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January 2011 Special Session Assembly Bill 10

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Natural Resources...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2013)



222 S. Hamilton St., #1  
Madison, WI 53703  
Phone: 608.250.9971

**Testimony on January 2011 Special Session Assembly Bill 10  
Presented by Erin O'Brien, Policy Director**

***Mission Statement:** Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.*

Wisconsin Wetlands Association is opposed to Assembly Bill 10. As written, it removes state wetlands protection permitting authority and state lakes and stream protection authority for all activities in Brown County that:

1. Affect less than 3 acres of wetlands;
2. Are zoned business; and,
3. Are part of a Tax Increment Financing District.

These provisions apply to all Brown County wetlands, isolated and federal. Because zoning classifications and TIF District boundaries can be modified anytime at the discretion of municipalities, we must assume there is at least the *potential* for any of the more than 30,000 acres of wetlands in Brown County to be filled at some time in the future. And this is with no review by the DNR, no public input, and no consideration of the type or quality of wetland to be filled. For these reasons alone, this bill should not advance.

But nobody believes that it is the intent of this legislature to call open season on all of the wetlands in Brown County. This bill is a response to a request by John Bergstrom and his agents for private legislation to allow him to fill a particular wetland area in the Village of Ashwaubenon. Wisconsin Wetlands Association has been involved in this matter since August 2010.

This issue has been well publicized in the media, but here for the legislative record, is a brief chronology of events.

- On July 14, 2010 WDNR issued a permit to John Bergstrom approving 1.65 acres of wetland fill. The intended development was not named in the application, but as DNR stated in the Green Bay Press Gazette, the working assumption is the tenant would be a Bass Pro Shop.
- The Bergstrom/Bass Pro Shop project was presented to the DNR as one piece of a large-scale redevelopment proposal to bring new restaurants, entertainment venues, and retail establishments to a Tiletown Entertainment District surrounding Lambeau Field. A 300 acre multijurisdictional TIF District is being developed to support this plan. In December, 2010, the Village of Ashwaubenon provided to us a map of a tentative 300 acre TIF district for this overall development project (see attachment).

- On August 31st, and as was our right under Wisconsin law, Wisconsin Wetlands Association petitioned the Department for a Contested Case hearing seeking review of the permit decision by an independent Administrative Law Judge. We requested the hearing due to concerns that the project was approved outside of standard department protocols, that alternatives within the proposed TIF District that would allow the project to proceed without filling the wetlands were not considered, and that the project as proposed would result in significant adverse impacts to high quality urban wetlands.

Some will have you believe that the wetlands to be impacted by this project are of little value. They are wrong. Before the review and approval of this permit was pulled out of the region and into DNR's Central office, the regional WDNR wildlife biologist described the wetland as one of the best urban wetlands seen in his tenure. The water regulations staff person for the region also questioned whether the project meets state water quality standards for wetlands.

- In October, Wisconsin Wetlands Association visited the site with our co-petitioners Dr. Bud Harris and Dr. Robert Howe, and another colleague, Gary Fewless. All three are scientists who have dedicated their careers to the study of wetlands. All three work and live in Brown County.

Due to the unusually short notice for this hearing, they could not be here today, but they asked me to submit this memo they wrote last December to describe the functions and values of this wetland. If the committee allows it, I would like to read their memo aloud. Their message is that, despite significant encroachment, this wetland clearly still provides significant functional values in its present state and will be irreparably harmed by the proposed development.

- Since August 31st, Wisconsin Wetlands Association and our co-petitioners have asked for one of two things:
  1. The chance to present the facts of this permit review and approval to an independent Administrative Law Judge; or
  2. The opportunity to participate in a good faith planning discussion with the applicant, the municipalities, and local citizens, to determine whether there is a way to move this proposed facility slightly further east in the 300 acre TIF District while also protecting the existing wetland resources.

We have been denied both opportunities. This despite numerous communications with former Secretary Matt Frank and the applicant where we asked about the status of the case and expressed a willingness to try to resolve the matter out of court.

Over the course of the last several weeks, Wisconsin Wetlands Association has been criticized by the applicant, in the media, and behind closed doors throughout this building. We have been painted as obstructionist and unreasonable. We assert that this is not a fair portrayal of our conduct in this matter.

In the last 10 years, Wisconsin Wetlands Association has reviewed and commented on hundreds of wetland fill permit requests. This is only the second contested case hearing we have requested seeking judicial review of a permit decision.

We are not opposed to planned development and believe there are creative solutions to this problem. But these kinds of problems are only solved when people are willing to get together around a table to talk. For the last five months, the only thing we have heard from John Bergstrom and his attorney is that the building has to go in that wetland. They have been unwilling to discuss even *the possibility* that there may be a solution to this problem that addresses everybody's concerns. And they have repeatedly reminded us that our options are to either work it out on their terms or this legislature is prepared to do so for them.

Does this make us unreasonable, or them?

I'll close with a few more words about this legislation.

Good legislation is that which applies the same set of standards in every case. Legislation that exempts a particular individual, business, or municipality from state wetland permit requirements is **not** good public policy. It sets a precedent for the passage of additional special-exception bills and erodes the integrity of the entire wetland protection program.

The bill may also create more problems than it solves. In 2010 approximately 75% of the wetland permits issued in Wisconsin were processed under General Permits authorized jointly by both the US Army Corps of Engineers and the WI Department of Natural Resources. As per this agreement, the federal approval is predicated on a full review of these projects by the State of Wisconsin. If the state review will no longer occur, the federal agencies will step in to once again review the requests to fill the federally regulated wetlands. This change is likely to lead to even longer lead times on permit approvals, a circumstance that would be contrary to your intent to create jobs and spur economic growth.

We are especially disappointed to see special legislation to address a matter that is currently undergoing judicial review. It circumvents our rights to due process and erodes public confidence that the government exists to openly and fairly serve the entire public.

We continue to be willing to meet with the Department of Natural Resources, the applicant, and municipal officials to engage in a rational planning process to resolve these issues and protect the State's resources. We respectfully request that you do not advance this legislation to a vote before the entire Assembly.



