

MEMORANDUM

TO: ASSEMBLY COMMITTEE ON LAND USE

FROM: RICHARD C. YDE, CITY ATTORNEY

RE: AB 806-810

DATE: FEBRUARY 25, 1998

Thank you for the opportunity to comment on Assembly Bills 806, 807, 808, 809 and 810. Based on the bills themselves and the literature distributed by their sponsors, it appears the sponsors feel that people need to be protected from their local governments. What is the basis for such a belief? Have local governments run amok abusing their citizens? The bills are a bad solution to a nonexistent problem.

Local governments are very much governments of the people, by the people and for the people. Local governments are on the front line mediating disputes between property owners. They are elected by their fellow citizens to perform that job and do so conscientiously. It is contrary to the public interest to make it more difficult and more expensive for them to do their jobs. If they make a mistake, there are already numerous statutory and constitutional protections in place to protect citizens' rights. Additional micromanagement of local affairs by the state legislature and the courts is not good for anyone.

The bills before you will increase red tape and property taxes without any corresponding public benefit. Specific problems with the individual bills include the following:

BILL 806

- If the City chose to update its zoning code, it would have to get two appraisals done of every parcel in the City. Failure to do so would subject the City to the risk that the entire zoning code could be voided at any time because one property owner can find an appraiser to say his property has been reduced in value by half. The City generally waits several months and

pays well in excess of \$1000 for each appraisal for eminent domain purposes. Two appraisals for each of 9,000 parcels in the City would likely take several years and cost in excess of \$20,000,000. The City's annual budget is about \$15,000,000.

- If an owner requests a zoning amendment for property, this bill would require the City to obtain appraisals of surrounding properties if their values might be affected. Thus a process that now takes a few weeks and costs a few hundred dollars would take months and cost thousands of dollars.
- Since the bill applies to boards and agencies of the City, it would apply to the Board of Zoning Appeals and Plan Commission among others. What is now a relatively cheap and streamlined process for property owners to obtain variances or conditional use permits would take months and cost thousands of dollars.
- It is not clear whether the costs of the appraisals can be passed on to property owners. Either way it is unreasonable. The property owner has to pay thousands of dollars for a simple variance request; or the taxpayers pay thousands of dollars every time a property owner makes such a request.
- It is not clear whether a denial of a variance or a conditional use permit is an action or a failure to act. However, it really does not make any difference since the City must obtain the appraisals before it is known how the board of appeals or plan commission will decide a request for either one.
- Proposed sec. 895.45(4)(b) requires the department of administration to "commence an action. . . if the interests of the public are at stake." Since the interests of the public are at stake in every action taken by a governmental unit, there are no cases in which the department would not be required to act.
- Based on the language of the bill, it apparently also would require the City to obtain appraisals of property outside the City if the value of that property might be affected by actions within the City.
- The bill lacks definitions of terms used such as "parcel", "probability", "owners", "good faith belief", "immediate and substantial threat", and "certain activities."
- Sec. 893.78 as created by this bill would eliminate any statute of limitations for private actions challenging the validity of ordinance since it is based on actual knowledge by the plaintiff rather than constructive knowledge (e.g.

"discovers or should have discovered"). There is no way to show that the plaintiff knew about the reduction in value before the plaintiff claims to know.

BILL 807

- Because the bill requires the City to prove receipt of the notice by every owner of property, the City would be forced to use registered mail to serve the notices. Even if we assume only one owner for each parcel and only a one page notice, the mailing cost alone for a rewrite of the City's zoning code would be in excess of \$56,000. In addition to that would be staff time in creating the notices, identifying owners, mailing the notices, tracking the return receipts and trying to determine what to do about owners who did not receive the notice.
- This bill does not define what constitutes a good faith effort. Therefore, it is impossible to know what the City must do to determine who owners are.
- Nor does the bill define owner. Does it include only fee owners or all persons with ownership interests? Does it include land contract vendors and vendees, tenants, mortgagees, persons with life estates, others?
- Nor does it explain what happens when property is conveyed during proceedings.
- Ultimately no ordinance will be enforceable because it will be impossible to prove that every owner got notice at the appropriate time.

BILL 808

- This Bill reverses over 200 years of the law of this country that laws enacted by the elected representatives of the people are presumed to be valid.
- Again, terms such as "natural values" and "environmentally sensitive areas" are not defined. Would it apply to zoning designed to protect the City's water supply? It appears that it would make it much more difficult to protect the City's water supply from contamination.
- In order to adopt any such ordinance, the City would have to hire consultants at who knows what cost to prepare a comprehensive written record.

BILL 809

- This bill simply imposes more red tape on cities and places additional limits on the ability of local elected officials to exercise their discretion in the public interest.

BILL 810

- This bill allows the loser in a lawsuit to have his court costs paid by the taxpayers. What is the sense in that?
- This bill also requires the taxpayers to pay actual attorney fees for a private litigant if he can convince a court that a board of appeals made an unreasonable mistake. The City's board of appeal is made up of citizen volunteers, not lawyers. What is the sense in making the taxpayers pay more money if that citizen board made a mistake?

In summary, the bills before you would increase red tape for both property owners and local governments, increase uncertainty in the adoption and enforcement of laws, increase litigation and increase property taxes. The only obvious beneficiaries of the bills would be appraisers and trial lawyers. There is no public benefit. Bills such as these only encourage the perception that legislators do the bidding of special interests rather than acting in the public interest.

Before you make such drastic changes in the law and impose such huge costs on taxpayers, please do some investigation to be certain there really is a problem which needs addressing. If you find a general problem with a regulatory program, as opposed to an isolated incident, the solution should be to reduce or eliminate that program rather than to add another dysfunctional layer of regulation with unknown costs and consequences. Any solutions should be considered long and hard before changing a system of government which has served this country well for over 200 years and the state for 150 years.



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.

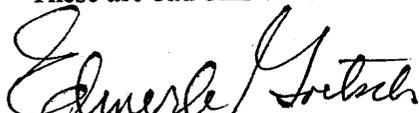
Beyond that, what happens if I sell my lot to my downstate brother? He's never owned property in Oneida County and therefore never received written notice of the ordinance change. Apparently he therefore does not have to comply with the ordinance, although I did. This looks to me like unconstitutional 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
President



Wisconsin Builders Association

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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.



FEBRUARY 26, 1998

AB 809

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 CURRENT 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.

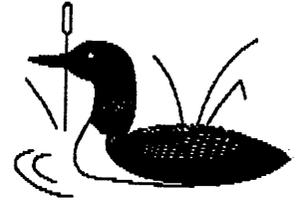
I URGE YOU TO SUPPORT ASSEMBLY BILLS 806- 810. GOVERNMENT IS FOR THE PEOPLE - NOT AGAINST THE PEOPLE.

MARTIN KOENECKE
REEDSBURG, WI

VILAS COUNTY LAKES ASSOCIATION

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

FEB 26 1998



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

AB 809

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,

A handwritten signature in cursive script that reads "John P. Seibel".

John P. Seibel, President