AB 808

WISCONSIN ASSOCIATION OF LAKES, INC.
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26 February 1998

STATEMENT BEFORE THE ASSEMBLY LAND USE COMMITTEE
Assembly Bills AB806 through AB810

Thank you for this opportunity to speak to this Committee. My name is Elmer Goetsch. I live in Three Lakes, in Oneida County.

I am the president of the Wisconsin Association of Lakes, representing about 275 local lake management organizations and their 90,000 local members. I have owned lakeshore property in Northern Wisconsin since 1964. I have been a citizen member of the Oneida County Board of Adjustment for eight years.

I speak on these bills from the perspective of protecting Wisconsin's lakes for future generations to safely use and enjoy. If these bills become law as presently written, they will wreak havoc on local zoning in Wisconsin, including shoreland zoning. Effective local zoning will be disintegrate. The potential impact of these bills has not been thought out.

Let me say that local zoning undoubtedly often places limitations on what property owners can do. But good local zoning helps protect and enhance private interests, while doing the same for public interests.

Local zoning protects owners from the bad things that their neighbors might do, which might not only disturb others, but directly reduce the value of their properties. At my home on Island Lake, I don't want to see my neighbor build a commercial sawmill, or a tannery, or an auto salvage yard. Local zoning is a tool used to separate conflicting land uses for private benefit.

Likewise, local zoning helps protect and preserve public interests, for example, Wisconsin's 15,000 lakes. These lakes belong to all the people under the public trust provision of the State Constitution. What thoughtless and irresponsible shoreline landowners may do along their shores can have an enormously detrimental effect on this public resource. Local zoning is a tool to help restrain those owners.

I am not here to assert that state and local zoning laws and regulations are perfect and don't need improvement. But these bills are bludgeons, when perhaps a small screwdriver would be sufficient to make needed fixes.

Just one example. AB807 requires that the county zoning agency make a good faith effort to identify each person whose property is affected by a proposed ordinance or amendment in a way that changes the allowable use of the person's property. The agency must mail a written notice to each person so notified Any person so identified who does not receive the written notice is not required to comply with the proposed zoning ordinance or amendment.

At first glance, this may seem quite reasonable a protection for little landowner from big government. However, the bill is very ambiguous. "Changes the allowable use..." is not defined but might be construed to mean ANY increased (or decreased) restriction on use, such as setback requirement. Undoubtedly, zoning rules are frequently in need of improvement, maybe even relaxation. This provision of the bill sweeps ALL changes into the furnace, not just more restrictive changes. This bill makes it just as hard to relax a zoning rule as it does to tighten it up.

And the "...is not required to comply..." provision of AB807 would mean a nightmare to obtain compliance. Oneida County is in process of rewriting it's zoning ordinance originally written nearly 20 years ago. Since this is a complete rewrite, nearly every property owner in the county could be affected. The County would have to send written notices to each and every owner of the 55,000 property parcels in the county. Certified or registered mail would have to be used. Return receipts would have to be filed and retained indefinitely to prove at some indefinite future date that the owner must comply. How long must they be kept? Who knows.

Beyond that, what happens if I sell my lot to my downstate brother? He's never owned property in Oneida County and therefore never received written notice of the ordinance change. Apparently he therefore does not have to comply with the ordinance, although I did. This looks to me like unconstitutional unequal protection under the law. Can you not see the absurdity this bill leads to?

From the perspective of my experience on the Oneida County Zoning Board of Adjustment, I can see that AB810 would seriously degrade the ability of zoning boards of adjustment to act. AB810 would lead to an enormous increase in appeals to the Board, and a dramatic increase in subsequent petitions to circuit courts for writs of certiorari. In fact, if this bill becomes law, the Oneida County Board will promptly receive my resignation from the Board of Adjustment. For that matter, the County Board may abolish the Board of Adjustment altogether, if they can, when they see what the legal costs are going to be.

The burden these bills would impose on the practical authority of local governments to do their jobs would be intolerable. There would no longer be effective local zoning.

Wisconsin has a wide diversity of communities. We should allow those communities as much latitude as possible to deal with their local circumstances. The State should not be imposing new and burdensome procedural requirements on local zoning authorities.

These are bad bills which WAL most emphatically and resolutely opposes.

Elmer A. Goetsch

ELMER A. GOETSCH
President

City of Menasha
Position on Assembly Bills 806, 807, 808, and 810

As a representative of the City of Menasha, I would like to express opposition to Assembly Bills 806, 807, 808, and 810. Earlier this year, the City of Menasha adopted a resolution in opposition to similar "takings" legislation at the federal level (please see attached Resolution R-1-98) Like that federal legislation, the Assembly Bills in question today propose to weaken the ability of local governments to regulate land use, to provide land use planning, and to protect the public interest and welfare.

AB 806 would have a significant negative impact on local governments because of the monetary costs and administrative burden it would create. The intent of this bill is to require state and local governments to prepare an assessment of property if the proposed government action may result in the "taking" of the property. Since a "taking" is defined as the reduction of the fair market value of property by 50% or more, the only way to determine this "takings" status is through an assessment. The practical application of this bill would result in a requirement for government to provide an assessment of property every time a proposed governmental action might impact the value of the property. This requirement would place serious financial limitations on the ability of local governments to provide sound land use planning and regulation for their own communities.

AB 807 would create a situation where an affected property owner could overturn a zoning ordinance by claiming not to have received notice. To prevent this, local governments would be required to send all notices by certified mail. Again, this requirement places a significant financial burden on local governments and their tax payers. For example, the City of Menasha recently made a minor amendment to its residential zoning requirements in relation to the maximum size of garages. If the city had been required to notify all affected properties, the cost would have been approximately $1,600 by regular mail or $13,850 by certified mail. Since the city strives to regularly update our zoning code, this requirement would amount to tens of thousands of dollars in mailing costs each year.

AB 808 would require local governments to prepare a comprehensive written record to document its rationale for any ordinance or resolution that is intended to protect the natural values of an environmentally sensitive area. Local government is given the authority and responsibility for protecting public welfare, and presumably can determine what levels of police and fire protection are appropriate for the community. Why then is local government burdened with an added level of proof or documentation for determining the appropriate level of environmental protection? Although providing rationale for all new ordinances and resolutions is already done routinely, this bill would create additional administrative requirements and a stricter standard on local governments than courts have imposed on state agencies. Also, this bill would create an unclear standard by not defining "environmentally sensitive areas."

AB 810 would require local governments to compensate legal fees to people who successfully challenge zoning decisions. If this is deemed fair, perhaps those who are unsuccessful should reimburse the city for the legal costs it occurred in defending its actions. AB 810 would be detrimental to the public interest because it would sap communities' initiative to enforce the zoning, building, and sanitary regulations that help ensure the quality of life for all residents. In addition to creating potential financial costs for local government, this requirement encourages people to sue rather than resolve conflict locally.

It is important to remember that local governments adopt land use regulations not for the purpose of infringing on property rights or "taking" property, but in good faith - to make our communities more livable. Municipalities take very seriously their responsibilities of protecting both the public interest and individual property rights. Not only would these proposals create additional government bureaucracy, but would place a greater financial burden on city tax payers. The City of Menasha strongly opposes all of these bills and any other similar "takings" legislation that would interfere with the city's ability to provide efficient and sound land use planning and zoning regulations for our community.