## Memorandum

**To:** Becky Abel, Executive Director, Wisconsin Wetlands Association

**From:** Dr. Hallett (Bud) Harris, Dr. Robert Howe, Gary Fewless

**Re:** Historic and current functional significance of the Lombardi Wetland at the proposed Argonne Street Retail site.

**Date:** December 15, 2010

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At the request of the Wisconsin Wetlands Association, we submit the following observations about the above mentioned Lombardi Wetland. These comments are informed by: our combined professional experience; a review of wetland assessments recorded by Jon Brand and Richard Nikolai (Wisconsin Department of Natural Resources File IP-NE-2010-5-01621); a vegetation survey completed by Gary Fewless following his September 30, 2010 site visit, and an additional site visit on October 11, 2010 where all three of us were present.

We recognize the fact that the functional values of the Lombardi Wetland and other wetlands in the area have been degraded. However, this wetland clearly still provides significant functional values in its present state. The plant diversity of this site is high for an urban/suburban wetland and the wildlife habitat values are locally significant. Given the seasonal hydroperiod and undocumented inundation levels, we rank the flood and stormwater storage/attenuation values as moderately important. We also agree that the site contributes to water quality protection in the Beaver Dam Creek/Duck Creek watershed, has local aesthetic/recreational value, and contributes (although minimally) to groundwater protection. Wetland complexes with this degree of values and services are rare in urban settings. While wetland encroachment is common in this area, to our knowledge few, if any, urban wetlands in the greater Green Bay area continue to provide this level of ecosystem services.<sup>1</sup>

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<sup>1</sup> The wetland complex adjacent to the Green Bay Airport is the only comparable site that comes to mind.

The functions and values of the Lombardi Wetland will be entirely eliminated in the proposed area (1.65 acres) of wetland fill; however, the proposed action will also impact the remaining adjacent wetland area. For example, the construction will further isolate the wetlands on the north end of the parcel from the forested wetlands to the south. This will be detrimental to wildlife by increasing habitat fragmentation. The loss of area from the existing wetland will also reduce its stormwater retention value. Any increase in disturbance by human activities will reduce the nesting value for Woodcock and Sandhill Crane, and will degrade breeding, stopover, foraging, and protective cover habitat for amphibians, deer, small mammals, and other resident and migratory wetland vertebrate species. Loss of wetland habitat and degradation of adjacent habitats also will reduce populations of plant pollinators (bees, wasps, butterflies, and other insects), natural predators (dragonflies, damselflies, hymenopteran parasitoids, predatory beetles, and others), and food resources for desirable species like hawks, owls, and wading birds. Additional alteration of the hydrology that results in drier conditions will also further degrade the remaining wetlands by increasing erosion and creating conditions that are favorable for the spread of *Phragmites australis* and other invasive species.

An evaluation of the impacts of the proposed project must consider the current and historical role of these wetlands in the watershed and the cumulative effects of this and prior actions. From aerial images as early as 1938 and ending in 2004 and from the Green Bay West topographic map, we can be reasonably confident that the Lombardi Avenue wetland was part of the Beaver Damn Creek Watershed that drains to Duck Creek and eventually into lower Green Bay. The hydrology of the area and the extensive forested wetlands (some of which persist yet today) have been markedly modified including channel modification as recently as the late 1990's or early 2000's. Before modification this wetland was part of an extensive complex of headwater wetlands draining to ecologically significant coastal wetlands of Green Bay.

The disruption and loss of these headwater wetlands has contributed significantly to the deterioration of coastal water quality and coastal wetlands of Green Bay and Lake Michigan. The undisputed decline

of these wetland complexes and their waters cannot be attributed to a single cause, as multiple disturbances, interacting processes, and past and present human activities all contribute.<sup>2</sup> However, to argue that the alteration or destruction of small or apparently isolated remaining wetlands is of no or little consequences disregards the fact that cumulative effects of many other small and purportedly isolated wetlands have led us to the situation that we have today.

Habitat fragmentation, which can compact resident wetland species of small mammals and amphibians, is another example where the cumulative impacts are substantial. We estimate no fewer than four species of small mammals and several species of frogs use the Lombardi Wetland. While none are endangered, all contribute to the food web dynamics of this urban/suburban ecosystem. Small organisms have limited dispersal ability, and those that are wetland dependant become vulnerable to extinction as isolated populations become separated by fragmentation.<sup>3,4</sup> Consequently, increasing human alteration of these wetlands will only exacerbate the already precarious ecological integrity and biodiversity at this site. Because metapopulations of wetland organisms will persist only through preservation of functional wetland mosaics,<sup>5</sup> impacts to this site may well have consequences on the biodiversity of other wetland complexes in the area. For example, this wetland may be especially significant to water birds and wetland invertebrates during wet years when other, less ephemeral wetlands, are flooded.

The conservation value of this site also has been underestimated because the wetland likely becomes especially valuable as migratory landbird stopover habitat during certain times of year. Emerging science reveals that wetlands like the Lombardi wetland (including wetlands that are significantly smaller than

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<sup>2</sup> Bedford, B.L. and Preston, E.M. 1988. Developing the scientific basis for assing cumulative effects of wetland loss and degradation on lanmdscape function: status,perspectives, and prospects. *Environmental Management*, 12: 751-771.

<sup>3</sup> Soule, Michael E. 1986. *Conservation Biology: the science of scarcity and diversity*. Pp. 13-18; The fitness and viability of populations. Sinauer Associates, Inc. Sunderland, Mass.

<sup>4</sup> Gibbs, J.P. 1993. Importance of small wetlands for the persistence of local populations of wetlands-associated animals. *Wetlands*.13(1):25-31.

