

Vote Record

AB 636

11

Assembly Committee on Environment

Date: 2-3-98 Executive Session Public Hearing

Bill Number: AB 636

Moved by: LA FAVE Seconded by: DUFF

Motion: 50445/2 USA 1 TO 636 - COMMITTEE

(UNAN. CONSENT FOR INTRODUCTION BY LA FAVE)

(UNAN. CONSENT TO CHANGE 540.)

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Present</u>	<u>Absent</u>
Rep. Marc Duff, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Lorraine Seratti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Peter Bock	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Judy Robson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>9</u>	<u>0</u>	<u>1</u>		

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Environment

Date: 2-3-98



Executive Session



Public Hearing

Bill Number: AB 636

Moved by: LA FAVE

Seconded by: KEDZIE

Motion: PASSAGE AS AMENDED

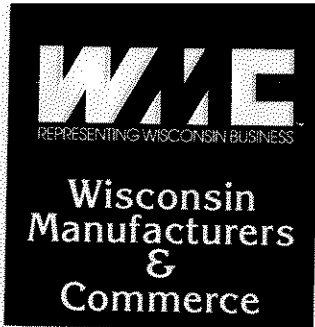
<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Present</u>	<u>Absent</u>
Rep. Marc Duff, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. DuWayne Johnsrud	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Lorraine Seratti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Peter Bock	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Judy Robson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Spencer Black	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. John La Fave	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>8</u>	<u>1</u>	<u>1</u>		



Motion Carried



Motion Failed



Wisconsin Manufacturers Association — 1911
Wisconsin Council of Safety — 1923
Wisconsin State Chamber of Commerce — 1929

James S. Haney
President

James A. Buchen
Vice President
Government Relations

James R. Morgan
Vice President
Education and Programs

TO: Assembly Environment Committee

FROM: Patrick K. Stevens
Environmental Policy Director

DATE: December 9, 1997

RE: AB 636 - DNR Permits

Wisconsin Manufacturers & Commerce (WMC) supports AB 636. AB 636 requires the Department of Natural Resources (DNR) to establish time limits for taking action on certain permits and licenses. If the DNR does not disapprove the application within the specified time period, the application is approved unless that applicant chooses to accept a refund of fees under the Permit Guarantee Program.

WMC supports this concept because it provides predictability as to when an applicant may expect a permit. Furthermore, by allowing the DNR to establish its own limits for action, and by allowing the DNR to extend this time period in appropriate circumstances, AB 636 provides predictability while maintaining the integrity of the permitting process.

While WMC supports AB 636, it may be appropriate to amend this bill in two ways. First, the Committee should consider amending the bill to include other permits, such as air construction permits. Second, the Committee may want to consider making these provisions optional to the applicant. This would also give the DNR additional time to examine permits that the applicant did not view as a high priority.

Please join WMC in supporting AB 636.

Thank you.

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Phone: (608) 258-3400
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HARMONY

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INVESTMENT REAL ESTATE AND LAND DEVELOPMENT

December 8, 1997

John LaFave
P.O. Box 8952
Madison, WI 53708

RE: AB636

Dear Representative LaFave,

Thank you for the opportunity to present my views on some of the issues attendant to the proposal bill. I come to the table with 25 plus years of experience in local land use planning and zoning administration, as well as the experience gained over the past year working in the private sector for a land developer with 40 years in the business. I can speak to the issues from having dealt with them from both sides of the fence.

The land development process involves complex and detailed steps including:
The gathering and analysis of data i.e.,
Physical site characteristics,
Legal - land title, zoning, subdivision control aspects, and
Environmental & Planning regulations as determined by state and local agencies.

What we face is the task of making sense of the complex factors which go into decision making on land use permits. With the help of state and local agency staff people we, with our consultants, exchange information and ideas about how well or poorly a concept fits the community sense of its future. All of this typically occurs during the pre application phase which tends to be out of the public arena. Where a concept proposal involves a Chapter 30 permit, as inevitably some do, the permit filing may include detailed and sophisticated analysis, along with design and mitigation measures which often are better understood by those who have been involved in the formation of the permit application than those who follow up in the review process. Having been party to two seemingly straight forward processes, one administered by the Wisconsin DNR, the other in

the Dept. of Commerce (chapter 236 Wisconsin Statutes-subdivision review) and (Chapter 30) I can say without hesitation that something is not working as it should in the Chapter 30 review area. While certain similarities exist, the contrast between the two is remarkable once a reviewable application packet is submitted. What in each case is a fairly straight forward discussion of rules and ways of satisfying the rules, continues in the case of subdivision Chapter 236 plat reviews for the most part but in the case of Chapter 30 permit considerations often becomes adversarial and involves much confusion, inconsistency and delay. For instance I can recite two examples and include as attachments to this letter where the length of time involved in the review process has certainly cost time and money which in the business of land development is critical to success and survival. We have found the bureaucracy doesn't operate with the same sense of urgency that we do in the absence of statutory deadlines.

