

1999 DRAFTING REQUEST

Bill

Received: **12/18/1998**

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Sheryl Albers (608) 266-8531**

By/Representing: **Rep. Albers**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Counties
Munis - miscellaneous
Courts - civil procedure**

Extra Copies: **PG**

Pre Topic:

No specific pre topic given

Topic:

Zoning, land use planning; takings mitigation

Instructions:

See Attached. Draft bill based on Florida law that requires creation of takings mitigation procedures by local units of government.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaured</u>
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/2	shoveme	wjackson	martykr	_____	lrbdocadmin	lrb_docadmin	S&L

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FE Sent For:

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Page 2

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FE Sent For: *MES 1/19/00* *Jb 1/20* *Jb 1/20*
1 1/20 Wlj *Km 2/21* *<END>*

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Table with columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. Row 1: /P1, shoveme 02/19/99, wjackson 02/23/99, martykr 02/24/99, Submitted lrb_docadmin 02/24/99, Required S&L.

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FE Sent For:

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

1? shoveme /pl 2/23 WJ 2/24 2-4-2 submit

1/11 MES 2/19/99

FE Sent For:

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MEMORANDUM

TO: Legislative Reference Bureau

FROM: Representative Sheryl K. Albers

DATE: December 11, 1998

RE: Drafting of a Proposed Amendment to Zoning Enabling Act

Please draft this. Also, note that this is based on a Florida statute. If you have any questions, please feel free to call.

DRAFT

PROPOSED AMENDMENT TO ZONING ENABLING ACT

MITIGATING INORDINATE BURDENS ON PRIVATE PROPERTY

1.01 Establishment of Mitigation Measures and Procedures

(A) **Statement of Purpose.** In order to reduce the potential for taking and due process claims arising from land use and environmental regulation; to protect public treasuries from undue exposure to damage claims; and avoid imposing on landowners inordinate regulatory burdens which in fairness and justice should be borne by the public as a whole, each governmental unit, that exercises land use approval authority under this article, is directed to enact ordinances or other laws providing for one or more of the mitigation measures set forth in Section (C) hereof, and to establish procedures for the implementation of such measures in order to provide appropriate relief in cases where landowners are found to be so burdened. This section shall be liberally construed to effect fully its obvious purposes and intent, and governmental entities shall direct all available resources and authorities to effect fully and expeditiously the obvious purpose and intent of this section in preventing inordinate regulatory burdens on private property.

(B) **Definitions.** For purposes of this section, the following words and phrases shall have the meanings indicated:

(1) “Action” means any regulation or act by a governmental entity, including denial of land use approval or a development permit, which by itself or in concert with regulations or actions of other government agencies, is alleged to cause an inordinate burden on the use or development of real property.

- (2) “Commission” means a planning and zoning commission or some similar body.
- (3) “Governmental entity” means the local legislative body, the commission, the board of appeals, the local executive, the hearing examiner or other local government official or agency which exercises land use approval or permitting authority under this article.
- (4) “Inordinate burden” or “inordinately burdened” mean that a regulation or action of one or more governmental entities, by itself or in concert with actions of other government agencies, has directly restricted or limited the use, density or development of real property and real property parcels such that:
- (i) the landowner is permanently unable to attain the reasonable, investment-backed expectation for the real property, or a vested right to a specific use with respect to the real property as a whole, or
 - (ii) on a per parcel basis the landowner is left with existing or vested uses that are unreasonable to such an extent that the landowner bears permanently a disproportionate share of a burden imposed for the good of the public which in fairness should be borne by the public at large.
 - (iii) The assessor has noted in valuing a real property parcel regulations or restrictions enacted in the prior year which have a negative impact on that real property parcel’s value.

The terms “inordinate burden” or “inordinately burdened” do not include temporary impacts to real property with the exception of moratoriums which exceed nine months in total length, not to include mining moratoriums; impacts to real property occasioned by governmental abatement, prohibition, prevention or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by a governmental body taken to grant relief to a landowner under this section.

- (5) “Landowner” means a person with a legal or equitable interest in real property who has filed an application for land use approval or a development permit, or is otherwise affected by a regulation or action of a governmental entity. The term does not include a governmental entity or entity, which has been, granted non-profit status by the government.
- (6) “Land use approval” or “development permit” mean any building permit, pre-building permit, zoning or use permit, subdivision approval, site plan approval, special exception, variance, or similar action authorizing the use of development of real property.
- (7) “Mitigation request” means an application or request by a landowner for relief under one or more of the mitigation measures set forth in Section (C) hereof from inordinate burdens on the landowner’s real property claimed to be caused by actions of governmental entities or other governmental agencies.
- (8) “Parcel” shall include any land segment which has been assigned a tax code number for identification or which is divided by a highway or stream deemed navigable, but assigned one identification number. The landowner shall have

six months from the time of enactment to request a separate identification number be assigned to each segment created by the obstruction dividing it.

(9) "Real property" or "property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the landowner had a relevant interest.

(C) **Mitigation Measures.** The local legislative body shall by ordinance or law establish within the county or municipality one or more of the following mitigation measures designed to protect the public interest while providing for reduced restraints on the use, density or development of the real property of landowners found to be inordinately burdened by any action taken pursuant to this article:

appeals process exists under 20.62.23(7)(a) 59.694 60.65

(1) Administrative appeals to agencies empowered to grant relief. Agencies may constitute commissions or by commissioners are elected.

(2) Cluster subdivision, or similar techniques such as planned unit development, to locate development on the least sensitive portion of the property.

(3) Density increases, or increases in the intensity or use of areas appropriate for development.

covered by appeals process

(4) Development agreements in accordance with Section _____ of this article.

(5) Land exchanges, including exchanges of privately or publicly owned land for the regulated parcel.

cnty can acq. under 0.59.52(6) towns: purchase under 0.60.10(2)(b) & (c)

(6) Mitigation programs, on site or off site, including payments in lieu.

in lieu of what?

(7) Performance zoning, including criteria to ensure that development will not adversely impact the surrounding area.

^{2,} (8) Transfer of development rights as authorized by Section^{2,} of this article.

see appeal process under (1)
(9) Variances, waivers, adjustments of land development or permit standards, or other extraordinary relief, including where appropriate conditions on the amount of development, density or use permitted. An inordinate burden shall not apply if the unit of government has made a written offer to purchase equal to the assessed value of the property.

(D) Criteria. The circumstances to be examined in determining whether the action of the governmental entity, by itself or in conjunction with regulations or actions of other government agencies, is unreasonable or inordinately burdens the use, density or development of the real property parcels may include, but are not limited to:

(1) The history of the real property, including when it was purchased, how much was purchased, where it is located, the nature of the title, the composition of the property, and how it was initially used.

add assessment determination

(2) The history of development and use of the real property, including what was developed on the property and by whom, if it was subdivided and how and to whom it was sold, whether plats were filed or recorded, and whether infrastructure and other public services or improvements may have been dedicated to the public.

(3) The history of environmental protection and land use controls and other regulations, including how and when the property was classified, how use, density or development was proscribed, and what changes in classifications occurred.

- (4) The present nature and extent of each real property parcel, including its natural and altered characteristics.
- (5) The reasonable expectations of the landowner at the time of acquisition of the property parcel(s), or immediately prior to the implementation of the regulation or action at issue, whichever is later, under the regulations then in effect and under common law.
- (6) The public purpose sought to be achieved by the regulation or action, including the nature and magnitude of the problem addressed by the underlying regulations on which the action is based; whether the action is necessary to the achievement of the public purpose; and whether there are alternative actions that would achieve the public purpose and allow for reduced restriction on the use, density or development of the property.
- (7) Uses, density or development specifically authorized for and outlined in plans or policies by the unit of government.
- (8) Restrictions placed on similar property related to use, density and development.
- (9) Any other information determined relevant by the governmental entity.

(E) Procedure. The local legislative body shall establish procedures for implementation of the mitigation measures it enacts pursuant to this section. The procedures shall provide for the submission of mitigation requests to a governmental entity empowered to grant the requested relief.

- (1) Such procedures may provide for reasonable time limits, within which an affected landowner must file a mitigation request. In no event should such

time limit be less than 180 days after denial of a land use approval or development permit, but nothing herein shall prevent a landowner from filing a mitigation request prior to final action on a pending application for a land use approval or development permit.

- (2) Such procedures may require that mitigation requests be supported by appropriate documentation, including a bona fide valid appraisal that supports the mitigation request and demonstrates the loss in fair market value to the real property.
- (3) Nothing herein shall preclude the governmental entity from initiating mitigation measure on its own motion in any case.
- (4) Where appropriate, a public hearing may be required prior to determining any mitigation request or mitigation proposal initiated by the governmental entity. Where a public hearing is already provided in the land use approval or development permit process, no additional hearing shall be required for the mitigation request. Government entities must be bodies of elected officials or a majority thereof elected.
- (5) If the governmental entity considering the mitigation request finds that denial of a land use approval or development permit, or other action, either by itself or in combination with the actions or regulations of other government agencies, is unreasonable or inordinately burdens the use, density or development of any segment or parcel of a landowner's property, the governmental entity shall grant the mitigation request in whole or in part, with

appropriate modifications, conditions or restrictions to protect the public interest that would have been served by said denial or action.

(6) If the governmental entity finds that denial of the land use approval or development permit, or other action, is not unreasonable or does not inordinately burden the use, density or development of the landowner's property, the mitigation request shall be denied, in which event the proceeding shall end and the landowner may elect to file suit in a court of competent jurisdiction.

(7) Invoking the procedures of this section is not a condition precedent to filing a civil action, or a waiver of rights provided under the common law of this State.

(8) If the governmental entity considering appeals/mitigation requests is not elected, the landowner may appeal to the Wisconsin Commission on Land Use, which shall consist of 3 members, plus one alternate member, appointed by the governor. The commission shall meet monthly to review cases brought before it. The commission shall review all cases within 60 days of the filing with the commission, and shall have access to resources and assistance from the land use office in the Department of Administration (DOA).

? There is
no Comm on
Land Use



WLI
RMR

PRELIMINARY **DRAFT - NOT READY FOR INTRODUCTION**

SOON

D-note

gm

1 **AN ACT** ..., relating to: requiring a city, village, town or county to develop a
2 procedure to mitigate the effects on landowners of certain zoning or land use
3 decisions.

Analysis by the Legislative Reference Bureau

To be provided in a future version of the bill.

For further information *see* the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

4 **SECTION 1.** 59.694 (11)[✓] of the statutes is created to read:

5 59.694 (11) **REQUIRED TO ACT.** If directed to do so by the county board under s.
6 66.034 (4)[✓], the board of adjustment shall grant a special exception or variance under
7 this section to comply with the procedure described in s. 66.034 (4) (b).[✓]

8 **SECTION 2.** 60.65 (3)[✓] of the statutes is amended to read:

9 60.65 (3) **POWERS AND DUTIES.** The town board may authorize the board of
10 adjustment to, in appropriate cases and subject to appropriate conditions and

1 safeguards, permit special exceptions to the terms of the zoning ordinance under s.
 2 60.61 consistent with the ordinance's general purpose and intent and with applicable
 3 provisions of the ordinance. This subsection does not preclude the granting of special
 4 exceptions by the town zoning committee designated under s. 60.61 (4) or the town
 5 board, in accordance with regulations and restrictions adopted under s. 60.61. The
 6 town board, under s. 66.034 (4),^I may also require the board of adjustment to grant
 7 a special exception or variance under this section to comply with the procedure
 8 described in s. 66.034 (4) (b).^J

History: 1983 a. 532; 1985 a. 135; 1987 a. 395; 1995 a. 201.

9 **SECTION 3. 62.23 (7) (e) 1.^I** of the statutes is amended to read:

10 62.23 (7) (e) 1. The council which enacts zoning regulations pursuant to this
 11 section shall by ordinance provide for the appointment of a board of appeals, and
 12 shall provide in such regulations that said board of appeals may, in appropriate cases
 13 and subject to appropriate conditions and safeguards, make special exceptions to the
 14 terms of the ordinance in harmony with its general purpose and intent and in
 15 accordance with general or specific rules therein contained. Nothing in this
 16 subdivision shall preclude the granting of special exceptions by the city plan
 17 commission or the common council in accordance with the zoning regulations
 18 adopted pursuant to this section which were in effect on July 7, 1973 or adopted after
 19 that date. The council, under s. 66.034 (4),^J may also require the board of appeal^S to
 20 grant a special exception or variance under this subsection to comply with the
 21 procedure described in s. 66.034 (4) (b).^J

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221,355; 1981 c. 289,341, 354,374, 1983 a. 49,410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187,225, 281,316, 1987 a. 161,395; 1989 a. 201, 1991 a. 255, 316, 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246

22 **SECTION 4. 66.034^J** of the statutes is created to read:

23 **66.034 Zoning mitigation. (1) DEFINITIONS.** In this section:

1 (a) "Action" means any zoning or land use ordinance that is enacted or
 2 regulation that is adopted, or building permit that is denied, by a political
 3 subdivision under s. 59.69[✓], 60.61[✓], 60.62[✓], 61.35[✓] or 62.23[✓]; or any denial of a special
 4 exception or variance to a zoning ordinance by a board of appeals under s. 62.23 (7)
 5 (e)[✓] or by a board of adjustment under s. 59.694[✓] or 60.65[✓].

***NOTE: The definition of "action" that is provided in the Florida statute you sent me seems to be both vague and overbroad. Please review the definition I've created and let me know whether it meets your intent.