Submitted by: Amy Kester
Community Development Specialist
City of Menasha
140 Main Street
Menasha, WI 54952

RESOLUTION R-1-98

RESOLUTION OPPOSING PROPOSED "TAKINGS" LEGISLATION

WHEREAS, the U.S. House of Representatives in October, 1997 passed HR 1534, to move local zoning and land use disputes from local decision makers into federal courts; and

WHEREAS, the bill threatens to increase the legal costs of communities across the country by spawning lawsuits in cases that would have otherwise been resolved at the local level; and

WHEREAS, the bill puts communities across Wisconsin and across the nation in a no-win situation when performing their jobs of mediating disputes among neighbors and protecting the common good; and

WHEREAS, HR 1534 is an example of "property rights" legislation that could provide a multi-billion dollar giveaway to developers, mining companies, large feedlots and other land owners across the country who are not concerned with the rights of their neighbors; and

WHEREAS, Wisconsin Reps. Scott Klug; Ron Kind; Tom Barrett; Jerry Kleczka; Dave Obey and Jay Johnson voted against HR 1534 on the House floor; and

WHEREAS, HR 1534 is now pending in the Senate Judiciary Committee, where S 781, a similar Senate measure, also is pending; and

WHEREAS, Sen. Herb Kohl and Sen. Russ Feingold of Wisconsin are both members of the Senate Judiciary Committee;

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Menasha, Wisconsin, expresses its thanks to Reps. Klug, Kind, Barrett, Kleczka, Obey and Johnson; and

FURTHER BE IT RESOLVED that the Common Council of the City of Menasha, Wisconsin urges Sens. Kohl and Feingold to oppose HR 1534, S 781 and similar proposals; and

FURTHER BE IT RESOLVED that copies of this resolution be forwarded to Sens. Kohl and Feingold and Reps. Johnson, Obey, Kleczka, Barrett, Kind and Klug.

Passed and approved this 19th day of January, 1998.

Joseph F. Laux, Mayor

ATTEST:

Joan Smogoleski, City Clerk

City of Milwaukee
Milwaukee 150 1846 1996

Department of City Development

Housing Authority
Redevelopment Authority
City Plan Commission
Historic Preservation Commission

Michael L. Morgan
Commissioner
Patrick G. Walsh
Deputy Commissioner

February 26, 1998

File Reference:

Testimony relative to Assembly Bills 806, 807, 808 and 810.

Dear Rep. Powers and members of the Committee on Land Use:

My name is John Hyslop and one of my responsibilities as the Manager of Planning Administration for the City of Milwaukee is to insure that public hearings relative to zoning amendments being reviewed by the City Plan Commission are properly notified and affected parties have the opportunity to comment. The City of Milwaukee far exceeds the notification requirement of the State of Wisconsin. I'm sure most other communities do as well.

All zoning amendments receive the Class II public hearing notification required by State Stats regardless of whether the amendment is to a zoning district boundary or to the text of the zoning ordinance itself. In addition, all district boundary amendments receive two public hearings each of which include direct mailed notices to all property owners within the area being changed as well as to property owners surrounding the area. Names and addresses are compiled from the City's computerized tax records.

The new notice requirements of Assembly Bill 807 are both vague and severe. While written notice is to be sent to "each person whose property is affected" the bill does not quantify the extent of the impact nor the extent to which tenants, lessees, vendees, absentee owners, or others would fall within the notice requirements. In addition, the notice provision works an historic reversal of the maxim "ignorance of the law is no excuse." For the first time, persons who do not or claim not to have received the required written notice are not required to comply with a city's ordinance, zoning change, or regulation.

This last provision will place an undo burden on all communities by forcing them to notify all affected persons by Certified Mail. The use of Certified mail would be required because without a signed receipt the city could not prove that a property owner received a notice and therefore, could not enforce ordinance changes. We currently notify property owners via Certified Mail when creating tax increment and business improvement districts. Our experience is that each notice costs $2.32 to mail and takes 5 minutes to fill out. A mailing of 120 notices would

require $278.40 in postage and $120.00 in net wages not including overhead or loss of time from normal assignments, for a total of approximately $400.00.

Unfortunately, Assembly Bill 807 applies to both zoning district boundary amendments and zoning text amendments. Both types usually affect the allowable use of a person's property. Text changes could easily be the most costly for a community to provide the proposed notification. A text change has the potential of requiring massive mailings. The City of Milwaukee averages approximately 50 zoning district boundary amendments and 15 text amendments each year. Boundary amendments average approximately 40 properties which would have to be notified while text amendments could range from a few owners to all properties in the city.

The City of Milwaukee is currently initiating a major rewriting of the City's zoning ordinance. With almost 158,000 individual parcels in the city, the new notification requirements would add over $500,000.00 to the city's cost of rewriting the zoning ordinance. This would occur at a time when Mayor Norquist and the Common Council have been making great strides in reducing the tax burden on city property owners.

Assembly Bill 808 also works an historical reversal, in this case on the burden of proof regarding legislative acts. Where current law affords the acts of legislative bodies a presumption of constitutionality, which must be rebutted beyond a reasonable doubt be challengers, this bill allows a court to shift the burden to the City and to invalidate any part of an ordinance or resolution "about which the Common Council is unable to produce clear, satisfactory and convincing evidence from the written record that indicates the rationale for the ordinance or resolution."

The bill, in its current form, applies only to "environmentally sensitive areas," but fails to define such areas, and it fails to define what must be included in the "comprehensive written record" of the Common Council's intent which will be essential to save any challenged council action. The primary ordinances which the City of Milwaukee have enacted over the years and which might be considered to affect "environmentally sensitive areas" would be those related to the establishment of Wetland/Shoreland Districts and Floodplain Districts. In both cases the City of Milwaukee had very little discretion in the determination of the boundaries of these districts or their establishment. Both were presented to the city by the Federal and State Governments and the city was threatened with the loss of Federal/State funding and/or assistance if they were not adopted.

While the city gladly adopted these regulations on their own merit, we question the impact of Bill 808 on future amendments to these ordinances or other ordinances which the city might be required to adopt.

Assembly Bill 806 redefines the term "taking" to mean something entirely different than is currently understood in either federal or state law. This bill defines a "taking" to be a reduction in the fair market value if private property by 50% or more. This contrasts markedly with the federal definition "where the regulation denies all economically beneficial or productive use of land" (Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015 (1992)) and Wisconsin's similar standard of "practically or substantially renders the land useless for all reasonable purposes" (Buhler v. Racine County, 33 Wis. 2d 137, 143 (1996)).

The determination of a "taking" is accomplished with two separate property assessments, conducted by certified appraisers, not employed by the government, assessing the fair market value of property both before a "governmental action that regulates private real property" takes effect, and then "assuming that the proposed action is taken." The average of these two assessments will determine whether or not a "taking" has occurred. The bill has no provision for compensating private property owners when a "taking" occurs, but rather mandates that any governmental action that would result in a "taking" be approved by a super majority vote. Assessments can be compelled by the petition of 12 or more owners of property, and the bill creates causes of action for owners of private property if the government fails either to conduct the required assessments or enacts an ordinance or adopts a resolution without the required three-fourths vote. Challengers to any municipal act may also avail themselves of the assistance of the District Attorney's Office or the State Department of Administration in the commencement of their actions. Government action taken in violation of any of the new regulation is void.

In addition to the new actions, persons challenging the government "shall" be awarded costs "including reasonable attorney fees" if they prevail in the action. Even the exemption of a baker's dozen of governmental acts reflects the heavy-handedness of the legislation, using language that would provide persons whose property is seized and forfeited under federal law or deemed a nuisance by the Commission of Building Inspection causes of action heretofore unavailable to them.

Although not perfectly clear, the definition of "governmental action" appears to be broad enough so as to cover routine matters such as regulation of driveways, access restrictions, issuance of permits, or other regulations regarding the use of private

property. The impacts of this Bill may be far reaching and costly, not to mention affectively tying the hands of local government and causing significant delay of governmental actions of the most routine matters.