<sup>5</sup> Gibbs, J. P. 2000. Wetland loss and biodiversity conservation. *Conservation Biology*,14: 314-317.



this) can have critical seasonal importance to migratory landbirds or during extreme weather events.<sup>6</sup>

The ecological context of this wetland (urban wetland in close proximity to important coastal wetlands of the Great Lakes) and resource characteristics (floristic diversity, structural heterogeneity, presence of trees) indicate that this site has significant conservation value that extends well beyond Green Bay and even Wisconsin. Doppler radar studies have shown that wetlands along the Great Lakes, particularly those in urban areas, are critically important as emergency stopover habitat for scores of resource-depleted migratory bird species, including rare and threatened species that nest in this region. The Lombardi wetland, with its large size, urban context and proximity to Lake Michigan is such a wetland.

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<sup>6</sup> Mehlman, D.W., Mabey, S.E., Ewert, D.N., Duncan, C., Abel, B., Cimprich, D., Sutter, R.D., and Woodrey, M. 2005. Conserving stopover sites for forest dwelling migratory landbirds. *The Auk*, 122(4):1281-1290.



## **Wisconsin Ducks Unlimited Testimony**

### **Assembly Bill 10**

### **Assembly Natural Resources Committee**

### **Chairman Jeff Mursau**

Good Day Chairman Mursau and members of the Assembly Natural Resources Committee. On behalf of Ducks Unlimited's 39,000 members in Wisconsin, we are voicing our disapproval of Assembly Bill 10. This legislation sets a bad precedent for governance and protection of Wisconsin's wetland and water resources, and we formally oppose such legislation. Wisconsin led the nation in protecting valuable isolated wetlands with passage of its 2001 Wisconsin Act 6 legislation following the U.S. Supreme Court's SWANCC decision. This action has led to the conservation of wetlands important to our citizens in the form of clean water, fish and wildlife habitat, and outdoor recreation – all which have an important role in sustaining and improving our economy in the state.

DU understands that sometimes wetlands and development are in conflict. We believe Wisconsin regulations provide for resolution of these conflicts, and we stand ready to work with the affected parties to resolve the issue with the Highway 41 and Lombardi Avenue wetland. We believe that an attempt should be made to resolve this specific situation, and Ducks Unlimited offers our expertise to work with the affected parties to advance wetland conservation and improving our economy and jobs in the Green Bay region.

Again, Ducks Unlimited does not support this legislation and urges members of the Natural Resources Committee to oppose Assembly Bill 10. Thank you for the opportunity to voice our concerns.

Nels Swenson

Wisconsin State DU Chairman

1358 Pinion Trail

Oregon, Wisconsin 53575

608-835-7493



**ANSWERS TO ISSUES RAISED**

## Response to Questions

**Q: Is the bill as amended an improper private or local law?**

A: No. The Wisconsin Constitution does not prohibit private or local laws except in two circumstances which do not apply here. First, Art. IV §18 prohibits local laws that, “embrace more than one subject.” This typically issue arises where multiple issues are in a single bill like a budget bill. In this case there is only one subject, so this limitation does not apply. Second, Art. IV §31 lists nine specific types of local laws that are prohibited such as changing a person’s name. This bill does not fall into any of the enumerated laws, so this limitation does not apply.

**Q. Is the bill about a particular retailer?**

A. No. Mr. Bergstrom has been working to develop a destination retail establishment to anchor redevelopment on Lombardi Avenue from Highway 41 to Lambeau Field. This is not about a specific retailer. If a particular retailer is not interested, the project will still move forward with other similar establishments. The need for the legislation remains critical to the redevelopment effort.

**Q. What is the impact of this bill on wetlands in Brown County?**

A. First, the bill has been amended to apply to this area, not all of Brown County.

Second, as to the wetlands impacts from this project, the DNR approved the project because it will result in an overall enhancement. In particular Bergstrom as agreed to undertake the following:

- Bergstrom agrees to **restrict wetland fill** to a maximum of **1.65 acres** instead of the nearly 4.0 acres originally sought
- Bergstrom agrees to **create or restore 4.0 acres of wetlands** on a separate property in vicinity of site. This is a mitigation ratio well above the standard 1.5:1 in NR 350.06.
- Bergstrom agrees to **preserve the remaining 7.69 acres of wetlands** on site through a **conservation easement** or deed restriction that will preserve them in perpetuity.
- Bergstrom agrees to develop an **invasive species management plan** for remaining 7.69 acres of wetlands to prevent buckthorn and reed canary grass which are already on site.
- Bergstrom agrees to provide an **updated stormwater management plan** to protect wetland hydrology
- Bergstrom agrees to establish **wetland educational** signs, viewing areas and walkways.

Third, Bergstrom has agreed to abide by these provisions if the legislation is passed, see attached.

**Q. What is the economic impact of this bill?**

A. As noted above, this is about anchoring redevelopment on Lombardi Avenue. In particular, the development is projected to produce the following economic impacts to the area:

- The proposed development will generate \$30-35 million in construction projects
- During construction, at various points the project will generate approximately 300 construction jobs
- After construction, depending on the retailer, the site will generate approximately 150 full time retail jobs
- A similar development near the sports complex for the New England Patriots generates in excess of 3,000,000 visitors a year. If the same number of visitors spent on average \$100, that would bring \$300,000,000 of spending into Brown County
- In addition to direct benefits this project can serve as a catalyst to economic development in the Lombardi Avenue corridor.

**Q. Why not simply go through the hearing process.**

A. The hearing process as currently structured for a water quality certification challenge is difficult, uncertain and provides a strong disincentive for development in Wisconsin.

- **Contested case hearings are full trials** before an independent administrative law judge (ALJ) from the Division of Hearings and Appeals. A contested case hearing means that witnesses are subject to cross examination, exhibits and testimony are elicited according to court room procedures.
- **Subjecting a prospective retail business to a process that requires that they be identified and potentially subject to cross examination in a trial like setting is not the way to attract businesses to Wisconsin.**
- **Unlike other water permit proceedings, a water quality certification proceeding is a "de novo" proceeding.** This means the ALJ does not defer to the agency decision, and the applicant has the burden of proof. Thus, despite the fact that the DNR approved this project the applicant has to **start over** in front of a new decision-maker. When we proposed that DNR be the designated decision-maker for the hearing, Wisconsin Wetlands Association objected.
- **Under current state law, wetland water quality certification standards are very discretionary.** Concepts such as "practicable alternatives" and "project purpose" are ill defined, and consideration of mitigation is severely restricted (WWA argues mitigation cannot even be considered at this site.) A hearing involving these

standards is uncertain under the best of circumstances. Where a person is developing a site to attract a high profile out of state retailer, and all of the details have not been determined, meeting the standards is even more difficult and uncertain.