The present bill is a step in the right direction, developers live in the communities they work in, they contract for services from local contractors, they fulfill contractual agreements, they build and implement the communities that others plan, they are partners in the process of accommodating the future and supplying satisfaction to the needs of the public. In addition, the proper regulation of the land development process is in its broadest sense one of seeking balance between competing forces. We recognize this completely and simply want a place at the table to exchange points of view with all of the other players in the light of day and with as full an understanding of others positions as possible.

Thank you for your time.

Sincerely yours,


Randall C. Melody
Project Manager

RCM/cw

Two actual case situations involving land developments that have been held in abeyance an unnecessarily long time pending regulatory disposition are offered for legislative committee consideration.

Case #1 - ST. '59 and West Avenue, City of Waukesha

Background: The property in question is the remaining 8 acres of a \pm 200 acres site acquired in 1970. The present site is the last remaining undeveloped parcel. In 1986 the City of Waukesha zoned the land M-2 General Business and authorized the filling of 4.5 acres of a degraded wetland. A 60' access easement was granted, the effect of which is to make accessible a 2 acre portion of the site lying west of Pebble Brook Creek. See map attached.

In 1993 application for a Chapter 30 permit was made to the Wisconsin DNR which was denied. We sought a contested case hearing on the matter as utilities were in place and the City of Waukesha has essentially granted its approval in 1986. A period of negotiations followed. These discussions culminated in a negotiated agreement with the DNR water regulation staff in the South East District to allow a 0.95 acre wetland fill reduced from the initial request of 4.5 acres. Wisconsin DOT then announced its intent to widen STH '59 and build a grade separated railroad crossing adjacent to our site. With the uncertainty this presented DNR asked us to await DOT final plans and acquisition. Waiting for the necessary activities attendant to the DOT acquisition brought us to October 1996. At this point we requested the permit to learn that a public comment period would be required. To preserve the public interest and satisfy the law, a 30 day comment period was advertised during which a single letter requesting contested case hearing was received. This letter dated March 13, 1997 ultimately led to a public hearing on September 2, 1997.

The public hearing consisted of a full presentation of the proposal including a recitation of the history of negotiated positions, explanation of engineering plans and also included the expert witness testimony of SEWRPC's chief biologist, Donald M. Reed and the DNR's water quality management specialist Marty Johnson - in favor of the proposal. All this preparation, expenditure of time, effort and resources including informal meetings with the person requesting the hearing to explain the proposal and hear his concerns continued right up until the hearing. Still he persisted, and on September 2, 1997 the hearing was held. To say the prepared statements and position of the person opposed to the permit was unconvincing is an understatement. It appeared, to us, from his comments that his primary reason to oppose the permit is that the owner had already derived enough profit from the development of the property and didn't deserve any more. His position regarding the nature of wetlands to be converted and whether they constituted a significant loss was totally refuted. On October 2, 1997 the hearing examiner ruled in our favor; over four years after the original proposal was applied for.

While no attempt was made to estimate the cost/expense related to frustration the real hard costs, one could estimate are related to:

1. Lost opportunity costs i.e., the return on investment that might have resulted had equivalent sums of capital been placed in other investments.
2. Lost revenues that might have been generated sooner if appropriate reviews had been conducted more efficiently and timely. Example: \$1,000,000 of borrowed money at 8% interest costs \$20,000/quarter - 1 million in a good 1997 mutual fund would have generated a possible 15 - 20% gain or \$150,000 to \$200,000.