6 (b) "Chief executive officer" means the mayor or city manager of a city, the
 7 village president of a village, the town board chairperson of a town or the county
 8 executive of a county or, if the county does not have a county executive, the
 9 chairperson of the county board of supervisors.

10 (c) "Governing body" means the body in which the legislative powers of a
 11 political subdivision are vested.

12 (d) "Inordinate burden" means an action that directly restricts or limits a
 13 landowner's use of, or ability to develop, the landowner's real property such that at
 14 least one of the following applies:

15 1. The landowner is permanently unable to attain the reasonable,
 16 investment-backed expectation for the real property.

17 2. The landowner is permanently unable to attain a vested right to a specific
 18 use of the real property.

19 3. With regard to at least one of the parcels of the landowner's real property,
 20 the use to which the landowner may put the real property is limited such that the
 21 landowner bears permanently a disproportionate share of the burden imposed by the
 22 action, compared to the burden borne by the public.

***NOTE: Although this definition of "inordinate burden" is based on the Florida statute, I'm not sure if it is workable and I'm not sure what it means. For example, I don't

SECTION 4

understand what an "investment-backed expectation" for real property is or how it can be determined. Also, I'm not sure what it means to "attain a *vested right* to a specific use of real property, how one determines what a "disproportionate" share of the "burden" is or how to ascertain what portion of the burden the "public" *should* bear. Instruction number (4) (iii), part of the definition of "inordinate burden" ~~which~~ dealt with an assessor's valuing of real property, does not fit with the intro. to instruction (4) so I ✓ omitted it from the definition and ✓ included the concept as one of the criteria the committee should use under sub. (2) (d) 9. Please review this definition very carefully.

1 (e) "Landowner" means the owner of record of a parcel of land or the purchaser
2 of land under a land contract who has the right to occupy and the right to use the land,
3 except that "landowner" does not include any unit of government or any nonprofit
4 corporation, charitable trust or other nonprofit association that is described in
5 section 501 (c) (3) of the Internal Revenue Code and is exempt from federal tax under
6 section 501 (a) of the Internal Revenue Code.

***NOTE: This definition is based on s. 29.164 (1) (b). ✓ Does it meet your intent?
Compare to ss. 33.01 (9) ✓ and 92.03 (4) ✓.

7 (f) "Parcel" means an identified section, fractional section or government lot.

8 (g) "Political subdivision" means a city, village, town or county.

9 (h) "Real property" means land and improvements on the land.

10 (1) (2) ^{Zoning (CS)} MITIGATION COMMITTEE. (a) ^{(1) Designation, creation} ~~Zoning mitigation committee~~. Not later than
11 the first day of the 6th month beginning after publication [revisor inserts date],
12 a political subdivision shall designate a zoning mitigation committee. The zoning
13 mitigation committee shall be an existing or newly created committee of the political
14 subdivision's governing body, a board of adjustment or appeals under s. 59.964, 60.65 ✓
15 or 62.23 (7) (e) ✓ or a separate committee that is not part of the political subdivision's
16 governing body.

17 (b) ~~Zoning mitigation~~ committee membership. If the zoning mitigation
18 committee designated under par. (a) ✓ is a separate committee, it shall consist of ~~five~~ ⁵
19 members who shall be appointed by the chief executive officer of the political
20 subdivision, subject to confirmation of the governing body. Members shall serve for

1 (1) ² ~~two~~ year terms and may be reappointed, except that ³ ~~three~~ of the initial appointees
 2 shall serve for one year terms. A member may be removed during his or her term by
 3 the chief executive officer for just cause. A member shall receive compensation at a
 4 rate set by the governing body. A member of the governing body may be appointed
 5 by the chief executive officer to the zoning mitigation committee.

6 (c) Zoning mitigation committee ^{officers} ~~procedures~~. The chief executive officer of the
 7 political subdivision shall select the chairperson of the zoning mitigation committee
 8 described under par. (a), and the committee shall elect from among its members a
 9 vice chairperson and secretary. The committee shall determine its own rules of
 10 operation. All expenses of the committee shall be paid by the political subdivision.

11 (3) MITIGATION REQUEST PROCEDURES, LIMITATIONS. (a) If a landowner believes
 12 that an action taken by a governing body places an inordinate burden on the
 13 landowner, the landowner may file a mitigation request with the zoning mitigation
 14 committee under sub. (2) not later than 180 days after the effective date of the action,

15 (b) No request for mitigation may be made under par. (a), or maintained once
 16 filed, if the political subdivision makes a written offer to purchase the landowner's
 17 real property, which the landowner believes is subject to an inordinate burden, at the
 18 current assessed value of the real property Nothing in this section precludes a
 19 political subdivision from initiating a mitigation process under this section.

√ ****NOTE: The last sentence in par. (b) is from the instructions you provided, but I'm
 not sure it makes sense. It could be read to mean that a political subdivision can make
 a mitigation request, which doesn't seem to make sense. What exactly is your intent with
 regard to this sentence?

20 (c) The zoning mitigation committee may require the landowner to provide
 21 information or documentation, such as appraisals of the landowner's real property
 22 or appraisals that demonstrate the real property's loss of value that may be

1 attributable to an action, that support^s the landowner's belief relating to the
2 inordinate burden.

3 (4) PROCEDURES. (a) **Committee meetings.** The^{zoning mitigation} committee shall meet within 14
4 days after receiving a mitigation request under sub. (3) and shall decide, not later
5 than 90 days after receiving a mitigation request, whether a landowner is subject to
6 an inordinate burden. In reaching its decision, the zoning mitigation committee
7 shall use the criteria described under par. (b). The committee may reach its decision
8 only after holding at least one public hearing on the mitigation request at which the
9 landowner, the governing body responsible for the action that led to the filing of the
10 mitigation request and any other interested party may appear. No public hearing
11 may be held under this² subdivision^{paragraph} unless a class 1 notice under ch. 985 is published
12' at least ~~seven~~¹ days before the scheduled hearing. The committee shall forward its
8 decision to the governing body.

14 (b) **Mitigation criteria.** In determining whether an inordinate burden is placed
15 on a landowner, a zoning mitigation committee shall consider at least all of the
16 following factors:

- 17 1. The history of the real property, including when it was purchased and how
18 it was initially used by the landowner.

***NOTE: I'm not sure what this criteria is supposed to discern. The instructions state that the history of the property should include "the nature of the title" and "the composition of the property"; I'm not sure what you mean by these 2 items. Also, the instructions state that the history should reveal "how it [the property] was initially used." I'm not sure what "initially" means ~~and~~^{and} to whom it applies. I added "by the landowner", but this may not always be useful information; i.e. if the current landowner only owned the property for 3 months before having a variance request turned down, "initial" use by the landowner would be meaningless. What is your intent in trying to determine how the land was "initially" used?

- 19 2. The history of the development and the use of the real property, including
20 what was developed on the property, by whom and when it was developed; whether

1 the real property has been subdivided and, if so, how, when and to whom it was sold;
2 whether plats were filed or recorded; and whether infrastructure or other public
3 services were dedicated to the public.

√ ****NOTE: Again, much of this language is taken ^{directly}~~right~~ from the Florida statute you sent me, but I don't know what it means to say "whether infrastructure or other public services were dedicated to the public." What is the intent of this language?

4 3. The history of environmental protection, land use controls and other
5 regulations that applied to the real property, including how and when the property
6 was classified, the nature of restrictions on density or development that applied to
7 the property and what changes in classifications applied to the real property.

8 4. The current land use restrictions and zoning ordinances and regulations that
9 apply to each parcel of the landowner's real property, including the size of each parcel
10 and its natural and altered characteristics.

11 5. The reasonable expectations of the landowner for developing or using the
12 property at the time the landowner acquired the property, or immediately before the
13 effective date of the action that led the landowner to file a mitigation request,
14 whichever is later.

15 6. The public purpose to be achieved by the action, including the nature and
16 magnitude of the problem addressed by the action; whether the action is necessary
17 to achieve the public purpose; and whether an alternate action could achieve the
18 public purpose and permit reduced restrictions on the use, density or development
19 potential of the real property.

20 7. The uses, density or development that may occur on the real property under
21 land use plans and zoning ordinances or regulations that are currently in effect in
22 the political subdivision.

1 8. Actions that apply to similar real property that restrict the use, density and
2 development potential of such similar real property

3 9. Whether the assessed value of the real property declined in the current year
4 compared to the immediately preceding year and, if so, whether the decline, in the
5 opinion of the assessor of the taxation district in which the real property is located,
6 is directly attributable to the action that caused the landowner to file the request for
7 mitigation.

 ****NOTE: This subdivision is based on one of the definitions of "inordinate burden"
in item (4) (iii) of the Florida statute. Does it meet your intent?

8 10. Any other information from any source that the committee considers
9 relevant.

10 **(c) Committee decisions.** 1. If the zoning mitigation committee decides that the
11 landowner is subject to an inordinate burden, the governing body shall mitigate the
12 inordinate burden by instituting one or more of the mitigation remedies under sub.
13 (5).[✓]

14 2. If the zoning mitigation committee decides that the landowner is not subject
15 to an inordinate burden, the landowner may appeal the committee's decision to the
16 circuit court.

 ****NOTE: What scope of review do you envision for the circuit court? Is the court
to make an independent review of the landowner's mitigation request, or is the court only
to decide whether the committee abused its discretion by not following the criteria under
par. (b)?

17 (5) MITIGATION REMEDIES. If the zoning mitigation committee makes the
18 determination described in sub. (4) (c) 1.,[✓] the governing body shall institute one^{or more} of
19 the following mitigation remedies:

20 (a) Enact or amend a zoning ordinance or adopt or amend a zoning regulation,
21 which allows the landowner to proceed with the use or development of the

1 landowner's real property, the inordinate burden on which prevented the landowner
2 from proceeding with such use or development and led to the landowner's filing of
3 the request for mitigation.

4 (b) Require the political subdivision's board of appeals under s. 62.23 (7) (e) or
5 board of adjustment under s. 59.694 or 60.65 to grant a variance or special exception
6 to an action, which allows the landowner to proceed with the use or development of
7 the landowner's real property, the inordinate burden on which prevented the
8 landowner from proceeding with such use or development and led to the landowner's
9 filing of the request for mitigation.

****NOTE: Pars. (a) and (b) seem to encompass a lot of the mitigation measures that are specified in your instructions. I did not include some of the measures in the instructions, such as "cluster subdivision", "planned unit development" and "performance zoning", because I do not know what they mean. Such specific measures, however, should be encompassed by the broad requirements under pars. (a) and (b). If these paragraphs do not encompass any of the specific measures in the instructions, please let me know which ones you want included.

10

(c) Enter into a written development agreement with the landowner ^{that} ~~which~~
11 allows the landowner to develop the landowner's real property in a way that is
12 specified in the agreement and under which the landowner agrees to written criteria
13 that ensure that such development will not adversely impact the surrounding area.

****NOTE: This paragraph is based on instructions (C) (4) and (7), although both the instructions, and this paragraph, seem to be rather vague. Instruction (C) (4) is a
✓ mitigation measure ~~that~~ which allows "development agreements in accordance with Section ___ of this article", but nowhere in the instructions is such a development agreement specified. Par. (c) seems vague in that it is unclear who will determine whether a landowner's development "adversely" impacts the "surrounding area." What is an "adverse impact?" "Pollution" of an undefined type or severity? A population increase of an undefined magnitude? Increased traffic noise? A loss of farmland? And how big is the "surrounding area?" I will need to know your intent so I can provide some details in par. (c).

14 (d) Enter into an agreement with the landowner to exchange real property
15 owned by the political subdivision for the real property that is subject to the
16 inordinate burden.

SECTION 4

****NOTE: The mitigation measure in item (C) (8) of the instructions is a "transfer of development rights as authorized by Section ____ of this article", but the instructions do not contain any information on the transfer of development rights. What is your intent? Whose development rights would be transferred, to whom would they be transferred and for what consideration would they be transferred?

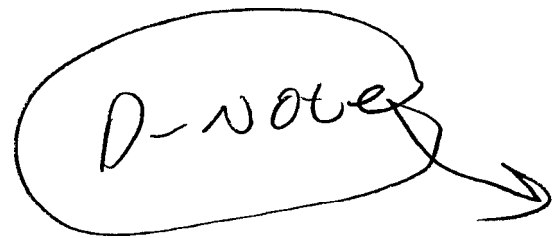
1 (e) Enter into an agreement with the landowner to compensate the landowner
2 for the inordinate burden placed on the landowner's real property. Such
3 compensation may be a cash payment, a purchase of development rights to the real
4 property or any other compensation that is agreed to by the parties,

****NOTE: The mitigation measure in item (C) (6) of the instructions is "~~Mitigation~~ programs, on site or off site, including payments in lieu." I do not know what "payments in lieu" (in "lieu" of what?) means, but my guess is that the instructions mean to authorize the political subdivision to make a cash payment as mitigation. Does par. (e) meet your intent with regard to this instruction?

5 **SECTION 5. Effective dates.** This act takes effect on the day after publication,
6 except as follows:

7 (1) The treatment of section 66.034 (3)[✓] of the statutes takes effect on the first
8 day of the 6th month beginning after publication ~~and~~ ^{revisory inserts date} ~~and~~

9 (END)



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1367/?dn

MES.../.....

WJ

Representative Albers:

- ✓ This bill is based on the instruction^s that you sent to me. Apparently, the instructions are based on a statute that has been enacted by Florida. Please review this bill very carefully to ensure that it is consistent with your intent.