## **DEVELOPMENT TIMELINE AND APPROVAL CONDITIONS**

## **Green Bay Redevelopment Project Permitting Chronology and Questions & Answers**

**Background:** John Bergstrom sought to develop a commercial site at the corner of State Highway 41 and Lombardi Avenue in Brown County. The Bergstrom site contains approximately 11 acres of upland and 9 acres of wetland.

**Chronology:** Key events in the wetland permitting process include:

- **Fall 2009:** Bergstrom began site survey work.
- **January 2010:** Initial contacts with DNR concerning the scope of the project and permitting requirements.
- **February 16, 2010:** on-site pre-application meeting asking for **4.0 acres** of wetland fill.
- **April 7, 2010:** A formal permit application was submitted to DNR including: an application, practicable alternatives analysis, wetland delineation report, wetland functional assessment, site plan, grading plan, erosion control plan, stormwater management plan and mitigation banking documentation. Wetland fill was reduced to **2.51 acres** following numerous plan revisions by applicant.
- **May 7, 2010:** DNR letter outlining timetable for a permit decision by July 30<sup>th</sup>.
- **May 18, 2010:** Second DNR site visit.
- **June 1, 2010:** DNR letter to Bergstrom requesting additional information on wetlands.
- **June 7, 2010:** DNR email stating that traditional stormwater ponds cannot be used for stormwater management.
- **June 14, 2010:** Bergstrom submits supplemental application reducing wetland impacts to **2.31 acres** by reducing the building footprint and adding a retaining wall. The revisions also included a revised stormwater management plan.
- **June 29-30, 2010:** DNR third site visit and follow up telephone conference agreeing to further modifications reducing wetland impacts to **1.65 acres** including reconfiguring parking and stormwater features.
- **July 15, 2010:** Final DNR approval issued.
- **August 2, 2010:** Final Publication.
- **August 31, 2010:** the Wisconsin Wetland Association (WWA) who is represented by a former DNR attorney, requested a contested case hearing

### **DNR Approval Conditions:**

- Bergstrom agrees to **restrict wetland fill** to a maximum of **1.65 acres**
- Bergstrom agrees to **create or restore 4.0 acres of wetlands** on a separate property in vicinity of site. This is a mitigation ratio well above the standard 1.5:1 in NR 350.06. Wetland mitigation bank credits typically cost in excess of \$30,000 per acre.
- Bergstrom agrees to **preserve the remaining 7.69 acres of wetlands** on site through a **conservation easement** or deed restriction that will preserve them in perpetuity.
- Bergstrom agrees to develop **an invasive species management plan** for remaining 7.69 acres of wetlands to prevent buckthorn and reed canary grass which are already on site.

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## **COMMITMENT LETTERS**

John F. Bergstrom  
Chairman and Chief Executive Officer

Bergstrom Corporation

January 27, 2011

Mr. Bruce Baker  
Deputy Div. Administrator, Water  
Wisconsin Department of Natural Resources  
101 South Webster Street, AD/8  
Madison, WI 53703

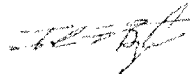
Dear Bruce,

As you know, the Wisconsin Department of Natural Resources approved my application for water quality certification on August 2, 2010, subject to several significant conditions which we were committed to undertake.

Currently, there is pending before the Wisconsin legislature, bills in the Assembly and the Senate that would exempt this project from water quality certification. If the legislation passes, I want you to be advised that I remain committed to following the conditions in the water quality certification.

Please contact me if you have any questions in this regard.  
Thank you very much.

Best regards,

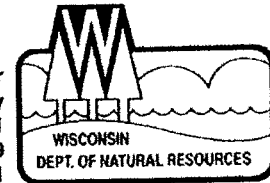


JFB.dmh

Post Office Box 777  
150 North Green Bay Road  
Neenah, Wisconsin 54956  
202.732.1111  
E-mail: jfb@bergstromauto.com

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
101 S. Webster Street  
Box 7921  
Madison WI 53707-7921

Scott Walker, Governor  
Cathy Stepp, Secretary  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711



January 28, 2011

John F. Bergstrom  
Bergstrom Corporation  
Post Office Box 777  
150 North Green Bay Road  
Neenah WI 54956

Dear John:

This is in response to your letter of January 27, 2011 regarding the August 2, 2010 water quality certification approved by the Department of Natural Resources. Based upon your commitment to follow the conditions that were contained in the certification the department will commit to provide you with the technical assistance for the restoration of the wetlands, design review and assistance with the educational feature, and our technical assistance on the purchase of additional wetlands. In addition, we would provide staff resources to appropriately assist with the other conditions listed in the water quality certification. The Department believes that by following the conditions of the certification and design you proposed, this project will enhance and protect the wetland located on the site.

Sincerely,

Bryce J. Baker, Administrator  
Division of Water



## Green Bay Redevelopment Project Wetland Permitting Issue – Substantive Issues

**Background:** John Bergstrom of the Bergstrom Corporation has obtained an option to purchase the commercial site at the corner of State Highway 41 and Lombardi Avenue for a national signature sporting goods store to be the gateway for redevelopment along Lombardi Avenue. The Bergstrom site contains approximately 11 acres of upland and 9 acres of wetland. The wetland is isolated from other waters and therefore is not subject to federal regulation by the Corps of Engineers. As a “nonfederal wetland” it is regulated by DNR under Wis. Stat. §281.36.