Even in instances where a "taking" does not occur, this bill presents a very substantial impediment to governmental action. Governmental entities will, in some instances, be forced to follow the extensive and expensive procedures for establishing market value where there is any conceivable impact upon property values as a result of proposed legislation; even in those instances where local governmental action is mandated by state or federal requirements. Predictably, many governmental entities will refrain from any action at all, however much needed for the public good, after considering the costs created by these new requirements.

Lastly, Assembly Bill 810 would entitle opponents of local land use regulations to costs and "reasonable attorney fees" if they prevail in certiorari actions brought to review Board of Zoning Appeals (BOZA) decisions, and it allows statutory costs "regardless of the disposition of the appeal." Prevailing opponents will obtain costs in most, if not all, cases with the bill's inclusion of those appeals where a court determines that BOZA acted "unreasonably." In our experience, that is the most commonly stated ground for an appeal, and is generally pled even when not the primary focus of a challenge. Moreover, in light of the fact that BOZA already bears the cost of reproducing the record for the court and challenger and of defending itself in all cases, it truly seems overkill to award costs to persons bringing appeals "as a matter of equity," irrespective of whether or not they prevail. The practical effect would be to encourage legal challenges by anyone displeased by a BOZA decision.

Thank you for the opportunity to present these comments.

Sincerely,

John R. Hyslop, AICP
Manager of Planning Administration
Department of City Development

Office of the City Attorney

Daniel P. Wright
City Attorney

City of Racine, Wisconsin

Guadalupe G. Villarreal
Deputy City Attorney

Scott Lewis
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February 25, 1998

Mr. Ed Huck
Wisconsin Alliance of Cities
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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	
Phone #	Phone # 414/636-9115	
Fax # 608/257-5882	Fax # 414/636-9570	

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

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.

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,

Daniel P. Wright
City Attorney

DPW/ee

c: Mayor James M. Smith

huck.tekings

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February 26, 1998

TO: Chairman Powers and Members of the Assembly Land Use Committee

FR: Byron Hawkins, President
Lake States Lumber Association

RE: Land Use Legislation

Mr. Chairman, members of the Committee, thank you for the opportunity to speak to you today. My name is Byron Hawkins and I am President of Lake States Lumber Association and its 200 member companies. The forest products industry in Wisconsin, according to 1995 DNR figures, consists of over 1,800 companies employing approximately 98,000 people with a payroll topping 3 billion dollars. Our annual shipments are valued at nearly 20 billion dollars.

I am here today to pledge our support for the four land use bills before your committee today -- Assembly Bills 806, 807, 808 and 810.

These land use reforms are modest and without compensation, which should remove any opposition from local elected officials. Last session, Representative Albers introduced much more dramatic and far-reaching legislation which required financial reimbursement by local units of government if it was determined a property rights taking had occurred. None of these bills contains that provision.

We still believe our government owes its citizens just compensation, however, we accept the political realities of being unable to pass that legislation at this time.

This is why the package of bills before you today reflects modest changes the timber industry desires which will bring more fairness to the "process." It is important that ordinary citizens have a real opportunity to participate, especially when proposed land use changes will affect their private personal property.

We understand that cities must put in river walks. We understand the need for green spaces. We understand the need for new roads. What we do not understand -- and what these bills begin to address -- is the way in which so many green spaces and river walks and new roads are created -- not in the light of day, but quickly and quietly before the private property owner finds out what's happening to them.

I think that all four of these bills boil down to two words -- "fairness" and "accountability." We're not asking for money or mandates or restrictions on imposing ordinances -- we're asking that the people of this state be treated **fairly** by all levels of state and local government. And we are asking that those units of government be held **accountable** for their decisions -- decisions that can have such a huge impact on the people affected.

Now to the first bill.

Remarks to Assembly Committee on Land Use on Behalf of
Wisconsin's Environmental Decade

February 26, 1998

Re: AB 806, AB 807, AB 808 and AB 810

Thank you for the opportunity to present Wisconsin's Environmental Decade's opposition to this package of anti-conservation, anti-environment bills.

First, as a general proposition of good government, I don't believe that any special interest should be given the tools with which to intimidate into inactivity governmental decision makers, the people they represent and the governments for which they work. But that is exactly what these bills attempt to do. If enacted, these bills would effectively prevent government at all levels within the state from acting to protect our common interests from the irresponsible actions of a few - those who would put land to every imaginable use without regard for the consequences of those land uses on others.

We live in a time and place where virtually everything we do on our land has impacts beyond our property boundaries. Whether we operate a foundry, raise livestock, or fertilize our lawns we impact others to some extent.

We establish governments to determine which impacts are acceptable and which are not. These bills are designed to intimidate local governments out of making such determinations, leaving those who have no regard for the consequences of their actions on their neighbors free to satisfy themselves at the expense of the rest of us.

Let me give you an example of what these bills might lead to. For most Wisconsinites, their single most valuable asset is their home. The value of that asset is protected by zoning - which says that only other homes may be built in residential areas. This ensures that the character of our residential neighborhoods remains intact. But if AB 806 becomes law, local governments will no longer be able to protect the integrity of our neighborhoods. If I can show that my residential lot would be worth more to me as a 24-hour truck wash and adult book store than as a home, but the Madison city council won't rezone or give me a conditional use permit, they will have "taken" my property. On the other hand, if they grant my request the resulting decrease in value of my neighbors' homes may also be a taking. What is a local government to do? That's not merely a rhetorical question, but rather an example of the dilemma governmental dscision makers all across the state will face on an almost daily basis.

These bills would create more bureaucracy at all levels as local governments attempt to satisfy the paperwork burdens of these bills. And the appraisers and lawyers are bound to be pleased with the additional business that would be created.

Having made these general comments, I also have a few specific criticisms of each bill.

AB 806: There is already a system and a process for protecting landowners from takings. It's called the Federal Constitution and the Federal Courts. As a general proposition, the Constitution is good enough for me. And I believe that we are all better served by that system than by tinkering with state law every time we disagree with a federal court decision.

This bill also makes one state agency responsible for suing other state agencies. Under this bill the Department of Administration would be empowered to sue other state agencies for failing to make assessments or, presumably for even good faith errors in attempting to make assessments. We all know how undesirable it is to have one state agency suing another, as those of you and your colleagues who voted to kill the Office of the Public Intervenor can attest. However, this might not be so bad if the political winds change and the language about DOA taking action "if the interests of the public are at stake" gets interpreted to mean the common good, rather than the condition of a particular individual's or interest group's balance sheet.

AB 807: As this is written anyone can avoid complying with an ordinance by simply avoiding receipt of written notice. Let's not invite people to irresponsible and bad neighbors. At the very least, let's not make it so easy.

AB 808: This bill fails to define the key term "environmentally sensitive area." I also seriously doubt it could withstand an equal protection challenge by someone aggrieved by a land use ordinance or resolution designed to do something other than protect an environmentally sensitive area.

AB 810: This is the most blatant attempt to intimidate local government, creating the prospect that a municipality would have to pay a challenger's costs even if that challenger loses!!

In conclusion, I just want to say that not only are these bills anti-conservation and anti-environment, they would be directly contrary to Wisconsin's tradition of good government. On behalf of Wisconsin's Environmental Decade I urge you to put these bills to their highest and best use - as scrap paper for recycling.

Thank you.