In many respects, the instructions were incomplete, confusing or ambiguous. Instead of writing you a memo that asks for clarifications on the instructions or requests more details for provisions that were not well developed, I decided to produce a bill based on what I gathered was the overall intent of the instructions. This way, ✓ at least you have a preliminary bill to serve as a basis for discussion of the issues addressed by the bill.

In some cases, I tried to draft a provision based on what I thought the instructions meant but, in other cases, I was not able to execute the instruction^s because there simply wasn't enough information. In either case, however, I included a ****NOTE which explains what I did, asks for more information or points out a problem with the instructions.

One of the most difficult parts of the bill is the definition of "inordinate burden^s". I tried to draft a definition that makes sense but, because the instructions were so difficult to interpret, I'm not sure if the definition works or reflects your intent. Some of the most incomplete parts of the instructions are the exact procedures that are supposed to be followed, details relating to the body that is to decide whether there is an inordinate burden, the types of zoning actions to which mitigation could apply and the actual mitigation measures that are supposed to be made available to a landowner who is subject to an inordinate burden. Because few details were provided regarding the body that is supposed to preside over the request for mitigation, I created many of the provisions in s. 66.034 (2) and (4) (a) with little information to go on. Please pay particular attention to these parts of the bill.

Before I can prepare an analysis and produce an introducible version of the bill, I will need answers to the questions I have asked and other issues I have raised will need to be addressed. I would be happy to meet with you or your staff members to discuss any issues related to this bill.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

**LRB-1367Pldn
MES:wlj:km**

February 24, 1999

Representative Albers:

This bill is based on the instructions that you sent to me. Apparently, the instructions are based on a statute that has been enacted by Florida. Please review this bill very carefully to ensure that it is consistent with your intent.

In many respects, the instructions were incomplete, confusing or ambiguous. Instead of writing you a memo that asks for clarifications on the instructions or requests more details for provisions that were not well developed, I decided to produce a bill based on what I gathered was the overall intent of the instructions. This way, you at least have a preliminary bill to serve as a basis for discussion of the issues addressed by the bill.

In some cases, I tried to draft a provision based on what I thought the instructions meant but, in other cases, I was not able to execute the instructions because there simply wasn't enough information. In either case, however, I included a ******NOTE** which explains what I did, asks for more information or points out a problem with the instructions.

One of the most difficult parts of the bill is the definition of "inordinate burden". I tried to draft a definition that makes sense but, because the instructions were so difficult to interpret, I'm not sure if the definition works or reflects your intent. Some of the most incomplete parts of the instructions are the exact procedures that are supposed to be followed, details relating to the body that is to decide whether there is an inordinate burden, the types of zoning actions to which mitigation could apply and the actual mitigation measures that are supposed to be made available to a landowner who is subject to an inordinate burden. Because few details were provided regarding the body that is supposed to preside over the request for mitigation, I created many of the provisions in s. 66.034 (2) and (4) (a) with little information to go on. Please pay particular attention to these parts of the bill.

Before I can prepare an analysis and produce an introducible version of the bill, I will need answers to the questions I have asked and other issues I have raised will need to be addressed. I would be happy to meet with you or your staff members to discuss any issues related to this bill.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us



Maic, 21 Sep 99

PRELIMIN

Note the changes in red.
When I get the 2nd draft from
you, Steve and I will make
final adjustments.

INTRODUCTION

Rep. Powers is planning a
hearing on Oct. 5 - if we can
get this out soon, we can get
it on the hearing notice.

THANKS.
[Signature] 6-8531

1' **AN ACT** to amend 60.65 (3) and 62.23 (7) (e) 1.; and to create 59.694 (11) and
2 66.034 of the statutes; **relating to:** requiring a city, village, town or county to
3 develop a procedure to mitigate the effects on landowners of certain zoning or
4 land use decisions.

Analysis by the Legislative Reference Bureau

To be provided in a future version of the bill.

For further information see the **state and local** fiscal estimate, which will be
printed as an appendix to this bill.

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

5 **SECTION 1.** 59.694 (11) of the statutes is created to read:
6 59.694 (11) **REQUIRED TO ACT.** If directed to do so by the county board under s.
7 66.034 (4), the board of adjustment shall grant a special exception or variance under
8 this section to comply with the procedure described in s. 66.034 (4) (b).

9 **SECTION 2.** 60.65 (3) of the statutes is amended to read:

1 60.65 (3) **POWERS AND DUTIES.** The town board may authorize the board of
2 adjustment to, in appropriate cases and subject to appropriate conditions and
3 safeguards, permit special exceptions to the terms of the zoning ordinance under s.
4 60.61 consistent with the ordinance's general purpose and intent and with applicable
5 provisions of the ordinance. This subsection does not preclude the granting of special
6 exceptions by the town zoning committee designated under s. 60.61 (4) or the town
7 board, in accordance with regulations and restrictions adopted under s. 60.61. The
8 town board, under s. 66.034 (4), may also require the board of adjustment to errant
9 a special exention or variance under this section to comnly with the procedure
10 described in s. 66.034 (4) (b).

11 **SECTION 3.** 62.23 (7) (e) 1. of the statutes is amended to read:

12 62.23 (7) (e) 1. The council which enacts zoning regulations pursuant to this
13 section shall by ordinance provide for the appointment of a board of appeals, and
14 shall provide in such regulations that said board of appeals may, in appropriate cases
15 and subject to appropriate conditions and safeguards, make special exceptions to the
16 terms of the ordinance in harmony with its general purpose and intent and in
17 accordance with general or specific rules therein contained. Nothing in this
18 subdivision shall preclude the granting of special exceptions by the city plan
19 commission or the common council in accordance with the zoning regulations
20 adopted pursuant to this section which were in effect on July 7, 1973 or adopted after
21 that date. The council, under s. 66.034 (4), may also require the board of appeals to
22 grant a special exention or variance under this subsection to comply with the
23 procedure described in s. 66.034 (4) (b).

24 **SECTION 4.** 66.034 of the statutes is created to read:

25 **66.034 Zoning mitigation. (1) DEFINITIONS.** In this section:

Not needed

1 (a) "Action" means any zoning or land use ordinance that is enacted or
 2 regulation ^{or master plan} that is adopted, or building permit that is denied, by a political
 3 subdivision under s. 59.69, 60.61, 60.62, 61.35 or 62.23; or any denial of a special
 4 exception or variance to a zoning ordinance by a board of appeals under s. 62.23 (7)
 5 (e) or by a board of adjustment under s. 59.694 or 60.65.

****NOTE: The definition of "action" that is provided in the Florida statute you sent me seems to be both vague and overbroad. Please review the definition I've created and let me know whether it meets your intent.

6 (b) "Chief executive officer" means the mayor or city manager of a city, the
 7 village president of a village, the town board chairperson of a town or the county
 8 executive of a county or, if the county does not have a county executive, the
 9 chairperson of the county board of supervisors.

10 (c) "Governing body" means the body in which the legislative powers of a
 11 political subdivision are vested.

12 (d) "Inordinate burden" means an action that directly restricts or limits a
 13 landowner's use of, or ability to develop, the landowner's real property such that at
 14 least one of the following applies:

15 1. The landowner is permanently unable to attain ^a ~~the~~ reasonable ~~return~~
 16 ~~investment-backed expectation for the real property.~~ ^{or the investment made to acquire}

17 2. The landowner ^{has little or no reasonable use of the real property by other than for the stated purposes.} ~~is permanently unable to attain a vested right to a specific~~
 18 ~~use of the real property.~~

19 3. With regard to at least one of the parcels of the landowner's real property,
 20 the use to which the landowner may put the real property is limited such that the
 21 landowner bears ^{permanently} a disproportionate share of the burden imposed by the
 22 action, compared to the burden borne by the public.

****NOTE: Although this definition of "inordinate burden" is based on the Florida statute, I'm not sure if it is workable and I'm not sure what it means. For example, I don't

understand what an “~~investment-backed~~ expectation” for real property is or how it can be determined. Also, I’m not sure what it means to “attain a vested **right to** a specific use of real property, how one determines what a “disproportionate” share of the “burden” is or how to ascertain what portion of the burden the “**public**” *should* bear. Instruction number (4) (iii), part of the definition of “inordinate burden” that dealt with an assessor’s valuing of real property, does not fit with the intro. to instruction (4) so I omitted it from the definition and included the concept as one of the criteria the committee should use under sub. (2) (d) 9. Please review this definition very carefully.

1 (e) “Landowner” means the owner of record of a parcel of land or the purchaser
 2 of land under a land contract who has the right to occupy and the right to use the land,
 3 except that “landowner” does not include any unit of government, ~~or any nonprofit~~
 4 ~~corporation, charitable trust or other nonprofit association that is described in~~
 5 ~~section 501(c)(3) of the Internal Revenue Code and is exempt from federal tax under~~
 6 ~~section 501(a) of the Internal Revenue Code.~~

***NOTE: This definition is based on s. 29.164 (1) (b). Does it meet your intent?
 Compare to ss. 33.01 (9) and 92.03 (4).

7 (f) “Parcel” means an identified section, fractional section or government lot.
 8 (g) “Political subdivision” means a city, village, town or county.
 9 (h) “Real property” means land and improvements on the land.

10 (2) **ZONING MITIGATION COMMITTEE.** (a) *DESIGNATION, CREATION* Not later than
 11 the first day of the 6th month beginning after publication . . . [revisor inserts date],
 12 a political subdivision shall designate a zoning mitigation committee. The zoning
 13 mitigation committee shall be an existing or newly created committee of the political
 14 subdivision’s governing body, ~~a board of adjustment or appeals under s. 59.694, 60.65~~
 15 ~~or 62.23 (7) (c)~~ ^{existing or newly created} or a ^{other than a board of adjustment or appeals under s. 59.694, 60.65 or 62.23(7)} separate committee, that is not part of the political subdivision’s
 16 governing body.

17 (b) **Committee membership.** If the zoning mitigation committee designated
 18 under par. (a) is a separate committee, it shall consist of 5 members who shall be
 19 appointed by the chief executive officer of the political subdivision, subject to
 20 confirmation of the governing body. Members shall serve for 2- year terms and may

1 be reappointed, except that 3 of the initial appointees shall serve for one-year terms.

2 A member may be removed during his or her term by the chief executive officer for
3 just cause. A member shall receive compensation at a rate set by the governing body.

4 A member of the governing body may be appointed by the chief executive officer to
5 the zoning mitigation committee.

6 *If the zoning mitigation committee designated under par. (a)
is a newly created committee,*
(c) **Committee officers, procedures.** ~~The~~ chief executive officer of the political
7 subdivision shall select the chairperson of the ~~zoning mitigation~~ committee
8 ~~described under par. (a),~~ and the committee shall elect from among its members a
9 vice chairperson and secretary. The committee shall determine its own rules of
10 operation. All expenses of the committee shall be paid by the political subdivision.

11 (3) **MITIGATION REQUEST PROCEDURES, LIMITATIONS.** (a) If a landowner believes
12 that an action taken by a governing body places an inordinate burden on the
13 landowner, the landowner may file a mitigation request with the zoning, mitigation
14 committee under sub. (2) not later ^{one year} ~~than 180 days~~ after the effective date of the action.

15 (b) No request for mitigation may be made under par. (a), or maintained once
16 filed, if the political subdivision makes a written offer to purchase the landowner's
17 real property, which the landowner believes is subject to an inordinate burden, at the
18 current ^{appraised} ~~assessed~~ value of the real property. ~~Nothing in this section precludes a~~
19 ~~political subdivision from initiating a mitigation process under this section.~~

***NOTE: The last sentence in par. (b) is ~~from~~ the instructions you **provided**, but I'm not sure it makes sense. It could be read **to** mean **that** a political subdivision can make a mitigation request, which doesn't seem to make sense. What exactly is your intent with regard **to** this sentence?

20 (c) The zoning mitigation committee may require the landowner to provide
21 information or documentation, such as appraisals of the landowner's real property
22 or appraisals that demonstrate the real property's loss of value that may be

claim of

1 attributable to an action, that supports the landowner's ~~belief relating to the~~
2 inordinate burden.

3 (4) PROCEDURES. (a) *Committee meetings.* The zoning mitigation committee
4 shall meet within ²¹~~14~~ days after receiving a mitigation request under sub. (3) and
5 shall decide, not later than 90 days after receiving a mitigation request, whether a
6 landowner is subject to an inordinate burden. In reaching its decision, the zoning
7 mitigation committee shall use the criteria described under par. (b). The committee
8 may reach its decision only after holding at least one public hearing on the mitigation
9 request at which the landowner, the governing body responsible for the action that
10 led to the filing of the mitigation request and any other interested party may appear.
11 No public hearing may be held under this paragraph unless a class 1 notice under
12 ch. 985 is published at least 7 days before the scheduled hearing. The committee
13 shall forward its decision to the governing body.

14 (b) *Mitigation criteria.* In determining whether an inordinate burden is placed
15 on a landowner, a zoning mitigation committee shall consider at least all of the
16 following factors:

17 ~~1. The history of the real property, including when it was purchased and how~~
18 ~~it was initially used by the landowner.~~

****NOTE: I'm not sure what this criteria is supposed to discern The instructions state that the history of the property should include "the nature of the title" and "the composition of the property"; Pm not sure what you mean by these 2 items. Also, the instructions state that the history should reveal "how it [the property] was initially used." I'm not sure what "initially" means nor to whom it applies. I added "by the landowner", but this may not always be useful information; i.e. if the current landowner only owned the property for 3 months before having a variance request turned down, "initial" use by the landowner would be meaningless. What is your intent in trying to determine how the land was "initially" used?