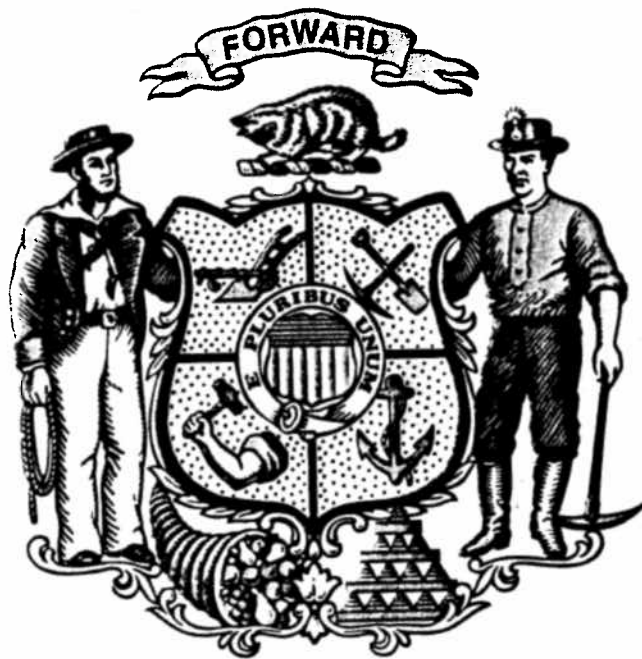
Site survey work began in 2009, and Bergstrom had a pre-application meeting with DNR in February 2010 asking for 4.0 acres of wetland fill. Bergstrom hoped to have the facility available in November 2010 for the holiday season. After multiple meetings, consideration of over a dozen alternative site configurations and concessions on building size, parking, and other features, Bergstrom reduced the wetland impacts to 1.6 acres. DNR finally granted water quality certification on August 2, 2010 and Bergstrom thought he was able to proceed.

**Issue:** Under DNR rules, any party can request a contested case hearing on a water quality certification of a wetland within 30 days of the decision by DNR. Such a hearing becomes a “de novo” proceeding in which the applicant must start “anew” to present his case, this time before an administrative law judge (ALJ). Such contested case hearings are full evidentiary trial like proceedings which can take 4 to 6 months or more to complete.

On August 31, 2010 the Wisconsin Wetland Association (WWA) who is represented by a former DNR attorney, requested a contested case hearing. **This request illustrates the uncertainty and inflexibility of Wisconsin wetland law.** First, WWA contends that DNR must consider “practicable alternatives” for the property other than that proposed by Bergstrom despite the fact that DNR rules say that the alternatives must consider the “overall project purpose.” WWA claims that Bergstrom cannot define the project purpose and that he should move the proposed store to another site and avoid the wetland impact. If that is the standard, there is almost never a wetland fill project that could be approved. Bergstrom relied on DNR rules and complied with the practicable alternatives test by evaluating the alternative site configurations and features. Second, WWA asserts that as long as there is an alternative, DNR cannot consider wetland mitigation in making its determination, and Bergstrom can offer nothing in the way of wetland restoration or enhancement to offset the 1.6 acre impact on this site.

So after spending more than six months to meet with DNR and develop a project able DNR believed met water quality certification standards, Bergstrom has now had to tell a prospective business that he has to start over in a new forum. The time and expense associated with protracted proceedings and the uncertainty associated with such proceedings could jeopardize the project and impact the entire redevelopment effort.

**Solution:** The proposed solution would provide an exemption from the state wetland water quality certification that would apply to redevelopment districts in Brown County similar to that provided for other projects in Trempealeau and Dunn Counties in Wis. Stat. §281.165. The exemption would limit the amount of fill and the areas in which the exemption could be applied and require mitigation of wetland impacts. While long term solutions are also required, this solution would address the immediate needs of this project.



## Talking Points for the Bergstrom Project

- Located in Brown County at the corner of Lombardi Avenue and Argonne Street in the Village of Ashwaubenon, WI.
- The water quality certification issued by the DNR identifies the project as a commercial development and wetland enhancement project.
- The site includes 11.49 acres of upland and 9.34 acres of wetland.
- The original proposal was for 3.95 acres of wetland fill with a 150,000 ft<sup>2</sup> building and 755 parking stalls (required by the village).
- After negotiations with the department the final proposal and certification was for 1.65 acres of wetland fill with a 130,000 ft<sup>2</sup> building and 481 parking stalls, 120 of which are under the building. (The developer is providing off-site employee parking and negotiated with the village for fewer stalls.)
- Wetland enhancements included as conditions in the certification include:
  - Invasive Species Management – Glossy buckthorn, reed canary grass and phragmites are invasive species proliferating in the wetland currently. The certification requires long-term management of these invasive species to include removal and prevention of reintroduction.
  - Native Plant Rescue – The developer agreed to rescue native plant species from the wetland area to be filled and replant them in the unfilled area.
  - Wetland Hydrology – The certification requires a management plan to ensure the characteristics of the current wetland are maintained after construction.
  - Development Restrictions – Conservation easements are to be placed on the remaining 7.69 acres of wetland on the property to protect them for future generations, including several acres of rare forested wetlands. The developer designed to project to avoid any impacts to these rare wetlands.
  - Wetland Restoration - The developer agreed to create or restore 4 acres of wetland on a separate property.
  - Wetland Education – The certification requires construction of walking paths and educational signs to inform the public of wetland characteristics and functions. The developer also agreed to construct a wetland overlook.
  - On-Site Bioretention – The design includes bioretention of storm water underground (due to proximity to Austin Straubel airport) to treat and infiltrate runoff before discharge off the property.





**Storm Water Management Plan for**

**Argonne Street Retail Site**

**Ashwaubenon, Wisconsin**

**RASN Project No. 3100011**

**June 10, 2010**

# Storm Water Management Plan for

Argonne Street Retail Site

Ashwaubenon, Wisconsin

Prepared by

Paul McIlheran, P.E.  
Senior Project Engineer  
Clif Poynter, P.E.  
Project Manager

R.A. Smith National, Inc.  
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## **INTRODUCTION**

The proposed Argonne Street Retail Site is located in the Village of Ashwaubenon, Brown County, Wisconsin. This site is located on the south side of Lombardi Avenue (CTH 'VK'), between USH-41 and Argonne Street.

## **STORMWATER REQUIREMENTS**

Under Village of Ashwaubenon Municipal Code and WDNR NR 151, the site must meet several requirements regarding water quality, peak discharge, and infiltration.