Wisconsin Builders Association

President
Bill Carity
Brookfield

President-Elect
Bill Binn
Lake Geneva

Treasurer
John O. Shaline
Green Bay

Secretary
Ron Derrick
New Richmond

Area Vice Presidents

1997-98

Bob Hernke
Oshkosh

Dave Osborne
Madison

Steve Schoen
Green Bay

Dave Turk
La Crosse

Keith Weller
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Judy Carpenter
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Esther Stange
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Jim Leppla
Appleton

Lana Ramsey
Union Grove

Rod Werner
Merrill

Ken Zaruba
New Richmond

Executive Vice-President

Bill Wendle

Director Governmental Affairs

Gerard Deschane

MEMORANDUM

TO: Members of the Assembly Land Use Committee

FROM: Jerry Deschane, Director of Government Affairs

DATE: February 26, 1998

RE: AB806, AB 807, AB808, AB809, AB810

On behalf of the more than 6,000 businesspeople represented by the Wisconsin Builders Association (WBA), we urge your support for these land use reform bills. Each of these bills is a practical effort to fix a real problem in the land use process.

AB 806 requires a state or local government agency to determine if a proposed law would reduce property value by 50% or more. If so, the local government needs a 2/3 vote to pass the proposal, while a state agency must find another alternative. It doesn't require compensation or prohibit a local government from taking the action. It simply asks that government to "look before it leaps."

AB 807 requires local governments to notify property owners directly if a zoning change will alter the permitted uses of their property. Current law requires only a legal notice published in one newspaper or posted on the town hall bulletin board. WBA regularly hears from members who found out, often at the last minute or after the fact, that a significant zoning change is taking place in their community. Those who would argue this will cost too much should weigh the cost of a postage stamp against the impact of changing the use of a person's land.

AB 808 requires local governments to document the reasons for declaring an area environmentally sensitive and thus off limits to most productive uses. Many communities in Wisconsin designate environmentally sensitive zones, under a variety of names, typically "Primary Environmental Corridor," or "Conservancy." There are many areas that need to be protected and preserved, and AB808 does nothing more than require the local government to put on paper the reasons for doing so.

AB 810 awards costs of up to $100 in legal and $100 in expert witness expenses to a property owner who successfully challenges a zoning decision. In addition, if the person can prove that the local government acted with gross negligence, his full costs can be paid. Under current law, the cost and burden of proof that must be borne by a property owner is almost overwhelming. As a result, many individuals who are harmed by a zoning decision simply can't afford to challenge that decision.

Thank you for your consideration.

NAHB

4868 High Crossing Boulevard • Madison, Wisconsin 53704-7403
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Frances Locke
2242 West Lawn
Madison, WI, 53711

My name is Frances Locke and I am speaking for the Wisconsin Audubon Council. Thank you for this opportunity to present our views.

I am concerned about the effects AB806,807, 808 and 810 will have on the ability of local governments to do their job effectively and conscientiously.

The overall effect of these bills is to add layers of bureaucracy by creating time consuming and burdensome proceedures. They would open the door to extended and costly litigation, with no provisions for compensation to the municipality, in other words an unfunded mandate.

The result of enacting these bills would be to reduce the ability of local governments to run their affairs.

For example AB806 requires two assessments of properties that might have value lowered by a governmental action. This would be costly and time consuming in large plats as charges are made for each parcel that is appraised--twice. And taxpayers foot the bill.

If the municipality still judges that the action is needed they may only implement it by a three fourth majority vote. This seems excessive, ammendments to the U.S. Constitution only require a two-thirds vote.

AB807 requires personal notice to every property owner affected by a proposed action. Again expensive and time consuming. To allow a property owner to not comply, if they didn't receive a notice is absurd, and probably not enforcable. Most courts have ruled that personal notice is not required. And again this would be a burdensom, time consuming hoop for local government to jump through.

AB 808 is vague, and reverses the normal practice of requiring a challenger to a law to prove his or her case. Costly, time consuming and inevitably incuring lengthy litigation.

AB 810 also reverses normal practice by awarding costs to the appelant if they prevail. Not only is this another burden on the taxpayer, but could seriously interfere with the local governing body to act in a way they think is fair

Frances Locke
Wisconsin Audubon Council
2-26-98

to all. If county board members or city alders have to act knowing that doing what they feel is best may cost taxpayers, and incur resentment, they are put in an unnecessarily difficult position.

Existing laws and constitutional protections have worked well in balancing various interests. And the simple fact is that most local governments in Wisconsin try very hard to be fair.

The chilling effects of these bills would make governing so potentially contentious, costly, and time consuming as to seriously impair local governments to govern effectively.

At a time when reducing bureaucracy and costs in government, and encouraging local control are seen as important values, these bills can only be seen as a giant step in the wrong direction.

- - - - - - -

1000 FRIENDS OF WISCONSIN

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Tom Quinn, Menomonie

Roger Shanks, Merrimac

Jeanie Sieling, Fitchburg

Jim Van Deurzen, Mazomanie

Amy Ward, St. Croix Falls

February 26, 1998

TO: The Assembly Land Use Committee

FR: Dave Cieslewicz, Director

RE: 1000 Friends' Positions on Assembly Bills 806, 807, 808 & 810

Overall Comments

Taken as a whole, these bills have the result of making it more difficult for local communities to protect the public interest in compatible and orderly development. The bills would increase costs to taxpayers, increase litigation and make it easier for developers and land speculators to bully local officials into approving ill-considered development schemes. Our land use laws *are* in need of revision, but the revisions need to increase public involvement by making the system more logical and less complex. These changes only add complexity and vagueness. Moreover, they increase the chances that decisions made by popularly elected bodies will not be final, but will be overturned by the courts. Overall, these bills tip the scales, already balanced in favor of developers, even further toward development interests.

Assembly Bill 806

This bill would require a three-quarters majority for any governmental action that would result in the reduction in value of a given property by 50% or more.

- Because the bill would allow any appraiser to determine that value had been reduced by 50% and because appraisers will try to justify the result that their client wants, it won't be hard for property owners to claim the 50% reduction and demand the super majority vote.

- The bill will result in increased public costs in two ways: 1) For litigation as governments and individuals argue over the extent of a reduction in value; 2) For the assessments of the impact of government actions on private property values, which is also required in the law.

- The bill defines a taking at a 50% reduction in value, an arbitrary amount. The courts have said that a taking results only when all or nearly all of the value of a property has been lost. This sets a new, much more liberal standard.

- Once the principle of a taking at a 50% reduction in value has been set, the next step will be to introduce legislation to require compensation for the loss in value. This would break state and local taxpayers and essentially eliminate any sensible regulation of land in the public interest.

- The bill puts alarming new powers in the hands of one state agency. It allows the Department of Administration to commence legal action against a local government if it thinks a local government action has resulted in a taking.

- The bill is filled with undefined terms that will attract litigation. For example, it exempts local government actions which are "a reasonable response" to state or federal legislation. This is an open invitation to argue over what is reasonable.

Assembly Bill 807

This bill requires local governments to notify property owners who would be effected by a proposed zoning change of the proposed change and the opportunity to appear at a public hearing. If the property owner claims they were not notified, they don't have to comply with the zoning action.

- The vast majority of zoning changes take place at the request of the property owner. They don't need to be notified of their own request.

- The bill would increase costs to local taxpayers because, for all intents and purposes, it would require notices to be sent certified mail. This is because property owners would be allowed to ignore zoning changes by simply claiming that they never received notice.

- In communities that made comprehensive changes in their zoning ordinances, the costs would be very substantial because it would require them to send written notice (probably via certified mail) to every property owner in the jurisdiction which might be affected.

- The bill is riddled with vague terms that will invite litigation and force communities to spend money to protect themselves. For example, the requirement that governments make a "good faith effort" to notify landowners will beg the question about what constitutes a good faith effort. Governments will be even more likely to use expensive certified mail to protect themselves against charges that there effort to notify was not made in good faith.