19 ^{real property, to include its uses, any development,}
~~1. 2. The history of the development and the use of the real property, including~~
20 ~~what was developed on the property, by whom and when it was developed;~~ whether

1 the real property has been subdivided and, if so, how, when and to whom it was sold,
 2 whether plats were filed or recorded; and whether ^{sewer, water, electricity, natural gas or other} ~~infrastructure or other public~~
 3 ~~infrastructure was added to the property~~ ~~services were dedicated to the public.~~

****NOTE: Again, much of this language is taken directly from the Florida statute you sent me, but I don't know what it means to say "whether **infrastructure** or other public services were dedicated to the public". What is the intent of this language?

4 ~~2. 3.~~ The history of environmental protection, land use controls and other
 5 regulations that applied to the real property, including how and when the property
 6 was classified, the nature of restrictions on density or development that applied to
 7 the property and what changes in classifications applied to the real property.

8 ~~3. &~~ The current land use restrictions and zoning ordinances and regulations that
 9 apply to each parcel of the landowner's real property, &
 10 ~~and its natural and altered characteristics.~~

11 ~~4. 5.~~ The reasonable expectations of the landowner for developing or using the
 12 property at the time the landowner acquired the property, or immediately before the
 13 effective date of the action that led the landowner to file a mitigation request,
 14 whichever is later.

15 ~~5. 6.~~ The public purpose to be achieved by the action, including the nature and
 16 magnitude of the problem addressed by the action; whether the action is necessary
 17 to achieve the public purpose; and whether an alternate action could achieve the
 18 public purpose and permit reduced restrictions on the use, density or development
 19 potential of the real property.

20 ~~6. 7.~~ The uses, density or development that may occur on the real property under
 21 land use plans and zoning ordinances or regulations that are currently in effect in
 22 the political subdivision.

1 ~~7. 8.~~ Actions that apply to similar real property that restrict the use, density and
2 development potential of such similar real property.

3 ~~8, 9.~~ ^{to be applicable,} Whether the assessed value of the real property declined in the current year
4 compared to the immediately preceding year and, if so, whether the decline, in the
5 opinion of the assessor of the taxation district in which the real property is located,
6 is directly attributable to the action that caused the landowner to file the request for
7 mitigation.

****NOTE: This subdivision is based on one of the definitions of "inordinate burden"
in item (4) (iii) of the Florida statute. Does it meet your intent?

8 ~~9. 10.~~ Any other information from any source that the committee considers
9 relevant.

10 (c) *Committee decisions.* 1. If the zoning mitigation committee decides that the
11 landowner is subject to an inordinate burden, the governing body shall mitigate the
12 inordinate burden by instituting one or more of the mitigation remedies under sub.
13 (5).

14 ~~2. If the zoning mitigation committee decides that the landowner is not subject~~
15 ~~to an inordinate burden, the landowner may appeal the committee's decision to the~~
16 ~~circuit court.~~ [Mirror 1-L. language of § 62.23 (e) 11 - 15, - the previous
phase for the board's decisions]

****NOTE: What scope of review do you envision for the circuit court? Is the court
to make an independent review of the landowner's mitigation request, or is the court **only**
to decide whether the committee abused its discretion by not following **the** criteria under
par. (b)?

17 (5) **MITIGATION REMEDIES.** If the zoning mitigation committee makes the
18 determination described in sub. (4) (c) 1., the governing body shall institute one or
19 more of the following mitigation remedies:

20 (a) Enact or amend a zoning ordinance or adopt or amend a zoning regulation,
21 which allows the landowner to proceed with the use or development of the

1 landowner's real property, the inordinate burden on which prevented the landowner
2 from proceeding with such use or development and led to the landowner's filing of
3 the request for mitigation.

4 (b) Require the political subdivision's board of appeals under s. 62.23 (7) (e) or
5 board of adjustment under s. 59.694 or 60.65 to grant a variance or special exception
6 to an action, which allows the landowner to proceed with the use or development of
7 the landowner's real property, the inordinate burden on, which prevented the
8 landowner from proceeding with such use or development and led to the landowner's
9 filing of the request for mitigation.

****NOTE: Pars. (a) and (b) seem to encompass a lot of the mitigation measures that are specified in your instructions. I did not include some of the measures in the instructions, such as "cluster subdivision", "planned unit development" and "performance zoning", because I do not know what they mean. Such specific measures, however, should be encompassed by the broad requirements under pars. (a) and (b). If these paragraphs do not encompass any of the specific measures in the instructions, please let me know which ones you want included.

10 (c) Enter into a written development agreement with the landowner that allows
11 the landowner to ^{USE OF} develop the landowner's real property in a way that is specified in
12 the agreement ^{is agreed to by the parties.} and ~~under which the landowner agrees to written criteria that ensure~~
13 ~~that such development will not adversely impact the surrounding area.~~

****NOTE: This paragraph is based on instructions (C) (4) and (7), although both the instructions, and this paragraph, seem to be rather vague. Instruction (C) (4) is a mitigation measure that allows "development agreements in accordance with Section ___ of this article", but nowhere in the instructions is such a development agreement specified. Par (c) seems vague in that it is unclear who will determine whether a landowner's development "adversely" impacts the "surrounding area". What is an "adverse impact"? "Pollution" of an undefined type or severity? A population increase of an undefined magnitude? Increased traffic noise? A loss of farmland? And how big is the "surrounding area"? I will need to know your intent so I can provide some details in par. (c).

14 ~~(d) Enter into an agreement with the landowner to exchange real property~~
15 ~~owned by the political subdivision for the real property that is subject to the~~
16 ~~inordinate burden.~~

****NOTE: The mitigation measure in item (C) (8) of the instructions is a "transfer of development rights as authorized by Section ____ of this article", but the instructions do not contain any information on the transfer of development rights. What is your intent? Whose development rights would be transferred, to whom would they be transferred and for what consideration would they be transferred?

1 (d) ~~(e)~~ Enter into an agreement with the landowner to compensate the landowner
2 for the inordinate burden placed on the landowner's real property. Such
3 compensation may be a cash payment, a purchase of development rights to the real
4 property or any other compensation that is agreed to by the parties. *an exchange of real property for the political subdivision for the landowner's real property subject to the inordinate burden.*

****NOTE: The mitigation measure in item(C) (6) of the instructions is "mitigation programs, on site or off site, including payments in lieu". I do not know what "payments in lieu" (in "lieu" of what?) means, but my guess is that the instructions mean to authorize the political subdivision to make a cash payment as mitigation. Does par (e) meet your intent with regard to this instruction?

5 SECTION 5. Effective dates. This act takes effect on the day after publication,
6 except as follows:

7 (1) The treatment of section 66.034 (3) of the statutes takes effect on the first
8 day of the 6th month beginning after publication.

9 (END)

RMP

PRELIMINARY **DRAFT - NOT READY FOR INTRODUCTION**

D-note

repeal

1 **AN ACT** to amend 60.65 (3) and 62.23 (7) (e) 1.; and to create 59.694 (11) and
 2 66.034 of the statutes; **relating to:** requiring a city, village, town or county to
 3 develop a procedure to mitigate the effects on landowners of certain zoning or
 4 land use decisions.

Analysis by the Legislative Reference Bureau

To be provided in a future version of the bill.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

5 **SECTION 1.** 59.694 (11) of the statutes is created to read:

6 **59.694 (11) REQUIRED TO ACT.** If directed to do so by the county board under s.
 7 66.034 (4), the board of adjustment shall grant a special exception or variance under
 8 this section to comply with the procedure described in s. 66.034 (4) (b).

9 **SECTION 2.** 60.65 (3) of the statutes is amended to read:

1 **60.65 (3) POWERS AND DUTIES.** The town board may authorize the board of
2 adjustment to, in appropriate cases and subject to appropriate conditions and
3 safeguards, permit special exceptions to the terms of the zoning ordinance under s.
4 60.61 consistent with the ordinance's general purpose and intent and with applicable
5 provisions of the ordinance. This subsection does not preclude the granting of special
6 exceptions by the town zoning committee designated under s. 60.61 (4) or the town
7 board, in accordance with regulations and restrictions adopted under s. 60.61. The
8 town board, under s. 66.034 (4), may also require the board of adjustment to grant
9 a special exception or variance under this section to comply with the procedure
10 described in s. 66.034 (4) (b).

11 **SECTION 3.** 62.23 (7) (e) 1. of the statutes is amended to read:

12 62.23 (7) (e) 1. The council which enacts zoning regulations pursuant to this
13 section shall by ordinance provide for the appointment of a board of appeals, and
14 shall provide in such regulations that said board of appeals may, in appropriate cases
15 and subject to appropriate conditions and safeguards, make special exceptions to the
16 terms of the ordinance in harmony with its general purpose and intent and in
17 accordance with general or specific rules therein contained. Nothing in this
18 subdivision shall preclude the granting of special exceptions by the city plan
19 commission or the common council in accordance with the zoning regulations
20 adopted pursuant to this section which were in effect on July 7, 1973 or adopted after
21 that date. The council, under s. 66.034 (4), may also require the board of appeals to
22 grant a special exception or variance under this subsection to comply with the
23 procedure described in s. 66.034 (4) (b).

24 **SECTION 4.** 66.034 of the statutes is created to read:

25 **66.034 Zoning mitigation. (1) DEFINITIONS.** In this section:

1 (a) "Action" means any zoning or land use ordinance that is enacted or
 2 regulation that is adopted, or building permit that is denied, by a political
 3 subdivision under s. 59.69, 60.61, 60.62, 61.35 or 62.23; or any denial of a special
 4 exception or variance to a zoning ordinance by a board of appeals under s. 62.23 (7)
 5 (e) or by a board of adjustment under s. 59.694 or 60.65.

a master plan is included in the listed cities

I did not add "master plan" because

****NOTE: The definition of "action" that is provided in the Florida statute you sent me seems to be both vague and overbroad. Please review the definition I've created and let me know whether it meets your intent.

6 (b) "Chief executive officer" means the mayor or city manager of a city, the
 7 village president of a village, the town board chairperson of a town or the county
 8 executive of a county or, if the county does not have a county executive, the
 9 chairperson of the county board of supervisors.

10 (c) "Governing body" means the body in which the legislative powers of a
 11 political subdivision are vested.

12 (d) "Inordinate burden" means an action that directly restricts or limits a
 13 landowner's use of, or ability to develop, the landowner's real property such that at
 14 least one of the following applies:

15 1. The landowner is permanently unable to attain ^a reasonable ~~an~~
 16 ~~return on the investment the landowner made in~~ ^{investment-backed expectation for} the real property.

17 2. The landowner is ^{can make little or no} permanently unable to attain a vested right to a specific
 18 use of the real property ^{other than recreational use}

19 3. With regard to at least one of the parcels of the landowner's real property,
 20 the use to which the landowner may put the real property is limited such that the
 21 landowner bears permanently a disproportionate share of the burden imposed by the
 22 action, compared to the burden borne by the public.

****NOTE: Although this definition of "inordinate burden" is based on the Florida statute, I'm not sure if it is workable and I'm not sure what it means. For example, I don't

Handwritten signature/initials

WJL

understand what an "investment-backed expectation" for real property is or how it can be determined. Also, I'm not sure what it means to "attain a **vested right** to a specific use of" real property, how one determines what a "disproportionate" share of the "burden" is or how to ascertain what portion of the burden the "public" **should** bear. Instruction number (4) (iii), part of the definition of "inordinate burden" that dealt with an assessor's valuing of real property, does not fit with the intro. to instruction (4) so I omitted it from the definition and included the concept as one of the criteria the committee should use under sub. (2) (d) 9. Please review this definition very carefully.

1 (e) "Landowner" means the owner of record of a parcel of land or the purchaser
2 of land under a land contract who has the right to occupy and the right to use the land,
3 except that "landowner" does not include any unit of government or any nonprofit
4 corporation, charitable trust or other nonprofit association that is described in
5 section 501 (c) (3) of the Internal Revenue Code and is exempt from federal tax under
6 section 501 (a) of the Internal Revenue Code.

****NOTE: This definition is based on s. 29.164 (1) (b). Does it meet your intent?
Compare to ss. 83.01 (9) and 92.03 (4).

7 (f) "Parcel" means an identified section, fractional section or government lot.
8 (g) "Political subdivision" means a city, village, town or county.
9 (h) "Real property" means land and improvements on the land.

10 (2) ZONING MITIGATION COMMITTEE. (a) **DESIGNATION, CREATION.** Not later than
11 the first day of the 6th month beginning after publication [revisor inserts date],
12 a political subdivision shall designate a zoning mitigation committee. The zoning
13 mitigation committee shall be an existing or newly created committee of the political
14 subdivision's governing body, a board of adjustment or appeals under s. 59.694, 60.65
15 or 62.23 (7) (e) or a separate committee that is not part of the political subdivision's
16 governing body.

17 (b) **Committee membership.** If the zoning mitigation committee designated
18 under par. (a) is a separate committee, it shall consist of 5 members who shall be
19 appointed, by the chief executive officer of the political subdivision, subject to
20 confirmation of the governing body. Members shall serve for 2-year terms and may

1 be reappointed, except that 3 of the initial appointees shall serve for one-year terms.
 2 A member may be removed during his or her term by the chief executive officer for
 3 just cause. A member shall receive compensation at a rate set by the governing body.
 4 A member of the governing body may be appointed by the chief executive officer to
 5 the zoning mitigation committee.

