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February 25, 1998

Mr. Ed Huck
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Post-it® Fax Note 7671		Date: 2/25/98	# of pages: 3
To: Ed Huck	From: Dan Wright		
Co./Dept: Alliance of Cities	Co: City of Racine		
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SUBJECT: Comments on "Takings Bills"

Dear Ed:

You forwarded the Mayor copies of Assembly Bills 806, 807, 808, and 810, relating to the above topic. In addition, 1997 Assembly Bill 757 also contains elements of takings legislation. Passage of any of these provisions would be adverse to the City of Racine since the result would be increased costs to the City, in many cases in an unreasonable manner, and an increase in administrative burdens.

The concept of AB 806 would undermine the zoning concepts approved by the U.S. Supreme Court in 1911. Namely, zoning regulations restricting the use of private property are proper and do not constitute a taking of property. AB 806 expands the definition of taking beyond constitutional parameters which have established entitlements of property owners. Complicated state regulation in statutes and administrative rules also provide such compensation. The appraisal concepts introduced in AB 806 would create a myriad of problems for municipalities. Since appraisal is not a "science", as has already been demonstrated in the eminent domain area, under Chapter 32, Wis. Stats., a government agency is required to obtain an appraisal for a taking and then pay for the owner's appraisal. The owner always seems to obtain a much higher appraised value for the property than the agency appraiser found, regardless of which private appraisal company is used by the agency. AB 806 also addresses the reassessment of parcels under certain circumstances and establishes an appeal process for aggrieved property owners. The whole process is fraught with difficulties for municipalities since the municipality may believe that a reassessment is not needed but the owner does. The costs associated with the appraisal and appeals aspect of the legislation are considerable. In addition, AB 806 overturns the U.S. rule relating to attorneys fees and grants such fees in cases arising under the AB 806 concept. In the United States, such provisions are rare and relate to matters as actions brought under the United States civil rights

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law and a very few others. It is inconceivable that AB 806 would be considered to be in the interest of the general public since its effect would be potentially burdensome costs on municipalities or, alternatively, a reluctance of municipalities to make appropriate zoning decisions. Either way, the public loses.

AB 807 is a somewhat bizarre provision which requires municipalities to obtain personal service of zoning notices on affected property owners. If the municipality fails to do so, the owners who did not personally receive notice would not be bound by the zoning changes. In order to have effective operation of government, the statutes typically provide for alternative types of notices so that government operations cannot be stymied. In this proposal, an owner with advanced notice of a proposed zoning change which the owner may not like, could avoid personal service. In order to protect itself, a government agency could not reasonably proceed with a zoning action until all owners affected received personal notice. This would make it very difficult to accomplish since the notices must contain a date of hearing, but the notice would not be valid unless all owners affected were actually served within the prescribed timeframe. In addition, the term "owner" varies and would probably be deemed to include unrecorded vendees under land contracts. This may make it virtually impossible to properly amend a municipality's zoning code. AB 807 is not a reasonable manner in which to address the potential problem of lack of notice relating to proposed zoning changes.

AB 808 shifts the burden of proof in litigation relating to certain zoning changes. This provision is also contrary to the historical operation of government and to the general nature of litigation in the United States. An alternative to this provision might be a requirement that specific reasons for such zoning decisions must be placed on the record. This would be similar to decisions made relating to the suspension, revocation or denial of alcohol beverage licenses. Overturning the presumption of validity of governmental decisions would be likely to foster litigation and considerably increase the costs of local government.

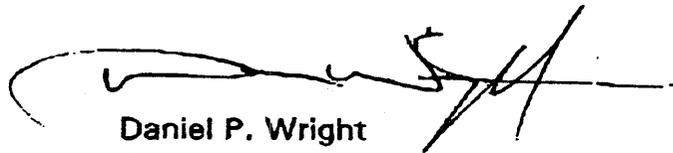
AB 810 would also abrogate the U.S. rule relating to payment of litigation expenses. Although on its face the bill would seem to place litigation expenses on a losing agency only if malicious intent or gross negligence existed, the word "unreasonably" is vague and would open the door to allow attorneys fees for the adverse party even though bad faith or malicious intent did not exist.

AB 757 contains some of the factors addressed in the above legislation. It would also create a considerable administrative burden on assessors and county registers of deeds. It also contains provisions which would result in inconsistencies with respect to the duty of municipal assessors, and should be opposed.

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Please keep us informed on the progress of these bills so that we may appear in opposition to the proposed legislation at future hearings. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Wright', with a long horizontal line extending to the right.

Daniel P. Wright
City Attorney

DPW/ee

c: Mayor James M. Smith

huck.takings