Assembly Bill 808

This bill requires local governments to create a comprehensive written record justifying a zoning action intended to protect an environmentally sensitive area. The bill requires courts to invalidate any ordinance that is not supported by clear, satisfactory and convincing evidence from the written record.

- The bill would increase costs to local property taxpayers by requiring increased staff time to compile an extensive written record for every zoning change.

- The bill sets a very high standard for these written records to make a "clear, satisfactory and convincing" argument, which will make it incumbent upon some local governments to hire attorneys to make sure that the record is adequate to withstand a court test.

- The bill has many undefined terms, which are bad legislative craftsmanship and which will invite litigation. For example, a term of central importance to this bill, "environmentally sensitive area", is left undefined.

- The bill would require courts to overturn decisions made by duly elected public officials, decisions which might be in the public interest and supported by the community, simply because there was some technical deficiency in the record.

- This is a fundamental change in law (far from being a conservative approach). Normally, ordinances are presumed to be valid, but this reverses the presumption and puts the burden on the public.

Assembly Bill 810

This bill requires courts to award litigation expenses to a person who prevails in a court challenge of a county or town board of adjustment or a city board of appeals decision.

- This bill will increase costs to local taxpayers who will be forced to pay for the attorneys of disgruntled landowners.

- This bill will put pressure on boards of adjustment to rule in favor of property owners and against decisions made in the community interest.

- This bill would encourage more litigation in already overworked courts.

CITY OF NEW LISBON

Incorporated by Act of The Wisconsin Legislature, April 9, 1889
218 EAST BRIDGE STREET, NEW LISBON, WISCONSIN
Mailing Address: POST OFFICE BOX D, NEW LISBON, WISCONSIN 53950

CITY CLERK
(608) 562-5213

ELECTRIC, WATER & SEWER DEPTS.
(608) 562-3103

Chairman Powers and members of the Land Use Committee,

I serve as the mayor of New Lisbon, a city of nearly 1,500 residents in Juneau County. I submit to you these written comments in favor of four pieces of legislation developed and introduced by Representative Sheryl Albers. I encourage you to support these provisions as they help protect property owners from overzealous government while helping protect local units of government from indulging in poor planning.

As a part-time mayor working with a part-time city council, I work very hard to protect the interests of private property owners as we plan for the future of the city. To help establish more protection for property owners and the city, however, some systems must be in place to ensure that we do not inadvertently take action which harms a property owner.

AB806 requires cities like ours to pass ordinances and resolutions with a supermajority vote if our proposed action would devalue property by more than 50%. Since 50% is such a high threshold, I anticipate relatively few instances when New Lisbon will need to conduct the requisite assessment or utilize the supermajority vote. Nonetheless, as a property owner myself, I understand the need for such a system. As a Mayor, I *want* to provide that kind of protection to those I serve.

AB807 simply requires that a notice and hearing be given to property owners when the use of their property is changed. Again, as a mayor, I want New Lisbon residents to participate in our local government and understand what we do as their elected representatives. Since our actions are always carefully planned, I'm not ashamed to notify property owners and afford them the opportunity to be heard. This bill is democracy in action.

AB808 really protects my city as much as any private property owner. When we have good records, we can respond more effectively to the citizens during public meetings, or defend our actions in court, if needed.

AB810 does not directly affect my city, but as a public official, I support any effort to provide those who appeal their board of adjustments decisions with some of their legal costs if they're successful. Cities need to be held accountable for their actions, and this is one small means to that end.

In sum, Representative Albers has put together a series of city-friendly pieces of legislation that I support 100%. As a mayor, as well as a property owner, I ask this committee to pass these bills out of committee so that the full legislature can debate their merit. Thank you for your consideration.

Kenneth H. Southworth, Mayor
City of New Lisbon, Wisconsin

AB 808

FEBRUARY 26, 1998

TO: REPRESENTATIVE MICHAEL POWERS & ASSEMBLY
LAND USE COMMITTEE

I AM WRITING THIS TO VOICE MY SUPPORT OF ASSEMBLY BILLS 806 - 810. IT IS IMPERATIVE THAT INDIVIDUAL LAND OWNERS BE NOTIFIED PRIOR TO ANY FORM OF GOVERNMENT ACTION ON THEIR PROPERTY. A GOVERNMENT SHOULD NOT BE ALLOWED TO CREATE SITUATIONS, LAWS, ORDINANCES, ETC. WHEREBY A GOVERNMENTAL BODY MAY TAKE AN INDIVIDUAL'S PROPERTY FROM THEM AGAINST THEIR WILL.

LITIGATION COSTS THAT ARISE OUT OF SUCH A SITUATION SHOULD BE FULLY REIMBURSED TO THE LANDOWNER BY THE GOVERNMENTAL BODY ATTEMPTING TO TAKE THE LAND. AN INDIVIDUAL LANDOWNER SHOULD NOT HAVE TO INCUR COSTS DEFENDING HIS OWNERSHIP OF A PROPERTY.

THIS ENTIRE PROCESS COULD BE FAR LESS CONFUSING TO ALL CONCERNED IF CITIES AND MUNICIPALITIES WOULD BE REQUIRED TO ADOPT ANY AND ALL MASTER PLANS BY ORDINANCE. THIS WOULD INSURE INVOLVEMENT BY THE CITIZENRY - THOSE MOST AFFECTED BY TAKING OF THEIR PROPERTY BY GOVERNMENTAL BODIES. THE CURRENT PROCESS WHEREIN A SELECT GROUP OF CITY OFFICIALS CAN ADOPT A MASTER PLAN WITHOUT PUBLIC INPUT IS NOT AT ALL DEMOCRATIC.

THIS SAME PROCESS RUNS TRUE REGARDING THE DEFINITION OF BLIGHT. A SELECT GROUP OF CITY OFFICIALS SHOULD NOT HAVE THE RIGHT TO DECLARE AN AREA BLIGHTED IN ORDER TO OBTAIN THAT PROPERTY AGAINST AN OWNERS WISHES. THE CURRECT DEFINITIONS FOR BLIGHT ARE VAGUE AND EASILY MANIPULATED TO SERVE SELFISH INTERESTS.

ANY INDIVIDUAL / PARTY SHOULD HAVE THE RIGHT TO ACT WHEN THEIR PROPERTY IS TO BE DEVALUED. IN A DEMOCRATIC SOCIETY, IT SEEMS INCOMPREHENSIBLE THAT A GOVERNMENTAL BODY MAY INCUR FINANCIAL HARDSHIP ON ANY INDIVIDUAL / PARTY IN ORDER TO TAKE PRIVATE PROPERTY.

I URGE YOU TO SUPPORT ASSEMBLY BILLS 806- 810. GOVERNMENT IS FOR THE PEOPLE - NOT AGAINST THE PEOPLE.

MARTIN KOENECKE
REEDSBURG, WI

Steven Anders
4682 Brown thrush Tr.
Cottage Grove, WI. 53527

Rep. Michael Powers
Room 114 West, State Capitol
Madison, WI. 53708

Dear Chairman Powers and members of the Land Use Committee,

I wish that I could attend your committee's hearing, however, my employment as a Technician in the Wisconsin Air National Guard prevents me from being with you. I am a resident of Dane County, and a Town Board Supervisor for the Town of Cottage Grove.

Protecting the interests of private property owners should be a high priority as any land use plans are considered, and I agree with Rep. Albers, that a process should be in place to essentially guarantee that actions are not pursued which would bring harm to any property owner. I found even Dane County's 20/20 planning process frustrating and confusing, for specific needs and wants of townships were overlooked, and while we attempted to make our case for certain changes during the time when the plan evolved, the amount of time required to be in attendance at all meetings was just not humanly possible.