If the zoning mitigation committee designated under par. (a) is a newly created committee,

6 (c) Committee officers, procedures. The chief executive officer of the political
 7 subdivision shall select the chairperson of the ~~zoning mitigation~~
 8 ~~described under par. (a)~~ committee, and the committee shall elect from among its members a
 9 vice chairperson and secretary. The committee shall determine its own rules of
 10 operation. All expenses of the committee shall be paid by the political subdivision.

11 (3) MITIGATION REQUEST PROCEDURES, LIMITATIONS. (a) If a landowner believes
 12 that an action taken by a governing body places an inordinate burden on the
 13 landowner, the landowner may file a mitigation request with the zoning mitigation
 14 committee under sub. (2) not later than ~~10 days~~ ^{one year} after the effective date of the action.

15 (b) No request for mitigation may be made under par. (a), or maintained once
 16 filed, if the political subdivision makes a written offer to purchase the landowner's
 17 real property, which the landowner believes is subject to an inordinate burden, at the
 18 current ^{appraised} ~~assessed~~ value of the real property. ~~Nothing in this section precludes a~~
 19 ~~political subdivision from initiating a mitigation process under this section.~~

****NOTE: The last sentence in par. (b) is from the instructions you provided, but I'm not sure it makes sense. It could be read to mean that a political subdivision can make a mitigation request, which doesn't seem to make sense. What exactly is your intent with regard to this sentence?

20 (c) The zoning mitigation committee may require the landowner to provide
 21 information or documentation, such as appraisals of the landowner's real property
 22 or appraisals that demonstrate the real property's loss of value that may be

mitigation request
~~variance~~

1 attributable to an action, that supports the landowner's ~~variance~~ relating to the
2 inordinate burden.

3 (4) PROCEDURES. (a) **Committee meetings.** The zoning mitigation committee
4 shall meet within ~~14~~²¹ days after receiving a mitigation request under sub. (3) and
5 shall decide, not later than 90 days after receiving a mitigation request, whether a
6 landowner is subject to an inordinate burden. In reaching its decision, the zoning
7 mitigation committee shall use the criteria described under par. (b). The committee
8 may reach its decision only after holding at least one public hearing on the mitigation
9 request at which the landowner, the governing body responsible for the action that
10 led to the filing of the mitigation request and any other interested party may appear.
11 No public hearing may be held under this paragraph unless a class 1 notice under
12 ch. 985 is published at least 7 days before the scheduled hearing. The committee
13 shall forward its decision ^{in writing,} to the governing body *and to the landowner*

14 (b) **Mitigation criteria.** In determining whether an inordinate burden is placed
15 on a landowner, a zoning mitigation committee shall consider at least all of the
16 following factors:

- 17 1. ~~The history of the real property, including when it was purchased and how~~
18 ~~it was initially used by the landowner.~~

*****NOTE:** I'm not sure what this criteria is supposed to discern. The instructions state that the history of the property should include "the nature of the title" and "the composition of the property". I'm not sure what you mean by these 2 items. Also, the instructions state that the history should reveal "how it [the property] was initially used." I'm not sure what "initially" means nor to whom it applies. I added "by the landowner", but this may not always be useful information; i.e. if the current landowner only owned the property for 3 months before having a variance request turned down, "initial" use by the landowner would be meaningless. What is your intent in trying to determine how the land was "initially" used?

- 19 ~~2. The history of the development and the use of the real property, including~~
20 ~~what was developed on the property, by whom and when it was developed;~~ whether



1 the real property has been subdivided and, if so, how, when and to whom it was sold;
 2 whether plats were filed or recorded; and whether ^{sewer, water, electricity or other} infrastructure ~~or other public~~
 3 ~~services were dedicated to the public~~ ^{was added to the property}

***NOTE: Again, much of this language is taken directly from the Florida statute you sent me, but I don't know what it means to say "whether infrastructure or other public services were dedicated to the public". What is the intent of this language?

4 ² The history of environmental protection, land use controls and other
 5 regulations that applied to the real property, including how and when the property
 6 was classified, the nature of restrictions on density or development that applied to
 7 the property and what changes in classifications applied to the real property

8 ³ 4. The current land use restrictions and zoning ordinances and regulations that
 9 apply to each parcel of the landowner's real property -
 10 ~~and its natural and altered characteristics~~ ←

11 ⁴ 5. The reasonable expectations of the landowner for developing or using the
 12 property at the time the landowner acquired the property, or immediately before the
 13 effective date of the action that led the landowner to file a mitigation request,
 14 whichever is later.

15 ⁵ 6. The public purpose to be achieved by the action, including the nature and
 16 magnitude of the problem addressed by the action; whether the action is necessary
 17 to achieve the public purpose; and whether an alternate action could achieve the
 18 **public purpose** and permit reduced restrictions on the use, density or development
 19 potential of the real property.

20 ⁶ 7. The uses, density or development that may occur on the real property under
 21 land use plans and zoning ordinances or regulations that are currently in effect in
 22 the political subdivision.

1 ⁷
8/ Actions that apply to similar real property that restrict the use, density and
2 development potential of such similar real property.

3 ⁶
9/ Whether the assessed value of the real property declined in the current year
4 compared to the immediately preceding year. and, if so, whether the decline, in the
5 opinion of the assessor of the taxation district in which the real property is located,
6 is directly attributable to the action that caused the landowner to file the request for
7 mitigation.

~~****NOTE: This subdivision is based on one of the definitions of "inordinate burden" in item (4) (iii) of the Florida statute. Does it meet your intent?~~

8 ⁹
10/ Any other information from any source that the committee considers
9 relevant.

10 **(c) Committee decisions.** 1. If the zoning mitigation committee decides that the
11 landowner is subject to an inordinate burden, the governing body shall mitigate the
12 inordinate burden by instituting one or more of the mitigation remedies under sub.

13 **(5).**

14 ^{a.}
2. If the zoning mitigation committee decides that the landowner is not subject
15 to an inordinate burden, the landowner may appeal the committee's decision to the
16 circuit court. *within 30 days after receiving a written copy of the decision*

ins
8-16

~~****NOTE: What scope of review do you envision for the circuit court? Is the court to make an independent review of the landowner's mitigation request, or is the court only to decide whether the committee abused its discretion by not following the criteria under par. (b)?~~

17 **(5) MITIGATION REMEDIES.** If the zoning mitigation committee makes the
18 determination described in sub. (4) (c) 1., ^{or if the circuit court reverses or modifies the} the governing body shall institute one or
19 more of the following mitigation remedies:

20 **(a)** Enact or amend a zoning ordinance or adopt or amend a zoning regulation,
21 which allows the landowner to proceed with the use or development of the

committee's decision under sub. (4) (c) 2. ✓

1 landowner's real property, the inordinate burden on which prevented the landowner
2 from proceeding with such use or development and led to the landowner's filing of
3 the request for mitigation.

4 (b) Require the political subdivision's board of appeals under s. 62.23 (7) (e) or
5 board of adjustment under s. 59.694 or 60.65 to grant a variance or special exception
6 to an action, which allows the landowner to proceed with the use or development of
7 the landowner's real property, the inordinate burden on which prevented the
8 landowner from proceeding with such use or development and led to the landowner's
9 filing of the request for mitigation.

****NOTE: Pars. (a) and (b) seem to encompass a lot of the mitigation measures that are specified in your instructions. I did not include some of the measures in the instructions, such as "cluster subdivision", "planned unit development" and "performance zoning", because I do not know what they mean. Such specific measures, however, should be encompassed by the broad requirements under pars. (a) and (b). If these paragraphs do not encompass any of the specific measures in the instructions, please let me know which ones you want included.

10 (c) Enter into a written development agreement with the landowner that allows
11 the landowner to ^{use or} develop the landowner's real property in a way that is specified in
12 the agreement ~~and under which the landowner agrees to written criteria that ensure~~
13 ~~that such development will not adversely impact the surrounding area.~~ ←

****NOTE: This paragraph is based on instructions (C) (4) and (7), although both the instructions, and this paragraph, seem to be rather vague. Instruction (C) (4) is a mitigation measure that allows "development agreements in accordance with Section ___ of this article", but nowhere in the instructions is such a development agreement specified. Par. (c) seems vague in that it is unclear who will determine whether a landowner's development "adversely" impacts the "surrounding area". What is an "adverse impact"? "Pollution" of an undefined type or severity? A population increase of an undefined magnitude? Increased traffic noise? A loss of farmland? And how big is the "surrounding area"? I will need to know your intent so I can provide some details in par. (c)

14 (d) Enter into an agreement with the landowner to exchange real property
15 owned by the political subdivision for the real property that is subject to the
16 inordinate burden.

~~****NOTE: The mitigation measure in item (C) (8) of the instructions is a "transfer of development rights as authorized by Section ___ of this article", but the instructions do not contain any information on the transfer of development rights. What is your intent? Whose development rights would be transferred, to whom would they be transferred and for what consideration would they be transferred?~~

1 (d) ~~(e)~~ Enter into an agreement with the landowner to compensate the landowner
2 for the inordinate burden placed on the landowner's real property. *The*
3 compensation may be a cash payment, a purchase of development rights to the real *Such*
4 property or any other compensation that is agreed to by the parties.

~~****NOTE: The mitigation measure in item (C) (6) of the instructions is "mitigation programs, on site or off site, including payments in lieu". I do not know what "payments in lieu" (in lieu of what?) means, but my guess is that the instructions mean to authorize the political subdivision to make a cash payment as mitigation. Does par. (e) meet your intent with regard to this instruction?~~

5 **SECTION 5. Effective dates.** This act takes effect on the day after publication,
6 except as follows:

7 (1) The treatment of section 66.034 (3) of the statutes takes effect on the first
8 day of the 6th month beginning after publication.

9 (END)

, an exchange of real property owned by the political subdivision for the landowner's real property that is subject to the inordinate burden

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1367/P2ins
MES:wlj:km

insert 8-16

- 1 b. If a landowner files an appeal under subd. par. 2. a. [✓] the zoning mitigation
2 committee shall send the court certified copies of all documents used by the
3 committee in reaching its decision [✓] and a copy of its written decision. If the court
4 believes it is necessary to do so to properly resolve the issue, the court may take
5 evidence, or appoint a referee to take evidence and report findings of fact and
6 conclusions of law as it directs, which shall constitute a part of the proceedings upon
7 which the determination of the court shall be made. The court may reverse or affirm,
8 wholly or partly, or may modify, the decision of the zoning mitigation committee.
- 9 c. Costs shall not be allowed against the zoning mitigation committee unless
10 it appears to the court that the committee acted with gross negligence or in bad faith,
11 or with malice, in making the ^{its} decision appealed from.
- 12 d. All issues in any proceedings under this subdivision [✓] shall have preference
13 over all other civil actions and proceedings.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1367/P2dn
MES:wlj:km

This version of the bill is based on the marked ^{up} copy of the ^{cc 2 version} /P1/ that you sent me. Although most of the questions I raised have been resolved, I am still not sure whether the definition of "inordinate burden" is workable. The definition of that term is somewhat improved in this version of the bill, but it's still unclear to me how one determines what a "disproportionate" share of the "burden" is or how to ascertain what portion of the burden the "public" *should* bear.

Please let me know if you have any questions or if there are additional changes you would like me to make.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

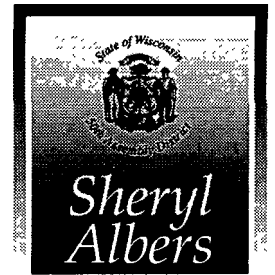
LRB-1367/P2dn
MES:wlj:km

October 21, 1999

This version of the bill is based on the marked-up copy of the “/P1” version that you sent me. Although most of the questions I raised have been resolved, I am still not sure whether the definition of “inordinate burden” is workable. The definition of that term is somewhat improved in this version of the bill, but it’s still unclear to me how one determines what a “disproportionate” share of the ‘burden” is or how to ascertain what portion of the burden the “public” *should* bear.

Please let me know if you have any questions or if there are additional changes you would like me to make.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us



To: Attorney Marc Shovers, LRB Drafting
From: Attorney Scott Harold Southworth, Research Assistant *SHS*

Date: January 3, 2000
Subject: LRB 1367/P2

Please make the following changes to the draft:

1) Page 3, line 1: We need to add the word "resolution" to the definition of "action." While master plans are part of the overall statutory cites included in the definition, our definition of "action" only brings those cites into play for "ordinances," "regulations" and "building permits." Master plans may be adopted by non-elected commissions via resolution, so I do not believe that our definition encompasses them at this point. "Resolutions" will need to be added to other areas of the bill, as well (e.g. page 6, line 14).

Might we want to eliminate "regulation" from page 3, line 1 of the bill and simply define "action" as "any zoning or land use ordinance or resolution that is enacted, or building permit that is denied, by a political subdivision"? Can a political subdivision enact "regulations?" Though a term utilized in the broader sense of land use regulation ("regulatory takings"), I wasn't aware that "regulation" had any statutory meaning in Wisconsin for a political subdivision, as we've defined "political subdivision." If ordinances and resolutions encompass all applicable actions of political subdivisions, we need to delete references to "regulations" throughout the bill (e.g. line 14 on page 6). If "regulations" is an operative term that can apply outside of ordinances and resolutions, we should simply define "action" as "any zoning or land use ordinance, resolution or regulation" Let me know if I'm mistaken in my understanding.