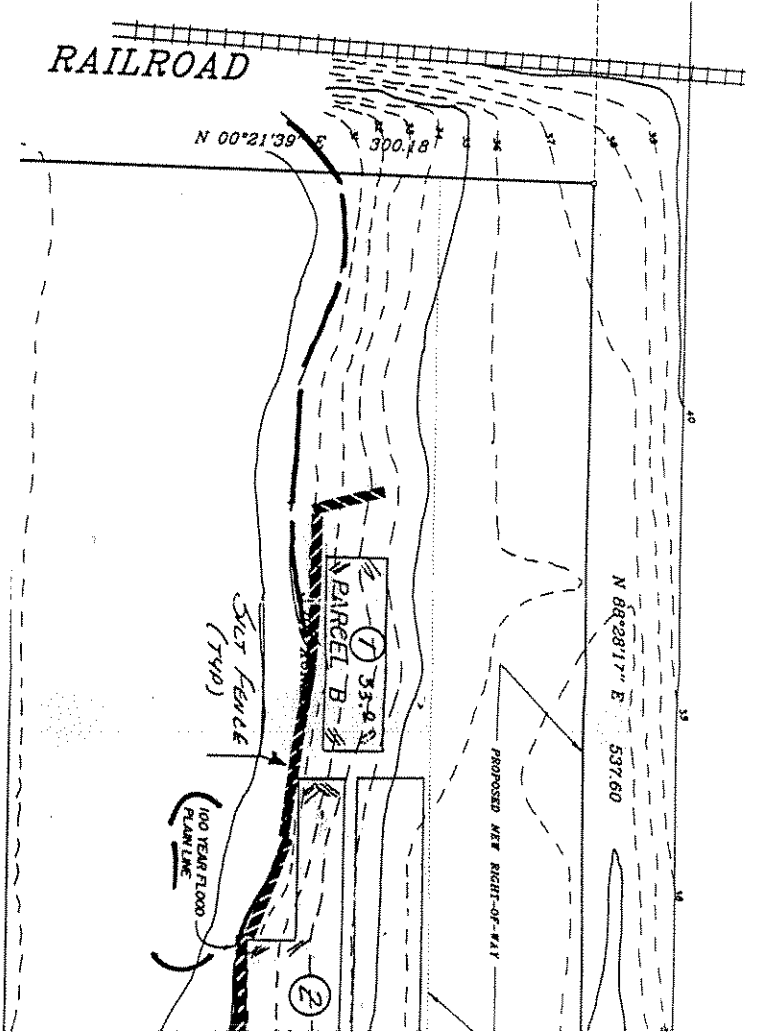
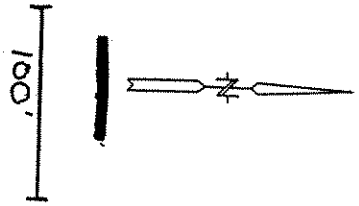
Idle resources whether land, labor or capital does not generate income, it must be put to use in some way to have value. We recognize that even conservancy wetland and environment corridor lands have value. They have the values

society assigns to them for wildlife habitat, floodwater storage attenuation, filtering of sediments and aesthetics to name a few. While regulation and review are necessary to balance out the rights of the individual with those of the community - unnecessary frivolous delays and unsubstantiated claims are often given full hearing as if they possessed equal merit with the expertise of licensed professional engineers and DNR staff people trained and knowledgeable in their various program areas. We do not advocate dismissing the public right to comment but do suggest we incorporate the notion of discovery and merit along with time limits similar to those used in the subdivision plat review process conducted in the Dept. of Commerce in Madison. Essentially that process involves data gathering, discussions with appropriate regulatory staff people at the state, federal and local levels to ascertain the requirements of law, formulation of the proposal which incorporates the concerns of all parties and generates a "give and take" leading towards a mutual accommodation whilst protecting the public interest however that may or come to be expressed. Perhaps the public comment period should occur sooner and be dealt with in the form of motions as is the case with the judicial review procedure in civil cases.

In a typical situation, three distinct phases are recognized; the preapplication - discovery and discussion phase, the preliminary application review phase where one lead review agent is responsible to distribute information, collect responses and report within a certain time. And the final application review phase where once the concerns, issues and objections raised and satisfied in the preliminary phase have been dealt with, final plans including developer agreements, corrected final engineering drawings and all necessary bonds and financial guarantees are reviewed for consistency.

In particular we have found in the review of formal permit applications, if there is no time dead line the motivation to act is simply not present. In addition what until this phase has been a relatively well understood process suddenly becomes

one where communication breaks down internally within the DNR, and we find it difficult to track progress on our various application. The contact person(s) we deal with send to various resource people requests for review but are unable to require timely responses which essentially leaves the developer to languish. And the suggestion that the return of permit application fees be a motivation to act more timely is ludicrous. The fees so nominal as compared to the costs of preparing plans (at times in excess of 10's of thousands of dollars in soft costs) that having a fee returned without a permit is really a meaningless gesture.



S.

Case #2

Waukesha Business Park South

*Background discussion with City Staff & DNR water quality Rep. 1996-early 1997

*Submittal of engineering plans mid May 1997 - prepared with the close consultation of DNR Staff

*30 Day Notice Period June 1997

*4 Letters requesting hearing served as the basis of contested case hearing (simple unsubstantiated claims which we feel fly in the face of our engineering plans sophistication and thoughtful development)

*Package of materials sent to Madison on August 29, 1997 by SE District

*Madison & SE District continue to analyze the data but have not asked for additional information from us

*no date selected for the hearing nor is there any indication of a possible date