Further, I 've found that existing laws often put the average citizen at a disadvantage, for the zoning and appeals process can be confusing to most, even after having it explained to them by a bureaucrat or an elected official. It take time to understand the process and it does seem that government, due to its authority to spend and levy taxes and make decisions based upon opinions which are not based on facts, at the present has the upper hand.

AB 806 as I understand, imposes a new requirement on towns or cities, to approve ordinances and resolutions with a supermajority vote if our approved action would devalue property by more than 50%. Fifty percent seems to be a rather high threshold, and I can imagine few instances when the supermajority vote requirement would come into play. Since the value of property and the taxes imposed thereon are the mechanism to support our education system, I well understand the need for such a system. Taxpayers deserve this type of protection.

AB 807 directs that notices be sent and hearings afforded property owners when the use of their property is altered. It is always my hope citizens and residents of townships feel welcome to participate in our local government meetings, and I fully understand that they have a right to know exactly what we do as their elected representatives. It seems to me that notification merely encourages property owners to step forward and share their concerns, and I believe that all affected parties deserve to be noticed and heard. This is what having a democracy is all about.

Lastly, AB 808 will serve to protect all communities, as well as individuals who own private property. Good record keeping is essential to having accountability, as it allows elected officials to respond in a timely manner to inquiring citizens or when our actions are challenged and need to be defended.

As an elected official for the town, I believe Rep. Albers' proposals constitute good government as they open process to the people. As an elected official who sincerely believes in accountability, and as a property owner, I urge this committee to pass these bills out of committee. In closing, I ask your prompt consideration of these measures.

Sincerely,

Steven C. Anders

February 26, 1998

Rep. Albers comments to Members of the Assembly Land Use Committee, pertaining to **Assembly Bills 806, 807, 808, and 810**

I am providing some background information prepared by a Senior Fellow at the National Conference of State Legislatures (NCSL), distributed in January of this year. These reports provide explanations in layman's language of applicable case law, general background on Constitutional provisions, brief analyses of "takings" legislation enacted in other states, and highlights some legislative and non-legislative options which legislators might consider in their efforts to balance land use management while protecting property rights and the environment.

I've selected some of the report's points that will be helpful to you as you review the bills which I and Senator Welch and Senator Drzewiecki have authored and which are before you today.

Page 4, volume 23, number 1 outlines the four types of state laws which have been enacted in 21 states. The legislation enacted to date in other states imposes certain responsibilities on agencies or local governments to ensure that "takings" by government action will not occur. In some states, certain types of actions by government now give an affected party the right to pursue a cause of action against government for its action. Legislation in most states either defines a new level of reduction in property value that constitutes a regulatory taking requiring compensation or modification of existing laws.

If you turn to page 11, volume 23 number 1, you will find five questions which are currently being utilized by many states and local government agencies in other states as a checklist to determine whether there may be Constitutional issues at issue when a regulation is under consideration.

NCSL's second report, entitled, "*Evaluating the Effects of State Taking's Legislation*," attempts to determine the effects of state takings legislation on state and local governments charged with implementing the types of laws which have been enacted to date in 21 states. Responses were generated from fifteen states which enacted legislation requiring financial compensation to a property owner. Studies show that few lawsuits were generated in those states which enacted laws creating a cause of action for compensation. In states which instigated dispute resolutions processes, the state with the largest number of cases filed was the State of Florida with thirty.

It was determined that in those states which required that assessments be prepared, "the cost of preparing assessments have been minimal with most state agencies absorbing them into their existing budgets, nor not incurring additional costs."

If we contrast our legislation with the private property protection act found on page 7 of this report, our proposals appear very modest.

It's not unusual for government to wear down and frustrate their opponent simply because the government has the deeper pockets. Governmental units traditionally runs up legal expenses by attacking those they oppose via one avenue until exhausted, then continuing to attack on another front. [*See* Baraboo News *clipping relating to the Hohl Propane situation*].

AB 810

AB 810 allows landowners to recover a small of amount of the legal costs associated with appeals from a board of adjustment or a city of appeals decision. Since landowners are limited to only $100 in costs, and $100 for each expert witness who testifies, this bill really only serves to alleviate some of the burden property owners incur upon appeal.

Providing for these minor legal fees bring these types of appeals on par with the statutes relating to court costs and fees in civil actions. Hopefully, it will also serve as a deterrent to governmental units which might otherwise treat appeals lightly.

AB 808

While none of the bills before you today require compensation by government to any private property owner, and none of the bills presented would require that a written report be prepared on each and every government action under consideration, AB 808 does impose additional requirements on government only when environmentally sensitive areas are at issue.

The bill requires a written record documenting its rational for the ordinance or resolution provide units of government with clear and understandable direction.

This bill tells units of government that certain information should be gathered and considered prior to enacted an ordinance or resolution which is meant to protect what the unit of government deems to be an environmentally sensitive area.

You will note that in the state of Kansas, agencies are expected to identify the risk to public health safety or welfare, to describe how the action with substantially advance the public interest, state the facts justifying the proposed action, assess takings implications, and identify alternatives.

AB 808 is not as broad, is narrow in its scope, and in addition to requiring governments to keep records, it changes the standard of presumption from one of assumed validity to one of requiring some evidence.

This change will, in essence, provide protection for units of government when faced with any court challenge, for as you are all aware, our judicial branch and our courts of law look to documented facts in rendering any decisions.

When units of government are held to a higher standard, citizens are then afforded a more reasonable level of certainty that an actual need to protect a certain area by enacting some type of restriction. This bill sends a message to government that if they cannot document a real need, or cannot justify their actions, then they shouldn't act.

AB 807

Requiring notice be sent to affected property owners would seem to be common courtesy in a civil society, especially in a society that is faced with changing employment trends. Families of today often have both spouses working at full time jobs, and if the family is has but one head of household, that adult may be holding down more than one job.

And, we should ask the question, how many times within one's lifetime of owning property does government change the allowable use of the property we own? Is the allowable use likely to be changed once every ten years, and if that is the case, is it too much to expect government to spend 32 cents (or possibly less under a bulk mailing) to give the property owning taxpayer notice? Or, let's say, government makes at least three changes each year, is ten dollars over a ten year period really too expensive?

It's an insult to all who pay property taxes, whether they own a piece of property worth a thousand dollars or many pieces of property worth a million dollars, to say they don't deserve this type of government service and it is disingenuous for elected officials to suggest this requirement is just too expensive to implement.

The statutes currently require that notice be afforded in all types of circumstances where an individual may be directly impacted by a change. When one individual opts to sue another party in court, notice must be sent or delivered to the party being sued, although at the onset it is not known whether the party noticed will be affected by the court's decision. 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 your property and causing harm, the neighbor has no right to go in and remove part or all of it. Even the government has no right to act to remove the tree without giving you notice, even if all officials agreed the tree was a problem. Let's say for example, government were to build a bomb shelter but because it needed furniture and lacked the funds on hand to go out an buy what it needed, opted instead to take at least one or more pieces of furniture from every household in its community without compensating or giving notice to the members of the community, simply on the basis of need, do you think that would be deemed acceptable in a democracy?

Recently in Sauk County, a forum was held on the Baraboo Bluffs. In February of 1980 the bluffs were deemed a natural area by the federal government, unbeknownst to most people who live in that community. 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 - approximately 1,000 landowners – each of whom might be affected by future changes which have yet to be proposed. The University of Wisconsin's Baraboo Campus theater was nearly at full capacity, with over 250 in attendance. It was stated at the forum that Nature Conservancy had compiled the mailing list by reviewing the tax rolls and that Department of Interior has paid the cost of the mailing.