2) Page 3, lines 12-22: Your concern relating to the definition of "inordinate burden" is well taken. We want legislators to focus on the mitigation committee and its task, not on the definition of "inordinate burden." To ensure complete clarity in the bill, please change the definition of "inordinate burden" to the following language, which takes into account the Wisconsin Supreme Court's 1998 *Kenosha* County decision:

"Inordinate burden" means an action that directly restricts or limits a landowner's use of, or ability to develop, the landowner's real property such that the landowner can make little or no use of the real property, other than for recreational use."

3) Page 7, line 17 through page 8, line 7: We need to expand the scope of what parties can appeal a mitigation committee decision to more closely match that of zoning boards of appeals (§62.23(7)(e)10). Specifically, I want to add "any taxpayer of the political subdivision" and "the elected governing body of the political subdivision." I do not want to go any further, however, (i.e. as broad as the appeal rights under §62.23(7)(e)10).

NOT mentioned in §62.23(7)(a) as an action a city may take though they are probably what is used

2

The following information is being provided to you for your information only. It is not intended to constitute an offer of insurance or any other financial product. The information is provided for your information only and should not be relied upon as a basis for any investment decision. The information is provided for your information only and should not be relied upon as a basis for any investment decision. The information is provided for your information only and should not be relied upon as a basis for any investment decision.

To: MES

From: WLJ

Re: LRB-1367/I

- Section 66.034 was created in the budget bill. As such, I renumbered everything to be s. 66.038. I have no idea if this number choice is okay. Please advise.

Sections Affected Post-Drafting-Check For 99-1367/1

Thursday, January 20, 2000 8:52 am

Current Wisconsin Statutes updated through 1999 Act 25

SECTION (Sub)(Par)	TREATMENT	AFFECTED BY
66.034	cr. (vetoed in part)	Act 0009



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1367-~~22~~ I

MES:wlj ~~km~~

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Wanted
Thurs. 10AM
1/20

D-note

regen

1 AN ACT to amend 60.65 (3) and 62.23 (7) (e) 1.; and to create 59.694 (11) and
2 66.034 of the statutes; relating to: requiring a city, village, town or county to
3 develop a procedure to mitigate the effects on landowners of certain zoning or
4 land use decisions.

INS
ANV

Analysis by the Legislative Reference Bureau

~~To be provided in a future version of the bill.~~

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

5 SECTION 1. 59.694 (11) of the statutes is created to read:
6 59.694 (11) REQUIRED TO ACT. If directed to do so by the county board under s.
7 ^{66.038} ~~66.034~~ (4), the board of adjustment shall grant a special exception or variance under
8 this section to comply with the procedure described in s. ^{66.038} ~~66.034~~ (4) (b).

9 SECTION 2. 60.65 (3) of the statutes is amended to read:

1 60.65 (3) **POWERS AND DUTIES.** The town board may authorize the board of
 2 adjustment to, in appropriate cases and subject to appropriate conditions and
 3 safeguards, permit special exceptions to the terms of the zoning ordinance under s.
 4 60.61 consistent with the ordinance's general purpose and intent and with applicable
 5 provisions of the ordinance. This subsection does not preclude the granting of special
 6 exceptions by the town zoning committee designated under s. 60.61 (4) or the town
 7 board, in accordance with regulations and restrictions adopted under s. 60.61. The
 8 town board, under s. ^{66.038}~~66.034~~(4), may also require the board of adjustment to grant
 9 a special exention or variance under this section to comply with the procedure
 10 described in s. ^{66.038}~~66.034~~ (4) (b).

11 **SECTION 3.** 62.23 (7) (e) 1. of the statutes is amended to read:

12 62.23 (7) (e) 1. The council which enacts zoning regulations pursuant to this
 13 section shall by ordinance provide for the appointment of a board of appeals, and
 14 shall provide in such regulations that said board of appeals may, in appropriate cases
 15 and subject to appropriate conditions and safeguards, make special exceptions to the
 16 terms of the ordinance in harmony with its general purpose and intent and in
 17 accordance with general or specific rules therein contained. Nothing in this
 18 subdivision shall preclude the granting of special exceptions by the city plan
 19 commission or the common council in accordance with the zoning regulations
 20 adopted pursuant to this section which were in effect on July 7, 1973 or adopted after
 21 that date. The council, under s. ^{66.038}~~66.034~~(4), may also require the board of appeals to
 22 grant a special exention or variance under this subsection to comply with the
 23 procedure described in s. ^{66.038}~~66.034~~ (4) (b).

24 **SECTION 4.** ^{66.038}~~66.034~~ of the statutes is created to read:

25 ^{66.038}~~66.034~~ **Zoning mitigation. (1) DEFINITIONS.** In this section:

1 (a) "Action" means any zoning or land use ordinance that is enacted or
 2 regulation ^{or resolution} that is adopted, or building permit that is denied, by a political
 3 subdivision under s. 59.69, 60.61, 60.62, 61.35 or 62.23; or any denial of a special
 4 exception or variance to a zoning ordinance by a board of appeals under s. 62.23 (7)
 5 (e) or by a board of adjustment under s. 59.694 or 60.65.

~~****NOTE. I did not add "master plan" because a master plan is included in the listed
 cites.~~

6 (b) "Chief executive officer" means the mayor or city manager of a city, the
 7 village president of a village, the town board chairperson of a town or the county
 8 executive of a county or, if the county does not have a county executive, the
 9 chairperson of the county board of supervisors.

10 (c) "Governing body" means the body in which the legislative powers of a
 11 political subdivision are vested.

12 (d) "Inordinate burden" means an action that directly restricts or limits a
 13 landowner's use of, or ability to develop, the landowner's real property such that ~~at~~
 14 ~~least one of the following applies:~~ ^{the landowner can make little or}
^{no use of the real property, other}
^{than recreational use.}

- 15 ~~1. The landowner is permanently unable to attain a reasonable return on the~~
- 16 ~~investment the landowner made in the real property.~~
- 17 ~~2. The landowner can make little or no use of the real property, other than~~
- 18 ~~recreational use.~~
- 19 ~~3. With regard to at least one of the parcels of the landowner's real property,~~
- 20 ~~the use to which the landowner may put the real property is limited such that the~~
- 21 ~~landowner bears permanently a disproportionate share of the burden imposed by the~~
- 22 ~~action, compared to the burden borne by the public.~~

1 (e) "Landowner" means the owner of record of a parcel of land or the purchaser
2 of land under a land contract who has the right to occupy and the right to use the land,
3 except that "landowner" does not include any unit of government.

4 (f) "Parcel" means an identified section, fractional section or government lot.

5 (g) "Political subdivision" means a city, village, town or county.

6 (h) "Real property" means land and improvements on the land.

7 (2) ZONING MITIGATION COMMITTEE. (a) **Designation, creation.** Not later than the
8 first day of the 6th month beginning after publication [revisor inserts date], a
9 political subdivision shall designate a zoning mitigation committee. The zoning
10 mitigation committee shall be an existing or newly created committee of the political
11 subdivision's governing body or a separate committee, other than a board of
12 adjustment or appeals under s. 59.694, 60.65 or 62.23 (7) (e), that is not part of the
13 political subdivision's governing body.

14 (b) **Committee membership.** If the zoning mitigation committee designated
15 under par. (a) is a separate committee, it shall consist of 5 members who shall be
16 appointed by the chief executive officer of the political subdivision, subject to
17 confirmation of the governing body. Members shall serve for 2- year terms and may
18 be reappointed, except that 3 of the initial appointees shall serve for one-year terms.
19 A member may be removed during his or her term by the chief executive officer for
20 just cause. A member shall receive compensation at a rate set by the governing body.
21 A member of the governing body may be appointed by the chief executive officer to
22 the zoning mitigation committee.

23 (c) **Committee officers, procedures.** If the zoning mitigation committee
24 designated under par. (a) is a newly created committee, the chief executive officer of
25 the political subdivision shall select the chairperson of the committee, and the

1 committee shall elect from among its members a vice chairperson and secretary. The
2 committee shall determine its own rules of operation. All expenses of the committee
3 shall be paid by the political subdivision.

4 (3) MITIGATION REQUEST PROCEDURES, LIMITATIONS. (a) If a landowner believes
5 that an action taken by a governing body places an inordinate burden on the
6 landowner, the landowner may file a mitigation request with the zoning mitigation
7 committee under sub. (2) not later than one year after the effective date of the action.

8 (b) No request for mitigation may be made under par. (a), or maintained once
9 filed, if the political subdivision makes a written offer to purchase the landowner's
10 real property, which the landowner believes is subject to an inordinate burden, at the
11 current appraised value of the real property.

12 (c) The zoning mitigation committee may require the landowner to provide
13 information or documentation, such as appraisals of the landowner's real property
14 or appraisals that demonstrate the real property's loss of value that may be
15 attributable to an action, that supports the landowner's mitigation request relating
16 to the inordinate burden.

17 (4) PROCEDURES. (a) *Committee meetings.* The zoning mitigation committee
18 shall meet within 21 days after receiving a mitigation request under sub. (3) and
19 shall decide, not later than 90 days after receiving a mitigation request, whether a
20 landowner is subject to an inordinate burden. In reaching its decision, the zoning
21 mitigation committee shall use the criteria described under par. (b). The committee
22 may reach its decision only after holding at least one public hearing on the mitigation
23 request at which the landowner, the governing body responsible for the action that
24 led to the filing of the mitigation request and any other interested party may appear.
25 No public hearing may be held under this paragraph unless a class 1 notice under

1 ch. 985 is published at least 7 days before the scheduled hearing. The committee
2 shall forward its decision, in writing, to the governing body and to the landowner.

3 (b) **Mitigation criteria.** In determining whether an inordinate burden is placed
4 on a landowner, a zoning mitigation committee shall consider at least all of the
5 following factors:

6 1. The history of the development and the use of the real property; whether the
7 real property has been subdivided and, if so, how, when and to whom it was sold;
8 whether plats were filed or recorded; and whether sewer, water, electricity or other
9 infrastructure was added to the property.

10 2. The history of environmental protection, land use controls and other
11 regulations that applied to the real property, including how and when the property
12 was classified, the nature of restrictions on density or development that applied to
13 the property and what changes in classifications applied to the real property.

14 3. The current land use restrictions and zoning ordinances ~~and regulations~~ ^{and resolutions} that
15 apply to each parcel of the landowner's real property.

16 4. The reasonable expectations of the landowner for developing or using the
17 property at the time the landowner acquired the property, or immediately before the
18 effective date of the action that led the landowner to file a mitigation request,
19 whichever is later.

20 5. The public purpose to be achieved by the action, including the nature and
21 magnitude of the problem addressed by the action; whether the action is necessary
22 to achieve the public purpose; and whether an alternate action could achieve the
23 public purpose and permit reduced restrictions on the use, density or development
24 potential of the real property.

1 6. The uses, density or development that may occur on the real property under
 2 land use plans and zoning ordinances ^{Or resolutions} on regulations that are currently in effect in
 3 the political subdivision.

4 7. Actions that apply to similar real property that restrict the use, density and
 5 development potential of such similar real property.

6 8. Whether the assessed value of the real property declined in the current year
 7 compared to the immediately preceding year and, if so, whether the decline, in the
 8 opinion of the assessor of the taxation district in which the real property is located,
 9 is directly attributable to the action that caused the landowner to file the request for
 10 mitigation.

11 9. Any other information from any source that the committee considers
 12 relevant.

13 **(c) Committee decisions.** 1. If the zoning mitigation committee decides that the
 14 landowner is subject to an inordinate burden, the governing body shall mitigate the
 15 inordinate burden by instituting one or more of the mitigation remedies under sub.

16 (5). ^{by a taxpayer who resides in the political subdivision or the governing body of the political subdivision}

17 2. a. If the zoning mitigation committee decides that the landowner is not
 18 subject to an inordinate burden, the landowner may appeal the committee's decision
 19 to the circuit court within 30 days after receiving a written copy of the decision.

20 b. If ~~a landowner files~~ ^{is filed} an appeal under subd. 2. a., the zoning mitigation
 21 committee shall send the court certified copies of all documents used by the
 22 committee in reaching its decision and a copy of its written decision. If the court
 23 believes it is necessary to do so to properly resolve the issue, the court may take
 24 evidence, or appoint a referee to take evidence and report findings of fact and
 25 conclusions of law as it directs, which shall constitute a part of the proceedings upon

1 which the determination of the court shall be made. The court may reverse or affirm,
2 wholly or partly, or may modify, the decision of the zoning mitigation committee.

3 c. Costs shall not be allowed against the zoning mitigation committee unless
4 it appears to the court that the committee acted with gross negligence or in bad faith,
5 or with malice, in making its decision.

6 d. All issues in any proceedings under this subdivision shall have preference
7 over all other civil actions and proceedings.

8 (5) **MITIGATION REMEDIES.** If the zoning mitigation committee makes the
9 determination described in sub. (4) (c) 1., or if the circuit court reverses or modifies
10 the committee's decision under sub. (4) (c) 2., the governing body shall institute one
11 or more of the following mitigation remedies:

12 (a) Enact or amend a zoning ordinance or adopt or amend a zoning regulation *or resolution*
13 which allows the landowner to proceed with the use or development of the
14 landowner's real property, the inordinate burden on which prevented the landowner
15 from proceeding with such use or development and led to the landowner's filing of
16 the request for mitigation.

