmental unit" means the state, a political subdivision of the state,
10 a special purpose district in the state, an agency or corporation of a political
11 subdivision or special purpose district, or a combination or subunit of any of the
12 foregoing.

1 (c) “Land use regulation” means any of the following:

2 1. A statute regulating farming, forest practices, or the use of private real
3 property or of any interest in private real property.

4 2. An administrative rule regulating the use of private real property or of any
5 interest in private real property.

6 3. An ordinance, including a zoning ordinance, regulating the use of private
7 real property or of any interest in private real property.

8 4. A town, county, or regional plan that regulates the use of real property or of
9 any interest in real property.

10 (d) “Nuisance” means a condition that a court has found to be a nuisance under
11 ch. 823, except that a widely accepted or utilized practice by a majority of landowners
12 that are subject to the same ordinances is not a nuisance if that practice is not
13 specifically prohibited by those ordinances.

14 (e) “Private real property” means real property or an interest in real property
15 that is not owned by the United States, a governmental unit, or a nonprofit
16 organization described in section 501 (c) of the Internal Revenue Code.

17 (f) “Property owner” means the present owner of the property or of an interest
18 in the property.

19 **(2)** (a) If, after the effective date of this paragraph [revisor inserts date], a
20 governmental unit enacts a land use regulation or enforces a land use regulation that
21 was in effect on or after the effective date of this paragraph [revisor inserts date],
22 that restricts the use of private real property or prohibits the development of
23 property that otherwise could be developed that reduces the fair market value of the
24 property, that applies to a parcel of land, not to an owner of a parcel of land, and that

1 continues to apply to that land regardless of who owns the property, the property
2 owner shall be compensated for that restriction or prohibition.

3 (b) The compensation of the property owner under par. (a) shall equal the sum
4 of the following:

5 1. The amount of the reduction in the fair market value of the real property.

6 2. The amount of permit fees paid and not refunded.

7 3. The value of any improvements to the real property that the government unit
8 orders removed as part of the enforcement of the land use regulation.

9 4. The reasonable costs of removing those improvements.

10 (c) The property owner shall submit a written demand for compensation or
11 waiver from regulation to the governmental unit. The demand shall include
12 identification of the property, a description of the land use regulation, an itemized
13 statement of the amount of compensation requested, and documentation to support
14 the amount of compensation requested.

15 (d) If a claim for compensation or waiver is from an applicable land use
16 regulation enacted before the effective date of this paragraph [revisor inserts
17 date], the written demand for compensation must be made within 2 years after the
18 date that the governmental unit applies the land use regulation to a land use
19 application submitted by the property owner or within 2 years after the effective date
20 of this paragraph [revisor inserts date], whichever is later. If a claim for
21 compensation arises from a land use regulation enacted after the effective date of
22 this paragraph [revisor inserts date], the written demand for compensation must
23 be made within 2 years after the date that the governmental unit enacts the land use
24 regulation or within 2 years after the property owner submits a land use application
25 that is affected by the land use regulation, whichever is later.

1 **(3)** During the 90 days following receipt of the written demand for
2 compensation or waiver from regulation, the governmental unit may request
3 additional information from the property owner, and may make offers to settle the
4 claim. The compensation requested shall be due if one of the following applies:

5 (a) An applicable land use regulation continues to be enforced against the
6 private real property 90 days after the property owner has made a written demand
7 for compensation or waiver from regulation to the governmental unit that is
8 enforcing the land use regulation.

9 (b) The governmental unit lacked justification to request for substantiation of
10 the claim amount during the 90 day period subsequent to the claim being filed.

11 **(4)** A governmental unit may adopt procedures for the processing of claims for
12 compensation under sub. (2), but those procedures may not be required as a
13 prerequisite to the filing of a written demand for compensation under sub. (2). The
14 failure of a unit of government to act on a previously submitted land use application
15 to that governmental unit is not grounds for dismissal or delay of a claim for
16 compensation under sub. (2). A governmental unit may not charge a fee for the
17 submission of a claim under sub. (2).

18 **(5)** In lieu of payment of compensation as the result of a written demand under
19 sub. (2), the governmental unit that enacted or enforced the land use regulation may
20 modify, remove, or not apply all or part of the land use regulation to allow the
21 property owner to use the property in a manner that was permitted at the time that
22 the owner acquired the property. The governmental unit shall file an approved
23 resolution of the modification, removal, or inapplicability of land use regulation with
24 the register of deeds, specifying the address and legal description of the property to
25 which the modification, removal, or inapplicability applies.

1 **(6)** A property owner may bring an action in circuit court where the private real
2 property is located for compensation listed under sub. (2) (b) 1. to 4. resulting from
3 any land use regulation that restricts the use of the property that otherwise could
4 be developed if the land use regulation continues to apply to the property more than
5 180 days after the property owner has made a written demand for compensation
6 under sub. (2) and the property owner has not received an offer of compensation or
7 has not accepted the compensation that is offered or has not received a written offer
8 to waive the applicable land use regulation from any person with proper authority.
9 A property owner bringing an action under this subsection must include in his or her
10 complaint the legal description of the property involved, substantiation of the
11 damage done to the property, the land use regulation that resulted in the request for
12 compensation, and the date that the land use regulation was enacted or enforced.
13 The property owner may use a comparative sales analysis as a reasonably accurate
14 method to substantiate the damage done to the property and the resulting reduction
15 in the fair market value of the property. The court, if ordering compensation, shall
16 also order the governmental unit to pay the property owner's reasonable attorney
17 fees, expenses, costs, and disbursements related to the circuit court action.

18 **(7)** If the governmental unit argues in an action brought under sub. (6) that the
19 land use regulation is necessary to prevent a public nuisance, and the court finds that
20 the property was not creating a public nuisance, the court shall, in addition to the
21 other remedies in this section, order the governmental unit to pay the property
22 owner's reasonable attorney fees, expenses, costs, and disbursements related to the
23 court action.

24 **(8)** If compensation ordered under sub. (6) is not paid within 2 years after the
25 order is entered, or if the governmental unit has not modified or removed or not

1 applied all or part of the land use regulation as provided under sub. (5) within 2 years
2 after the owner made a written demand for compensation, the property owner shall
3 be allowed to use or develop the private real property in a manner that was permitted
4 at the time that the owner acquired the property.

5 **(9)** Subsection (2) does not apply to a land use regulation that meets any of the
6 following criteria:

7 (a) Regulates or prohibits activities for the protection of public health and
8 safety, including fire and building codes, health and sanitation laws and rules, solid
9 or hazardous waste laws or rules, and pollution control laws and rules.

10 (b) Is required to comply with federal law.

11 (c) Prohibits the possession or sale of pornography.

12 (d) Was enacted before the date that the owner acquired the private real
13 property unless the regulation was enacted before the owner acquired the property
14 but after a family member of the owner, the estate of a family member, or a legal
15 entity owned by a family member, acquired the property. The governmental unit
16 shall file a statement of the land use regulation that does not apply under this
17 paragraph with the register of deeds, specifying the address and legal description of
18 the property to which the statement applies.

19 **(10)** The provisions of ss. 16.007, 893.80, and 893.82 do not apply to claims
20 made under this section.

21 **(END)**