Forget for a moment the actual costs of mailing and the actual costs of determining who might be affected by a proposed change, and let's consider the intangible costs to society of not giving affected individuals notice. When peoples' 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, a loss in government accountability and credibility, and the animosity toward bureaucrats and elected officials only increases. There is in existence already a general lack of trust - akin to one having to bargain with another who fails to bargain in good faith.

We wonder why voter turn out is so low. We wonder why so few citizens want to participate in government affairs. We say we want to change these trends, yet our actions too often speak louder than our words.

The fact is that current policies impose great expectations on property owners, but we fail to impose similar expectations on government. 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 financial system which is based upon the value of property, yet we allow government actions to impact an individuals' net worth without informing them.

Some of the costs of failing to give notice are not known and cannot be known. How does one put a value on people who no longer believe or trust their government? I believe the benefits of affording notice far outweigh the costs which may be incurred, and I believe taxpayers are willing to bear the cost as they view individual notice as a service which government should provide.

AB 806

AB 806 seeks to give protection to property owners who would otherwise suffer great economic loss. The language was deliberately written in a way that provides straightforward, specific, easy-to-understand guidelines for governmental units when they pursue actions which might drastically devalue a landowner's piece of property.

I understand that compensation may provide a burden for governmental units; thus, this legislation does not provide for any monetary compensation – not even for court costs or legal services. Rather, we ask governmental units to do two things: **First**, prepare an assessment of a piece of property – an "impact assessment" if you will – when their action (defined as a statute, administrative rule, etc.) may result in a devaluation of a landowner's property of over 50% of the fair market value; **second**, pass ordinances and resolutions with a supermajority vote – 3 out of 4 members of the elected body – if that 50%+ devaluation would occur. If it's

an administrative rule, the state would simply have to forego implementation until the devaluation is 50% or less.

Contrary to some other states, which utilize much smaller thresholds like 20%, we chose a very high threshold – over 50% of fair market value – to trigger these two actions. This means fewer expenditures for governmental units. At the same time, property owners still receive protection. In essence, the rights of property owners, and the interests of the public, sit on balance.

For too long, we have assumed that any action taken by a governmental unit is legitimate simply because it passes with a majority vote. The Bill of Rights found in our U.S. Constitution was established to protect the minority from the will of the majority. Unfortunately, regulatory takings do not yet fully awaken the power of the Fifth Amendment. As a state legislature, we have a duty to recognize the need for protection for all landowners in Wisconsin. We have a responsibility to raise the standards upon which *we* operate.

This bill will provide a basis for more careful, thoughtful development of governmental actions, place property owners on equal footing with governmental units, and further open the doors of participation to those who live and own property in Wisconsin.

Basic Principles & General Guidelines

1. All new duties imposed upon units of government must be easily understood by both elected officials and private citizens; keep it simple;
2. Open up the democratic process; measures should encourage not discourage citizen involvement in the land use planning/decision making process; demystify the zoning process; and, hold elected officials accountable for their actions;
3. Ensure legislation is prospective and not overly burdensome; avoid blocking government actions; impose set expectations on elected officials and agency bureaucrats in order that proposed government actions are based on facts and reality, thereby avoiding enactment of actions which are based purely on speculation, emotion, or perception. In other words, force democracy to occur.
4. Ensure a thorough review process by imposing checkpoints and guaranteeing public access to both judicial and legislative branches – at both state and local levels.
5. Provide protection for landowners who legitimately claim they've been harmed by the heavy hand of government by giving them an avenue of redress; level the playing field for people who own property but whose financial means is average or below average;
6. Provide protection for units of government by outlining exemptions, or giving them a defense;
7. Provide greater assurance that values of each parcel are an accurate reflection of the sticks contained within that particular parcel's bundle of rights and seek to ensure that current statutes are being adhered to, specifically those which require assessors to take into account the impact of any ordinances

on the value of parcels of property;
8. Preclude government from significantly devaluing any property; set a threshold which is deemed significant by any reasonable person;
9. Ensure that all citizens respect others property rights;
10. Avoid imposing unreasonable burdens or excessive costs upon government;

VILAS COUNTY LAKES ASSOCIATION

P.O. Box 494
Eagle River, WI 54521-0494
February 26, 1998

FEB 2 6 1998

The Honorable Michael Powers
Chairman, Land Use Committee
Wisconsin State Assembly
PO Box 8953
Madison WI 53708-8953

AB 808

Dear Representative Powers,

The Vilas County Lakes Association wishes to register its opposition to Assembly Bills 806 through 810, inclusive, which are now before the Land Use Committee. There are concepts in these bills that might improve land planning and regulation, such as broader notice of proposed changes (807) and their rationale (808). On the whole, however, all these bills have extremely serious potential consequences.

They would: (1) impose a simplistic universal solution to complex land-use matters that are better managed locally, and (2) seriously impede the efforts of local and state land-use planning and regulatory agencies to protect natural resources, including public waters. The latter consequence has particular importance to local economies throughout Wisconsin, especially the counties of the northwoods whose economic health depends heavily on these irreplaceable natural resources.

Respectfully yours,

John P. Seibel

John P. Seibel, President

FEB 2 6 1998

Kilgore, Kathi

From: Vernon Martin[SMTP:vwmartin@win.bright.net]
Sent: Wednesday, February 25, 1998 4:51 PM
To: Rep.Powers
Cc: Rep.Steinbrink; Rep.Ainsworth; Rep.Owens; Rep.Bock
Subject: Chairman and Committee on Land Use

Members of the Committee on Land Use:

May I may make some input to the deliberations regarding AB806, 807, 808, and 810.
My comments will first address some general concepts, which I consider to be much more important than any specific discussion of the precise wording for these bills. Secondly, I hope to point out some specific wording concerns in the bills.
There is a true sense in which all of these bills are only a Band-Aid to salve the wounds and boils of a far more serious underlying malady. Though I would certainly prefer to have some Band-Aids and dressings to lessen the hurt, control the disease, and alleviate some of the harm, overcoming the disease at its roots is my real and strong desire. If we cannot end the disease, I thoughtfully suspect the long-term prognosis is terminal.
Clearly, the disease is the now omnipresent reach of government agencies into the most macro and micro aspects of our lives and decisions. Agency government has created a labyrinth and maze of rules that even those who work full time with it are not sure how it all works. The ordinary citizen is left in a daze and commonly just gives up trying to exercise their right to government "of the People by the People and for the People." In order to even "scratch the surface" of being an informed participant in the government game, as its now played, one must forsake family, productive enterprise, community volunteerism, recreation, etc. to a significant degree. Our fine assemblywoman has scheduled a "listening session " in our area to hear comment on the State land use plans. This one meeting is a perfect example of the choice the citizen is forced to make. I am unable to attend because someone has to pay the bills, this means I am not available to run to the plethora of hearings, and meetings dealing with the next area of my life that will be bureaucratically legislated. My wife has to make the choice of attending this listening meeting or celebrating my daughter's birthday with a special music concert.
Well, my daughter is the priority, but the pervasiveness of government is the only reason that such a meeting has to be scheduled in the first place. Now if this were an infrequent dilemma I could say "that's life" and get on with it. Sorry to say this is the choice I must face literally every day of the week - many times there are two government input events - if I choose to be party to all that my government is about to do to me and my family. I actually could find myself without a family as a result!
There would be other meaningful ways to expand on this theme, but I do hope that you "get it". If your response is something to the effect that "we live in modern and complex times when its no longer possible for things to be simple and thus I am just being nostalgic for a simpler time etc."- -then you didn't "get it"! Life has always been complicated, but we didn't always have omnipresent and omnipowerful government. Our Nation and the State of Wisconsin are being driven almost inexorably into the governmental forms that have proved so destructive in many other parts of the world. We have entered an era in

which government agencies see themselves as the rightful owner of all prerogatives and citizens must ask and hope that permissions will be parceled out when requested (clue: it helps to have plenty of political pull and money)- a very different twist from the "inalienable rights" of the Declaration of Independence!