17 (b) Require the political subdivision's board of appeals under s. 62.23 (7) (e) or
18 board of adjustment under s. 59.694 or 60.65 to grant a variance or special exception
19 to an action, which allows the landowner to proceed with the use or development of
20 the landowner's real property, the inordinate burden on which prevented the
21 landowner from proceeding with such use or development and led to the landowner's
22 filing of the request for mitigation.

23 (c) Enter into a written development agreement with the landowner that allows
24 the landowner to use or develop the landowner's real property in a way that is
25 specified in the agreement.

1 (d) Enter into an agreement with the landowner to compensate the landowner
2 for the inordinate burden placed on the landowner's real property. The compensation
3 may be a cash payment, a purchase of development rights to the real property, an
4 exchange of real property owned by the political subdivision for the landowner's real
5 property that is subject to the inordinate burden or any other compensation that is
6 agreed to by the parties.

7 **SECTION 5. Effective dates.** This act takes effect on the day after publication,
8 except as follows:

9 (1) The treatment of section ^{66.038(3)}~~66.034(3)~~ of the statutes takes effect on the first
10 day of the 6th month beginning after publication.

11 (END)



INS ANL, p. 1 of 2

Under current law, a city, village, town that is authorized to exercise village powers (municipality) or county is authorized to enact zoning ordinances that regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population and the location and use of buildings, structures and land for various purposes.

A municipality's board of appeals or a county's board of adjustment is authorized under current law to hear and decide appeals that allege that there is an error in the enforcement of a zoning ordinance, to hear and decide special exceptions to the terms of a zoning ordinance and to authorize a variance from the terms of a zoning ordinance. A "use" variance grants permission for a use that is not permitted by the zoning ordinance and an "area" variance relaxes restrictions on dimensions, such as setback, frontage, height, bulk, density and area. To grant a variance, a board of appeals or board of adjustment must find four things:

1. The variance will not be contrary to the public interest.
2. Substantial justice will be done by granting the variance.
3. The variance is needed so that the spirit of the ordinance is observed.
4. Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.

Although the term "unnecessary hardship" is not defined in the statutes, a recent decision of the Wisconsin Supreme Court, *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396,398 (1998), held that the legal standard of unnecessary hardship requires that the property owner demonstrate that without the variance, he or she has no reasonable use of the property.

This bill requires political subdivisions (cities, villages, towns or counties) to develop a procedure to mitigate the effects on landowners of certain zoning or land use decisions. Under the bill, a political subdivision is required to create within ~~6~~ six months of the bill's effective date a zoning mitigation committee (ZMC), which may be part of the political subdivision's governing body or a separate committee. If a landowner believes that an action taken by a political subdivision's governing body places an inordinate burden on the landowner, the landowner may file a mitigation request with the ZMC no later than one year after the action takes effect.

The bill defines "action" to be any zoning or land use ordinance, regulation or resolution of a political subdivision or a denial of a building permit, special exception or variance. An "inordinate burden" is defined as an action that directly restricts or limits a landowner's use of, or ability to develop, the landowner's real property such that the landowner can make little or no use of the real property, other than recreational use.

A ZMC must meet within 21 days after receiving a mitigation request, and must decide within 90 days of receiving the request whether a landowner is subject to an inordinate burden. Before reaching its decision, the ZMC must hold at least one public hearing on the mitigation request at which the landowner, the governing body responsible for the action that led to the request and any other interested party may

INS ANL p. 2 of 2

appear. The factors that a ZMC is required to use in reaching its decision include the following:

1. The history of the development and the use of the real property.
2. The history of environmental protection, land use controls and other regulations that applied to the property,
3. The current land use restrictions, ordinances, regulations and resolutions that apply to each parcel of the property.
4. The reasonable expectations of the landowner for developing or using the property.
5. The public purpose to be achieved by the action, the nature and magnitude of the problem addressed by the action and whether alternate actions could achieve the public purpose.
6. The uses, density or development that could occur on the property under the current land use plans, regulations and ordinances.
7. Whether the assessed value of the real property declined in the current year compared to the previous year and if so, whether the decline is directly attributable to the action that caused the landowner to file the mitigation request.

If a ZMC finds that the landowner is subject to an inordinate burden, the political subdivision's governing body is required to mitigate in one of the following ways:

1. ^{to} Enact or amend a zoning ordinance or regulation ^{SET} which allows the landowner to use or develop the property that is subject to the mitigation request.
2. Grant a special exception or variance which allows the landowner to proceed with the use or development of the property that is subject to the mitigation request.
3. Enter into a written development agreement with the landowner.
4. Enter into an agreement with the landowner to compensate the landowner for the inordinate burden.

If a ZMC finds that the landowner is not subject to an inordinate burden, the landowner, a taxpayer who resides in the political subdivision or the governing body of the political subdivision may appeal the ZMC's decision to the circuit court.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1367/1dn
MES:wlj:km

Your written comments to the /P2 version of the bill ask whether "regulation" should be eliminated from page 3, line 1 of the bill because you've questioned whether a political subdivision may enact a "regulation." While you are correct that political subdivisions almost certainly never enact a regulation, and that they almost always enact an ordinance or adopt a resolution, I have kept "regulation" in the bill. This is because s. 62.23 (7) (a) authorizes a city (and a village and certain towns) to enact or adopt an "ordinance, resolution or regulation" under s. 62.23.

I've expanded the scope of which parties may appeal the decision of a mitigation committee, in created s. ^{66.038}~~66.034~~(4) (c) 2., to include "a taxpayer who resides in the political subdivision or the governing body of the political subdivision," but this expansion seems a little odd to me. If the zoning mitigation committee decides that a landowner is **not** subject to an inordinate burden, I can't imagine why a political subdivision would ever want to appeal such a decision. To a lesser extent, I'm not sure why a taxpayer, who may have no interest in the matter, would have a statutory right to appeal. Did you mean to give the political subdivision or a taxpayer the right to appeal if the committee decides that the landowner **is** subject to an inordinate burden? This would entail amending created s. ^{66.038}~~66.034~~(4) (c) 1.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us

*if the affected
landowner chooses
not to appeal*

*and that the
political subdivision
must ^{then} mitigate*

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1367/1dn
MES:wlj:jf

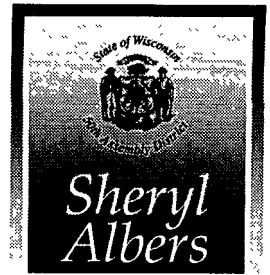
January 20, 2000

Your written comments to the /P2 version of the bill ask whether "regulation" should be eliminated from page 3, line 1, of the bill because you've questioned whether a political subdivision may enact a "regulation." While you are correct that political subdivisions almost certainly never enact a regulation, and that they almost always enact an ordinance or adopt a resolution, I have kept "regulation" in the bill. This is because s. 62.23 (7) (a) authorizes a city (and a village and certain towns) to enact or adopt an "ordinance, resolution or regulation" under s. 62.23.

I've expanded the scope of which parties may appeal the decision of a mitigation committee, in created s. 66.038 (4) (c) 2., to include "a taxpayer who resides in the political subdivision or the governing body of the political subdivision," but this expansion seems a little odd to me. If the zoning mitigation committee decides that a landowner is *not* subject to an inordinate burden, I can't imagine why a political subdivision would ever want to appeal such a decision. To a lesser extent, I'm not sure why a taxpayer, who may have no interest in the matter, would have a statutory right to appeal if the affected landowner chooses not to appeal. Did you mean to give the political subdivision or a taxpayer the right to appeal if the committee decides that the landowner *is* subject to an inordinate burden and that the political subdivision must then mitigate? This would entail amending created s. 66.038 (4) (c) 1.

Marc E. Shovers
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Instructions
for /2



To: Attorney Marc Shovers, LRB-Drafting
From: Attorney Scott Harold Southworth, Research Assistant ~~SHS~~

Date: January 20, 2000
Subject: LRB 1367/1 - Mitigation Committee

Marc,

Thanks so much for getting to this bill quickly. I have only question and three changes:

- D-note*
- 1) Did you intend to change the statute section we create in this bill from 66.034 to 66.038? I noted the difference between /P2 and /1, and just wanted to bring it to your attention in case it was an unintended typographical error.
 - 2) I would like to add "reasonable" to the definition of "inordinate burden" on page 5, line 7. This will make it completely consistent with the **Kenosha** County decision. That was an oversight on my part.
 - 3) I want to give the committee more than 21 days to meet - on page 6, line 25 we should change "21" to "30."
 - 4) You correctly discerned in your drafter's note that our intent may be to allow taxpayers or the elected body of the governmental unit to appeal if the mitigation committee decides that there is an inordinate burden. However, I don't think we need to change 66.038(4) (c) 1. Instead, I would prefer to simply eliminate the first part of sub. (4) (c) 2 so that a landowner, a taxpayer or the elected body can appeal any decision of the mitigation committee. I understand that this could mean a taxpayer could appeal if the mitigation committee decides against the property owner; however, that is so very unlikely I don't think it's necessary to address that in the statutes. Nonetheless, if a taxpayer really believes that his or her neighbor is being harmed by the mitigation committee's decision and wants to appeal the decision, great! Of course, I can foresee a situation where the effect of an ordinance would not only have an adverse effect on a landowner, but on an adjoining landowner, as well. For instance, if an ordinance stopped a landowner from doing anything on his property, like building a small home, that would increase the value of the adjoining lots, those adjoining lot owners would have an economic interest in seeing the mitigation committee find an "inordinate burden" on behalf of their neighbor. Not likely, of course, but possible.

I also think we need to eliminate the "after receiving a written copy of the decision" found on page 9, lines 2-3, and replace it with "after the decision is released by the committee." The current language would give any taxpayer the ability to "receive" a copy of the decision a year after the decision and then file an appeal. However, to ensure that plenty of time exists

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy auditing of the accounts.

In addition, the document outlines the procedures for handling discrepancies. If there is a difference between the recorded amount and the actual amount received or paid, it is crucial to investigate the cause immediately. This could be due to a clerical error, a missing receipt, or a fraudulent transaction.

The second section focuses on the regular reconciliation of bank statements. It is recommended to compare the bank's records with the company's ledger at least once a month. This helps to identify any unauthorized withdrawals or errors in the bank's reporting.

Furthermore, the document provides guidelines for the safekeeping of financial records. All documents should be stored in a secure, fireproof location. Digital copies should also be maintained to prevent data loss in the event of a physical disaster.

Finally, the document stresses the importance of staying up-to-date with changes in tax laws and regulations. Consulting with a professional accountant can help ensure that the company remains in full compliance with all applicable laws, thereby avoiding penalties and legal issues.

between the release of decision, its receipt by the respective parties and the preparation of the appeal, we should increase the number of days from 30 to 60.

Thus, sub. (4) (c) 2 would read as follows:

The landowner, a taxpayer who resides in the political subdivision or the governing body of the political subdivision may appeal the committee's decision to the circuit court within 60 days after the decision is released by the committee.

If you can get me these changes sometime this afternoon or early tomorrow, I can get the cosponsorship memo out tomorrow. Give me a call with any questions. Thanks again!



RMR

1999 BILL

[Handwritten signature]

WANTED
Fri. 1/21
9AM

[Handwritten signature]

1 **AN ACT to amend** 60.65 (3) and 62.23 (7) (e) 1.; and **to create** 59.694 (11) and
2 66.038 of the statutes; **relating to:** requiring a city, village, town or county to
3 develop a procedure to mitigate the effects on landowners of certain zoning or
4 land use decisions.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, town that is authorized to exercise village powers (municipality) or county is authorized to enact zoning ordinances that regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population and the location and use of buildings, structures and land for various purposes.

A municipality's board of appeals or a county's board of adjustment is authorized under current law to hear and decide appeals that allege that there is an error in the enforcement of a zoning ordinance, to hear and decide special exceptions to the terms of a zoning ordinance and to authorize a variance from the terms of a zoning ordinance. A "use" variance grants permission for a use that is not permitted by the zoning ordinance and an "area" variance relaxes restrictions on dimensions, such as setback, frontage, height, bulk, density and area. To grant a variance, a board of appeals or board of adjustment must find four things:

1. The variance will not be contrary to the public interest.
2. Substantial justice will be done by granting the variance.
3. The variance is needed so that the spirit of the ordinance is observed.

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4. Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.

Although the term “unnecessary hardship” is not defined in the statutes, a recent decision of the Wisconsin Supreme **Court, State v. Kenosha County Board of Adjustment**, 218 Wis. 2d 396,398 (1998), held that the legal standard of unnecessary hardship requires that the property owner demonstrate that without the variance, he or she has no reasonable use of the property.

This bill requires political subdivisions (cities, villages, towns or counties) to develop a procedure to mitigate the effects on landowners of certain zoning or land use decisions. Under the bill, a political subdivision is required to create within six months of the bill’s effective date a zoning mitigation committee (ZMC), which may be part of the political subdivision’s governing body or a separate committee. If a landowner believes that an action taken by a political subdivision’s governing body places an inordinate burden on the landowner, the landowner may file a mitigation request with the ZMC no later than one year after the action takes effect.

The bill defines “action” to be any zoning or land use ordinance, regulation or resolution of a political subdivision or a denial of a building permit, special exception or variance. An “inordinate burden” is defined as an action that directly restricts or limits a landowner’s use of, or ability to develop, the landowner’s real property such that the landowner can make little or ~~n~~^{use} the real property, other than recreational use.