- For water quality in a new development, the total suspended solids must be reduced by 80% on an average annual basis to the maximum extent practicable.
- For peak discharge, the post-development 2-year storm event runoff rate must be reduced to the pre-development 2-year storm event runoff rate.
- The infiltration requirement is to infiltrate such that the post-development infiltration volume shall be at least 60% of the predevelopment infiltration volume.

Due to the proximity of the site to the Austin Straubel International Airport, open water ponds are not allowed on this site.

## **EXISTING CONDITIONS**

The proposed site is approximately 20.83 acres. Although the site is undeveloped, parts of the site have been previously disturbed by the placement of clay fill. Undisturbed parts of the site are wooded or have scrub brush.

Native soils include poorly drained Wauseon fine sandy loam, Allendale loamy fine sand, Shawano loamy fine sand, and Markey muck, classified as soil type D, C, A, and D, respectively, by USDA. The water table appears to be at the surface of the native soil seasonally, and the native soils were saturated at the time of the soil testing in November 2009. See Appendix A for the soil boring report and Appendix B for USDA soil information.

Wetlands have been located on the site. See Appendix C for the site survey. Wetland locations also appear on the plans.

The existing fill on the site drains both to the north and south wetlands, before entering municipal storm sewer in Argonne Street. The existing runoff from the site was calculated to be 14.42 CFS. For calculations details, see:

- Table 1 for the composite curve number detail
- Appendix D for the hydrology model
- Existing Conditions Exhibit (EX-1) for hydrologic modeling data

Table 1: Existing Site: Composite Curve Number

Area ID	Cover	Soil type	CN	Area (acres)
A	Woods	A	30	0.4
B	Brush	D	73	3.2
C	Brush	D	73	0.1
D	Brush	D	73	0.3
E	Open space	C	74	10.8
F	Woods	C	70	0.9
G	Woods	D	77	5.1
Total			74	20.83

**PROPOSED CONDITIONS**

The proposed development consists of a retail building and parking lot. The parking lot will be drained to bioretention areas that in turn drain to an underground detention system. The underground detention will drain to existing storm sewer in the adjacent street. The bioretention areas will have standpipes that will direct runoff in excess of the 2-year storm event runoff to adjacent wetlands.

Bioretention with underdrains were chosen, even though infiltration is not expected, as a way to provide water quality without a water quality pond. Underground retention is required to meet the peak flow matching requirement.

**WATER QUALITY DESIGN**

Stormwater Water Quality for this project will be accomplished by the use of bio-retention basins. SLAMM modeling has been prepared for this project in accordance with the requirements of NR 151. Total Suspended Solid removal after controls is in excess of 80%. Please see the included water quality appendix for these calculations and results.

**PEAK DISCHARGE DESIGN**

An underground detention system provides detention to attenuate the site 2-year, 24 hour storm event runoff to a rate less than the existing runoff rate.

The system is designed to collect filtered water at the bottom of the bioretention areas with underdrains that lead to underground piping. The underground piping will collect runoff and slowly release the water to the adjacent municipal storm sewer.

The underground collection system consists of 1800 lineal feet of 5-foot diameter pipe, tied together with a header pipe that leads to the control manhole. The control manhole has a plate with a 9-inch diameter orifice. As water is released it first flows through the orifice, and then ultimately over the plate, which acts as a weir. The construction plans have further system details.

In the proposed condition, most of the site is tributary to the proposed detention, but some areas are not. To evaluate the total site runoff, the hydrographs for the areas tributary to the detention were routed through the detention system. The outflow detention hydrograph was then combined with the hydrographs of the areas not tributary to the pond, to calculate a total release rate from the site.

The existing runoff from the site for the 2-year, 24 hour event was calculated to be 14.42 CFS, and the runoff from the proposed site is calculated to be 13.25 CFS, so the detention design exceeds the peak discharge attenuation requirement.

For calculations details, see:

- Table 2 for the composite curve number detail
- Appendix E for the hydrology model
- Proposed Conditions Exhibit (EX-2) for hydrologic modeling data

Table 2: Proposed Site: Composite Curve Number

Area ID	Cover	Soil type	CN	Area (acres)
A	building	C	98	3
B	parking lot tributary to detention	C	98	6.69
C	pervious tributary to detention	C	74	1.37
D	pavement area not tributary to detention	C	98	0.45
E	brush: north undisturbed area	D	77	1.8
F	woods: south undisturbed area	C	70	0.9
G	woods: south undisturbed area	D	77	5.1
H	grass area not tributary to basins	C	74	1.52
Total				20.83

### **OVERFLOW DESIGN**

The bioretention systems were designed such that flows produced by storms greater than the 2-year, 24 hour storm are released through a standpipe, and directed to adjacent wetlands, so as to not overtax the bioretention basins.

The overflow standpipes were set just above the maximum high water for the 2-year storm events in each basin. Basin D, the west basin, was also designed with an overflow weir for this purpose.

### **INFILTRATION DESIGN**

This site is exempt from infiltration requirements based on the soil borings presented in Appendix A. The borings show the presence of a high water table.

### **CONCLUSION**

The storm water management plan for this project satisfies the requirements of State code NR 151 and the requirements of the Village of Ashwaubenon with respect to storm water quality standards and 2-year storm detention requirements. The site is exempt from infiltration due to high groundwater.

## **MAINTENANCE PLAN**

### **I. Post storm event inspection:**

Inspect the following every spring and fall and after every major rainstorm:

1. Debris cleanup: The facilities shall be inspected and all debris shall be collected and disposed of appropriately. The goal of this cleanup process is to remove all materials that may contribute to clogging and thus reduce functionality of the bioretention areas.
2. Erosion repair and sediment removal: Eroded areas shall be promptly repaired using low-impact earth moving techniques commensurate with the scale of the repair task. Any bare soil areas shall be revegetated according to the original design specifications.