On to some specific concerns of wording for these bills:

AB806

A 50% threshold is far too low. Even 10% is a taking if it is your hard earned investment that you have made in your property. This bill appears only to address measurable assessable losses, but does nothing for the loss of rights and uses, that may be just as important to the owner, not reflected in a fair market assessment. Example; a statute prohibiting flying a flag on a pole on a bluff top.

The remedy process is inscrutably contingent on enough points to keep the attorneys and the poor citizen burdened for months to get a determination.

AB807

The bill does not mention notification to property owners of State agency actions that may have use or rights impact. Only county, municipal, or township is included. State designation of land and regulatory changes have had some of the most significant impacts.

AB808

Again this bill appears to exempt the State and its agencies from any requirements and pertains only to counties, municipalities and townships.

The requirements stated in the bill for a government entity to protect its decision are ludicrously easy to meet. It only says there must have been reasons offered in the prior consideration for laws as to a legitimate public purpose. A reason can be conjured for almost anything. The real criteria must be that health, safety , or serious effects against the common good are stake and the facts justify that concern to a degree that requires abrogation of a property or use rights. There should not be loose language that allows faddish thinking to prevail over basic rights

With regard to environmentally sensitive areas, the proper classification, if they are truly essential to the common welfare, is that of a park or public land that is purchased outright thereby paying the owner for full value of his property.

AB810

The $100 amounts mentioned in the LRB summary for any successful appeals are not seen in the wording of the document. If those amounts are valid, they are wholly inadequate to accommodate the cost of a successful appeal in many instances. $100 buys somewhere between 20 min and 90min of attorney billing -hardly enough to explain the situation. $100/appearance is more like the travel expenses alone for a real expert witness. Any government entity is going to have essentially unlimitec corporate counsel and all the facilities of government as their resource. The individual who is handed down a questionable decision from any board or court is already faced with monumental personal inconvenience, stress and maybe sacrifice in order to find justice. The simple prospect of losing both the appeal and the funds expended on such will curtail frivolous appeals.

The general intent of all the above bills is commendable in the absence of more basic reform in the nature of our government. I would hope to see each of these bills become law in a more finished form that is, hopefully, simpler and requires that the burden of new law become the government's burden and not just the lone citizen's burden. The irony is, of course, even the government's burden is the citizen's burden,

which makes one wary of adding yet another round of administrative procedure to the complexity of agency government.

Thank you for your thoughtful consideration of these views. I would request that my remarks be acknowledged and entered into the record of your committee's hearings.

Yours truly,

Vernon and Wanda Martin
N2490 390th St
Maiden Rock, WI 54750

FEB 2 4 1998

BAUMGARTNER REALTY

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Metro 342-1494
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5745 School Road
West Bend, WI 53095

Monday, February 23, 1998

Representative Mike Powers
P.O. Box 8953
Madison, WI 53708

Dear Representative Powers,

As I will not be able attend the Public Hearing for bills AB 806(LRB 3911), AB 807(LRB 4488/1), AB 808 (LRB 4489/1) and AB 810 (LRB 4509/1) scheduled for this Thursday, I am now writing to you for your support of these proposed bills.

I am a property owner and work daily within the real estate industry. Over the years I have seen property rights diluted and even ignored . The need is strong for these bills in protecting one's individual property rights. Please lend your support for the property rights bills.

Sincerely yours,

John and Sarah Follett
5745 School Rd
West Bend, Wi. 53095
414-342-1494

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Fax 675-2033

5745 School Road
West Bend, WI 53095

FEB 2 5 1998

Monday, February 23, 1998

AB 808

Representative Mike Powers
P.O. Box 8953
Madison, WI 53708

Dear Representative:

As I will not be able attend the Public Hearing for bills AB 806(LRB 3911), AB 807(LRB 4488/1), AB 808 (LRB 4489/1) and AB 810 (LRB 4509/1) scheduled for this Thursday, I am now writing to you for your support of these proposed bills.

I am a property owner and work daily within the real estate industry. Over the years I have seen property rights diluted and even ignored . The need is strong for these bills in protecting one's individual property rights. Please lend your support for the property rights bills.

Sincerely yours,

Joan M. Baumgartner
5996 Wausaukee Rd
West Bend, WI. 53095
414-675-9082

FEB 2 5 1998

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ASSISTANT CITY ATTORNEY

FACSIMILE TRANSMITTAL FORM
FAX NO. (414)524-3899

DATE: 2/25/98

TO: Rep. Powers

COMPANY Assembly Land Use Committee

PHONE:

FAX: 608/266-7038

FROM: Curt Meitz, City Attorney

RE: AB 806, 807 & 808

COMMENTS:

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There will be 3 pages, including this cover sheet.
If you do not receive all pages, or if you have any questions, please call:

Diane Cornejo
(414/524-3520

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February 25, 1998

Assembly Land Use Committee:
Rep. Powers
Rep. Ainsworth
Rep. Owens
Rep. Bock
Rep. Steinbrink

VIA FAX

Re: AB 806, 807 and 808

Dear Representatives:

This letter is in opposition to the above referenced bills.

The bills either fly in the face of accepted judicial construction of zoning laws and planning principles or open the door to needless lawsuits over the interpretation of terms set forth within the respective bills.

Assembly Bill 806 defines the term "taking" in a manner that goes far beyond the definition of taking as enunciated by our United States Supreme Court. In addition, the bill imposes additional burdens upon municipalities that are transferred to the taxpayers. Not only is there an additional burden of obtaining two appraisals regarding any proposed affected property, it needlessly exposes a municipality to the expense associated with litigation as someone will undoubtedly challenge the appraisals made by the municipality if those appraisals are adverse to the property owners' interests.

With regard to Assembly Bill 807, existing law sets forth a more than adequate procedure for notifying owners of proposed zoning changes. In addition, most municipalities, like Waukesha, have more stringent notice requirements in place than state law for notifying affected property owners. This bill is a boon for attorneys as it creates the additional issues as to the interpretation of what is a good faith effort and whether their client actually received notice. In addition, the language of the bill provides incentive for an imaginative legal counsel to attempt to overturn a zoning amendment by arguing that even if the landowner's property was not part of the proposed area to be zoned, the proposed zoning would

materially affect the use of the landowner's property. Successful piecemeal challenges would also be totally contrary to sound land use planning principles and undermine zoning as an effective tool for coordinating land use planning.

Assembly Bill 808 not only does not define the term "environmentally sensitive" but attempts to totally undermine the long standing judicial principle of the presumption of validity accorded zoning regulations. This legislation clearly an undue burden upon a municipality to justify the enactment of the legislation. The effectiveness and purpose of any law would be greatly diminished if the legislative body has to justify the enactment by a middle burden of proof which is even greater than that required to prove a case in a civil action. This new standard will undoubtedly invite challenges to legislation that otherwise could easily pass the appropriate reasonable basis test. If this is the standard by which legislation is to be judged, this will clearly have a chilling effect on municipalities enacting any legislation in this area. A municipality's ability to enact legislation would be most burdensome for small municipalities which do not have the resources to prepare comprehensive records, hire experts, or defend court challenges.

Very truly yours,

Curt R. Meitz
City Attorney

CRM/
dlc