A ZMC must meet within ~~20~~³⁰ days after receiving a mitigation request, and must decide within 90 days of receiving the request whether a landowner is subject to an inordinate burden. Before reaching its decision, the ZMC must hold at least one public hearing on the mitigation request at which the landowner, the governing body responsible for the action that led to the request and any other interested party may appear. The factors that a ZMC is required to use in reaching its decision include the following:

1. The history of the development and the use of the real property.
2. The history of environmental protection, land use controls and other regulations that applied to the property.
3. The current land use restrictions, ordinances, regulations and resolutions that apply to each parcel of the property.
4. The reasonable expectations of the landowner for developing or using the property.
5. The public purpose to be achieved by the action, the nature and magnitude of the problem addressed by the action and whether alternate actions could achieve the public purpose.
6. The uses, density or development that could occur on the property under the current land use plans, regulations and ordinances.
7. Whether the assessed value of the real property declined in the current year compared to the previous year and if so, whether the decline is directly attributable to the action that caused the landowner to file the mitigation request.

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If a ZMC finds that the landowner is subject to an inordinate burden, the political subdivision's governing body is required to mitigate in one of the following ways:

1. Enact or amend a zoning ordinance or regulation which allows the landowner to use or develop the property that is subject to the mitigation request.
2. Grant a special exception or variance which allows the landowner to proceed with the use or development of the property that is subject to the mitigation request.
3. Enter into a written development agreement with the landowner.
4. Enter into an agreement with the landowner to compensate the landowner for the inordinate burden.

If a ZMC finds that the landowner is ^{subject, by an inordinate burden or if} ~~not~~ ^{ZMC finds that the landowner is} subject to an inordinate burden, the landowner, a taxpayer who resides in the political subdivision or the governing body of the political subdivision may appeal the ZMC's decision to the circuit court.

For further information see the state **and local** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 59.694 (11) of the statutes is created to read:

2 **59.694 (11) REQUIRED TO ACT.** If directed to do so by the county board under s.
3 66.038 (4), the board of adjustment shall grant a special exception or variance under
4 this section to comply with the procedure described in s. 66.038 (4) (b).

5 **SECTION 2.** 60.65 (3) of the statutes is amended to read:

6 **60.65 (3) POWERS AND DUTIES.** The town board may authorize the board of
7 adjustment to, in appropriate cases and subject to appropriate conditions and
8 safeguards, permit special exceptions to the terms of the zoning ordinance under s.
9 60.61 consistent with the ordinance's general purpose and intent and with applicable
10 provisions of the ordinance. This subsection does not preclude the granting of special
11 exceptions by the town zoning committee designated under s. 60.61 (4) or the town
12 board, in accordance with regulations and restrictions adopted under s. 60.61. The
13 town board, under s. 66.038 (4), may also require the board of adjustment to errant

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1 ~~a special exception or variance under this section to comply with the procedure~~
2 ~~described in s. 66.038 (4) (b).~~

3 SECTION 3. 62.23 (7) (e) 1. of the statutes is amended to read:

4 62.23 (7) (e) 1. The council which enacts zoning regulations pursuant to this
5 section shall by ordinance provide for the appointment of a board of appeals, and
6 shall provide in such regulations that said board of appeals may, in appropriate cases
7 and subject to appropriate conditions and safeguards, make special exceptions to the
8 terms of the ordinance in harmony with its general purpose and intent and in
9 accordance with general or specific rules therein contained. Nothing in this
10 subdivision shall preclude the granting of special exceptions by the city plan
11 commission or the common council in accordance with the zoning regulations
12 adopted pursuant to this section which were in effect on July 7, 1973 or adopted after
+ 13 that date. ~~The council, under s. 66.038 (4), may also require the board of appeals to~~
14 ~~grant a special exception or variance under this subsection to comply with the~~
15 ~~procedure described in s. 66.038 (4) (b).~~

16 SECTION 4. 66.038 of the statutes is created to read:

17 **66.038 Zoning mitigation. (1) DEFINITIONS.** In this section:

18 (a) "Action" means any zoning or land use ordinance that is enacted or
19 regulation or resolution that is adopted, or building permit that is denied, by a
20 political subdivision under s. 59.69, 60.61, 60.62, 61.35 or 62.23; or any denial of a
21 special exception or variance to a zoning ordinance by a board of appeals under s.
22 62.23 (7) (e) or by a board of adjustment under s. 59.694 or 60.65.

23 (b) "Chief executive officer" means the mayor or city manager of a city, the
24 village president of a village, the town board chairperson of a town or the county

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1 executive of a county or, if the county does not have a county executive, the
2 chairperson of the county board of supervisors.

3 (c) "Governing body" means the body in which the legislative powers of a
4 political subdivision are vested.

5 (d) "Inordinate burden" means an action that directly restricts or limits a
6 landowner's use of, or ability to develop, the landowner's real property such that the
7 landowner can make little or no ^{reasonable} use of the real property, other than recreational use.

8 (e) "Landowner" means the owner of record of a parcel of land or the purchaser
9 of land under a land contract who has the right to occupy and the right to use the land,
10 except that "landowner" does not include any unit of government.

11 (f) "Parcel" means an identified section, fractional section or government lot.

12 (g) "Political subdivision" means a city, village, town or county.

13 (h) "Real property" means land and improvements on the land.

14 **(2) ZONING MITIGATION COMMITTEE.** (a) **Designation, creation.** Not later than the
15 first day of the 6th month beginning after publication [revisor inserts date], a
16 political subdivision shall designate a zoning mitigation committee. The zoning
17 mitigation committee shall be an existing or newly created committee of the political
18 subdivision's governing **body or a separate committee, other than a board of**
19 **adjustment or appeals under s. 59.694, 60.65 or 62.23 (7) (e), that is not part of the**
20 **political subdivision's governing body.**

21 (b) **Committee membership.** If the zoning mitigation committee designated
22 under par. (a) is a separate committee, it shall consist of 5 members who shall be
23 appointed by the chief executive officer of the political subdivision, subject to
24 confirmation of the governing body. Members shall serve for 2- year terms and may
25 be reappointed, except that 3 of the initial appointees shall serve for one-year terms.

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1 A member may be removed during his or her term by the chief executive officer for
2 just cause. A member shall receive compensation at a rate set by the governing body.

3 A member of the governing body may be appointed by the chief executive officer to
4 the zoning mitigation committee.

5 (c) *Committee officers, procedures.* If the zoning mitigation committee
6 designated under par. (a) is a newly created committee, the chief executive officer of
7 the political subdivision shall select the chairperson of the committee, and the
8 committee shall elect from among its members a vice chairperson and secretary. The
9 committee shall determine its own rules of operation. All expenses of the committee
10 shall be paid by the political subdivision.

11 (3) **MITIGATION REQUEST PROCEDURES, LIMITATIONS.** (a) If a landowner believes
12 that an action taken by a governing body places an inordinate burden on the
13 landowner, the landowner may file a mitigation request with the zoning mitigation
14 committee under sub. (2) not later than one year after the effective date of the action.

15 (b) No request for mitigation may be made under par. (a), or maintained once
16 filed, if the political subdivision makes a written offer to purchase the landowner's
17 real property, which the landowner believes is subject to an inordinate burden, at the
18 current appraised value of the real property.

19 (c) The zoning mitigation committee may require the landowner to provide
20 information or documentation, such as appraisals of the landowner's real property
21 or appraisals that demonstrate the real property's loss of value that may be
22 attributable to an action, that supports the landowner's mitigation request relating
23 to the inordinate burden.

24 (4) **PROCEDURES.** (a) *Committee meetings.* The zoning mitigation committee
25 shall meet within ~~14~~³⁰ days after receiving a mitigation request under sub. (3) and

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1 shall decide, not later than 90 days after receiving a mitigation request, whether a
2 landowner is subject to an inordinate burden. In reaching its decision, the zoning
3 mitigation committee shall use the criteria described under par. (b). The committee
4 may reach its decision only after holding at least one public hearing on the mitigation
5 request at which the landowner, the governing body responsible for the action that
6 led to the filing of the mitigation request and any other interested party may appear.
7 No public hearing may be held under this paragraph unless a class 1 notice under
8 ch. 985 is published at least 7 days before the scheduled hearing. The committee
9 shall forward its decision, in writing, to the governing body and to the landowner,

10 (b) *Mitigation criteria.* In determining whether an inordinate burden is placed
11 on a landowner, a zoning mitigation committee shall consider at least all of the
12 following factors:

13 1. The history of the development and the use of the real property; whether the
14 real property has been subdivided and, if so, how, when and to whom it was sold;
15 whether plats were filed or recorded; and whether sewer, water, electricity or other
16 infrastructure was added to the property.

17 2. The history of environmental protection, land use controls and other
18 regulations that applied to the real property, including how and when the property
19 was classified, the nature of restrictions on density or development that applied to
20 the property and what changes in classifications applied to the real property.

21 3. The current land use restrictions and zoning ordinances, regulations and
22 resolutions that apply to each parcel of the landowner's real property.

23 4. The reasonable expectations of the landowner for developing or using the
24 property at the time the landowner acquired the property, or immediately before the

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1 effective date of the action that led the landowner to file a mitigation request,
2 whichever is later.

3 5. The public purpose to be achieved by the action, including the nature and
4 magnitude of the problem addressed by the action; whether the action is necessary
5 to achieve the public purpose; and whether an alternate action could achieve the
6 public purpose and permit reduced restrictions on the use, density or development
7 potential of the real property.

8 6. The uses, density or development that may occur on the real property under
9 land use plans and zoning ordinances, regulations or resolutions that are currently
10 in effect in the political subdivision.

11 7. Actions that apply to similar real property that restrict the use, density and
12 development potential of such similar real property.

13 8. Whether the assessed value of the real property declined in the current year
14 compared to the immediately preceding year and, if so, whether the decline, in the
15 opinion of the assessor of the taxation district in which the real property is located,
16 is directly attributable to the action that caused the landowner to file the request for
17 mitigation.

18 9. Any other information from any source that the committee considers
19 relevant.

20 (c) *Committee decisions.* 1. If the zoning mitigation committee decides that the
21 landowner is subject to an inordinate burden, the governing body shall mitigate the
22 inordinate burden by instituting one or more of the mitigation remedies under sub.

23 (5). ^{Note} The landowner, a taxpayer who resides in the political subdivision or the
governing body of the political subdivision may appeal the committee's decision
to the circuit court within 60 days after a written copy of the decision.

24 2. a. If the zoning mitigation committee decides that the landowner is not
25 subject to an inordinate burden, the landowner, a taxpayer who resides in the

is forwarded to the governing body under sub. (4)(a).

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1 political subdivision or the governing body of the political subdivision may appeal the
2 committee's decision to the circuit court within ~~30~~⁶⁰ days after receiving a written copy
3 of the decision *is forwarded to the governing body under sub. (4) (a)* ✓

4 b. If an appeal is filed under subd. 2. a., the zoning mitigation committee shall
5 send the court certified copies of all documents used by the committee in reaching
6 its decision and a copy of its written decision. If the court believes it is necessary to
7 do so to properly resolve the issue, the court may take evidence, or appoint a referee
8 to take evidence and report findings of fact and conclusions of law as it directs, which
9 shall constitute a part of the proceedings upon which the determination of the court
10 shall be made. The court may reverse or affirm, wholly or partly, or may modify, the
11 decision of the zoning mitigation committee.

12 c. Costs shall not be allowed against the zoning mitigation committee unless
13 it appears to the court that the committee acted with gross negligence or in bad faith,
14 or with malice, in making its decision.

15 d. All issues in **any proceedings** under this subdivision shall have preference
16 over all other civil actions and proceedings.

17 (5) **MITIGATION REMEDIES.** If the zoning mitigation committee makes the
18 determination described in sub. (4) (c) 1., or if the circuit court reverses or modifies
19 the committee's decision under sub. (4) (c) 2., the governing body shall institute one
20 or more of the following mitigation remedies:

21 (a) Enact or amend a zoning ordinance or adopt or amend a zoning regulation
22 or resolution, which allows the landowner to proceed with the use or development of
23 the landowner's real property, the inordinate burden on which prevented the
24 landowner from proceeding with such use or development and led to the landowner's
25 filing of the request for mitigation.

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1 (b) Require the political subdivision's board of appeals under s. 62.23 (7) (e) or
2 board of adjustment under s. 59.694 or 60.65 to grant a variance or special exception
3 to an action, which allows the landowner to proceed with the use or development of
4 the landowner's real property, the inordinate burden on which prevented the
5 landowner from proceeding with such use or development and led to the landowner's
6 filing of the request for mitigation.

7 (c) Enter into a written development agreement with the landowner that allows
8 the landowner to use or develop the landowner's real property in a way that is
9 specified in the agreement.

10 (d) Enter into an agreement with the landowner to compensate the landowner
11 for the inordinate burden placed on the landowner's real property. The compensation
12 may be a cash payment, a purchase of development rights to the real property, an
13 exchange of real property owned by the political subdivision for the landowner's real
14 property that is subject to the inordinate burden or any other compensation that is
15 agreed to by the parties.

16 **SECTION 5. Effective dates.** This act takes effect on the day after publication,
17 except as follows:

18 (1) The treatment of section 66.038 (3) of the statutes takes effect on the first
19 day of the 6th month beginning after publication.

20 **(END)**

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 01/21/2000

To: Representative Albers

Relating to LRB drafting number: LRB-1367

Topic

Zoning, land use planning; takings mitigation

Subject(s)

Counties, Munis - miscellaneous, Courts - civil procedure

1. **JACKET** the draft for introduction SA - 25 Jan 00
in the Senate or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Marc E. Shovers, Senior Legislative Attorney
Telephone: (608) 266-O 129