### **II. Annual Inspection:**

Inspect the following in spring:

1. General Inspection: Inspect bioretention areas for settling, cracking, erosion, and condition of overflow structure. Make repairs as necessary.
2. Confirm functionality of the bioretention areas: Inspect to see if the bioretention areas are draining within the design time limits. If they are not draining within the design drain times, engineered soils capacity must be enhanced (using deep tilling, re-grading, replanting, or other methodologies). The bioretention vegetation shall be visually inspected, to ensure healthy growth. Poor plant growth or growth of invasive species shall be assumed to be associated with reduced filtration capacity, and trigger the need for maintenance.
3. Clean Accumulated Sediment: Accumulated sediment shall be removed from bioretention areas. Any damaged vegetation shall be repaired.

## **Table of Contents – Appendices**

Existing Conditions Data Exhibit (EX-1)  
Proposed Conditions Data Exhibit (EX-2)

Appendix A – Soil Boring Report  
Appendix B – Soils Map  
Appendix C – Site Survey  
Appendix D – Existing Conditions Hydrology Model  
Appendix E – Stormwater Quality Calculations  
Appendix F – Proposed Conditions Hydrology Model



APPENDIX A:  
Soil Boring Report

APPENDIX B:  
SOILS MAP

APPENDIX C:  
Site Survey

APPENDIX D:  
Existing Conditions Hydrology Model

APPENDIX E:  
Water Quality Calculations

APPENDIX F:  
Proposed Conditions Hydrology Model

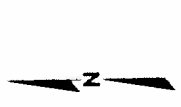


DATE	DESCRIPTION
06/20/10	FINAL REVIEW COMMENTS
06/20/10	FINAL REVIEW COMMENTS

**R.A. Smith National**  
*Beyond Surveying and Engineering*  
 1425 W. Riverside Blvd., Suite 1000  
 760-791-8444, www.ra-smith.com

**SITE PLAN**  
 ARGONNE STREET RETAIL SITE  
 ASHWAUBENON, WI

CONTRACT NO. 1008  
 A-1008  
 DATE: 08/18/10  
 SCALE: 1" = 80'  
 JOB NO. 1000011  
 PROJECT MANAGER:  
 CHRISTOPHER D. MITCHELL, P.E.  
 CHECKED BY: DMH  
 SHEET NUMBER:  
 C1.0



- LEGEND**
- EXISTING WETLAND AREA
  - ADDITIONAL WETLAND AREA AS DISCUSSED AT 05/18/10 SITE MEETING WITH WDMR & USACE
  - PROPOSED WETLAND FILL

**SITE DESIGN MODIFICATION SUMMARY**

- February 2010 Pre-Application: 150,000 sq. ft. building, 755 parking stalls, 55 acres wetland impact
- April 2010 Permit: 150,000 sq. ft. building, 433 parking stalls, 2.51 acres wetland impact
- June 2010 Permit: 130,000 sq. ft. building, 481 parking stalls, 2.31 acres wetland impact
- June 2010 Final Site Plan: 130,000 sq. ft. building, 481 parking stalls, 1.65 acres wetland impact

**SITE DESIGN MODIFICATIONS TO REDUCE WETLAND IMPACT**

- Reduced parking stalls by 40% to a ratio of 3.5:1 (Vasego requires 5:1)
- Customized building footprint
- Staircase and underground detention
- Concrete parking "under building"

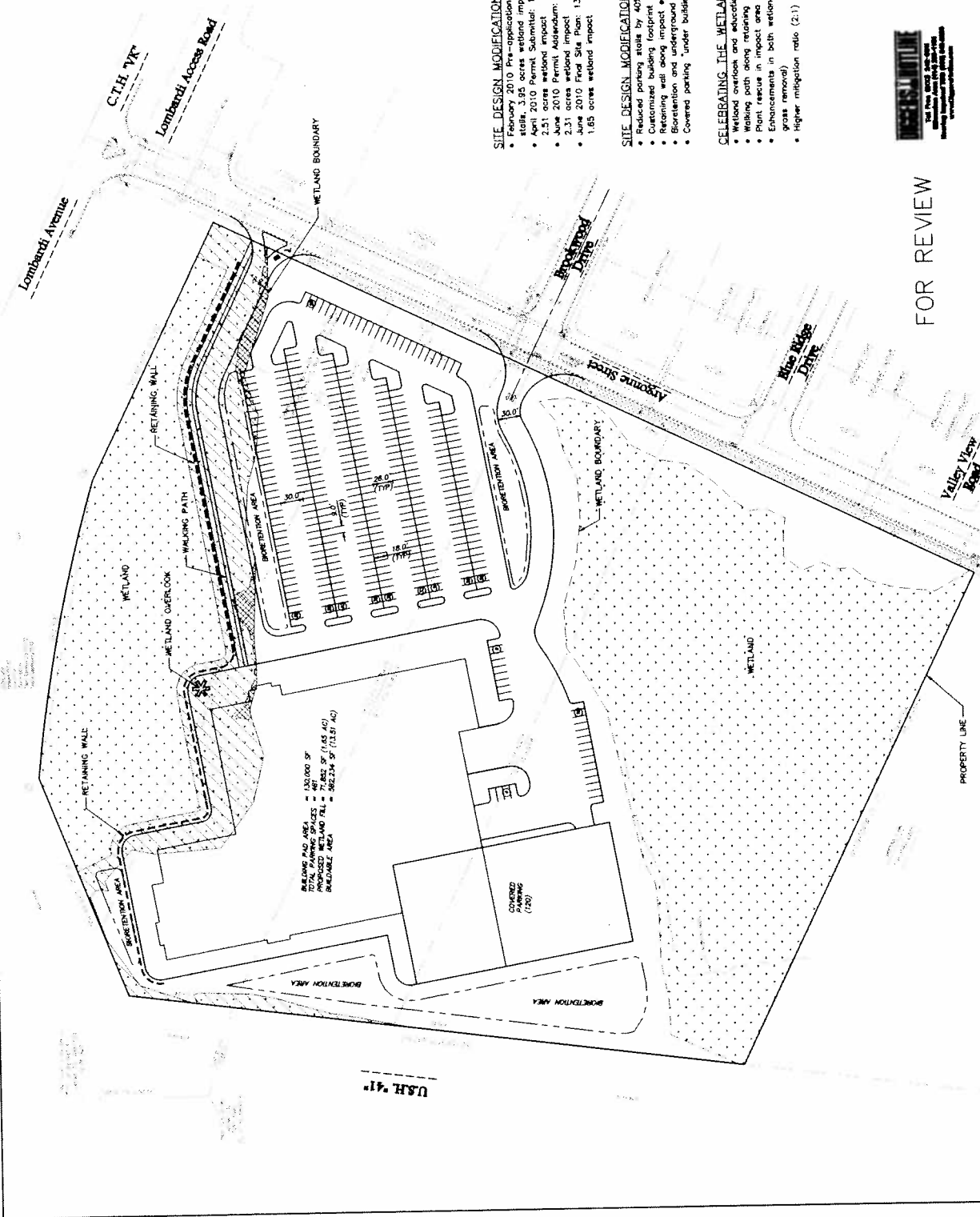
**CELEBRATING THE WETLAND**

- Wetland overlook and educational signage
- Walking path along retaining wall
- Plant rescue in impact area with local environmental group(s)
- Enhancements in both wetlands (e.g., glossy buckthorn and reed canopy grass removal)
- Higher mitigation ratio (2:1)

**NOTE:** CONTRACTOR SHALL REFER TO ARCHITECTURAL PLANS FOR EXACT LOCATION AND DIMENSIONS OF ALL BUILDINGS, WALKING PATHS, SIGNAGE, AND EXACT BUILDING UTILITY ENTRANCE LOCATIONS.

THE LOCATION OF ANY UTILITY INSTALLATIONS IS APPROXIMATE. CONTRACTOR SHALL VERIFY THE LOCATION OF ANY UTILITY INSTALLATIONS PRIOR TO THE PROJECT AREA THAT ARE NOT SHOWN.

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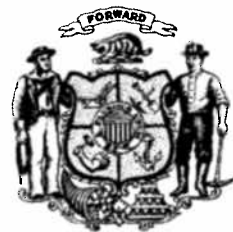


**FOR REVIEW**





WISCONSIN STATE LEGISLATURE



# THE BADGERHERALD

## News: State of Wisconsin

### **New bill lets business bypass wetland protection laws**

**Owners of Bass Pro Shop say land currently in 'sad condition,' add some will be set aside for wetland conservation; environmental groups remain unconvinced**

By Andrew Averill

Thursday, January 27, 2011 8:10 p.m.

Updated Friday, January 28, 2011 12:57:44 a.m.

A committee hearing Wednesday discussed legislation that would give one company the right to bypass state water quality regulations, provoking Democrats and conservation groups to cry foul.

Testimony before the Assembly Committee on Natural Resources spelled out the contents of the bill.

The bill introduced by Gov. Scott Walker Monday would effectively allow an 'activity' in a wetland on the outskirts of Green Bay to circumvent Wisconsin Department of Natural Resources' regulations concerning water quality standards, among other regulations.

Although the analysis by the Legislative Reference Bureau does not refer to the 'activity' by name, testimony before the committee revealed the bill pertained to development of a Bass Pro Shop, according to committee member Rep. Brett Hulsey's, D-Madison, office.

Hulsey voted against the bill in committee and wrote a letter to Bass Pro Shop founder Johnny Morris and president Jim Hagle, urging them to discuss the matter with lawmakers.

The identity of the developer is also mentioned in the letter.

"After hearing more than three hours of Assembly Natural Resources Committee testimony on this matter, we believe that your company and the developer, Mr. Bergstrom, can reach a compromise that meets your needs, but also protects our state's wetland laws and its fish population," Hulsey wrote in a letter.

Developer John Bergstrom owns car dealerships across Wisconsin. The Bergstrom family has donated close to \$7,000 to candidates for governor in both parties, of which over half went to Walker.

Democrats on the CNR have said Walker's bill amounts to a 'sweetheart deal' for Bergstrom, and think it is being rushed through the Capitol.

"Considering that this bill was introduced this Monday, the public hearing was held [Wednesday], and the committee had to vote on it [Thursday], it seems clear that this bill is a sweetheart deal for one well-connected developer," ranking minority member of the CNR Rep. Cory Mason, D-Racine, said in a statement

Executive director of the Sierra Club-John Muir Chapter Shahla Werner said she thought it was ironic that the legislation would allow a Bass Pro Shop to destroy parts of the wetland, a habitat most outdoorsmen would prefer to conserve.

Though CNR chair Rep. Jeff Mursau, R-Crivitz, said part of the development would include an area for wetland conservation and education opportunities, Werner remains opposed.

"They're doing some public relations by having part of the property devoted to wetland education," Werner said. "That doesn't make up for putting the Bass Pro Shop right on top of the wetland."

Testimony at the hearing largely agreed, with only two people vouching for the legislation, Shahla said.

The two in favor of passing the legislation include Bergstrom's attorney, Paul Kent, and an unlikely supporter, Head of DNR's Water Division Bruce Baker.

Baker approved the wetland project last year by second guessing the DNR scientist who originally sided against construction, finding it unacceptable, Shahla said.

Still, Mursau said the project would bring jobs to Wisconsin and would only fill in 1.6 acres of 'low quality' wetlands out of 9.3 total acres of wetlands.

"The site is in sad condition and has been so since the highway was placed here years ago," Mursau said. "It is the ingenuity and the willingness of individual risk to make their communities a better place to work, recreate and raise a family."

Have a thought? We welcome your input, but please be polite and stay on topic wherever possible. Your comment may be deleted if it is inappropriately off topic or promotional or if it is unnecessarily rude or contains personal attacks. We may delete comments for other reasons as well. Just keep it simple and focus on your points as respectfully as possible.

We allow and encourage comments employing satire, wit and irony to make points. Do not flag comments just because you disagree. Flagged comments will be immunized from further flagging unless they stray far from the guidelines and do not add to the discussion. **Before flagging a comment you think is offensive, consider your time might be better spent rebutting it than censoring it.**

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