



# DAVE MURPHY

State Representative • 56th Assembly District

Assembly Committee on Housing and Real Estate  
October 31, 2013

## Testimony on Assembly Bill 386

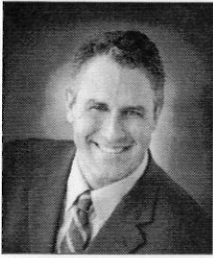
Chairman Murtha and members of the committee, thank you for allowing me to testify today. I am the author of AB 386 (and its companion, SB 314), which codifies case law pertaining to permit applications and authorizations for residential, commercial, and industrial development.

This bill has strong bipartisan support and when potential issues were raised, we drafted amendments that clarify the bill's intent. The first goal of this bill is to solidify rules applying to a project at the time the permit application is received. The original draft said the rules applied upon submission of an application, but we realized that might be problematic and harder to verify. So, we are offering an amendment that sets the parameters upon *receipt* of an application.

Secondly, this bill codifies case law for residential, commercial and industrial development. Industrial includes businesses like gravel and concrete, for example, but we don't intend this bill to apply to agricultural or mining operations.

When local economic development projects are proposed, both the political subdivision and the permit applicant will know what to expect and what will be required for the entire project. This does not add new regulations, nor does it prohibit the political subdivision from making new regulations. It also doesn't prohibit the political subdivision and applicant from forming agreements of their own. This bill does, however, prohibit subdivisions from applying new regulations to projects that were previously permitted.

AB 386 is another small step to make it easier to do business in Wisconsin, and to help businesses keep us near the top of the list in nationwide employment gains, as we have been over the last six months. Thank you.



# Frank Lasee

WISCONSIN STATE SENATOR  
FIRST SENATE DISTRICT



## Senator Lasee's Testimony Senate Bill 314/Assembly Bill 386—Vested Rights for Permit Applications

As Wisconsin's economy continues to grow, it's important that businesses and developers who seek to expand their operations have a stable playing field to grow on. Senate Bill 314 puts years of accepted case law into statute to make it clear that when someone goes through the work and expense to apply for a permit to develop a new business or housing development, that the zoning rules and laws that apply cannot be changed by a municipality after the application was submitted.

It's not fair for a municipality to move the goalposts to obtain a permit after a developer applies for the permit—and the courts agree. It's important for Wisconsin to make that clear to businesses and developers by passing this simple and common sense bill.

We were asked by interested parties to introduce an amendment that would exclude mining or agricultural permits, as the intent for this legislation is to address residential and commercial permits. Existing case law will apply for other types of permits. We have introduced amendments to provide the clarification.



Wisconsin REALTORS® Association

## Memorandum

**To:** All Legislators  
**From:** Tom Larson, Vice President of Legal and Public Affairs  
**Date:** October 8, 2013  
**Re:** AB 386/SB 314 – Vested rights

---

The Wisconsin REALTORS® Association (WRA) supports AB 386/SB 314 which codifies current case law as to when a property owner's right to build on or develop property according to current land use regulations is protected from future changes. Specifically, AB 386/SB 314 states that changes to any local ordinances and regulations cannot be applied to permit applications after the date the application has been submitted to the local government.

### Background

**Vested rights are established at a point in time when it is unfair to apply new changes to a permit application.** The concept of "vested rights" recognizes that, at some point in time, it is unfair to change the rules and regulations affecting a property owner's ability to use or develop his or her property. More specifically, "vested rights" refers to the point in time when a property owner's right to develop his or her property is protected from further changes to land-use regulations, such as subdivision regulations, zoning changes, or other requirements.

**Current law establishes vested rights for changes to zoning and subdivision regulations when a property submits an application for a permit.** Wisconsin law currently establishes "vested rights" for changes to both zoning and subdivision regulations upon submitting an application or permit to the government entity responsible for approving such application or permit.

- **Zoning** – A property owner has a right to use property according to a particular zoning classification when the property owner applies for a building permit which complies with the applicable regulations. See *Lake Bluff Housing Partners v. City of South Milwaukee*, 197 Wis. 2d 157 (1995).
- **Subdivision plats** – A property owner's right to have a proposed subdivision plat evaluated based upon current subdivision regulations vests at the time the property owner submits a preliminary plat (or final plat, if a preliminary plat is required). See Wis. Stat. § 236.11(1)(b).

- Over -

## Two problems with current law

1. A property owner's vested right to zoning is found in case law, not the state statutes. This is a problem because not all local officials are attorneys and thus they are often unaware of legal standards established in case law.
2. The law is silent as to when a property owner's rights vest with respect to future changes in other types of development regulations and permit requirements at the local level. Many different types of permits can be required for new development at the local level including permits for building, plumbing, mechanical, driveways, sewer hookup, and stormwater. While current law addresses zoning changes and subdivision plats, current law does not address when a property owner's rights are protected related to other development-related permits.

## Reasons to Support AB 386/SB 314

**+ Property owners need a permit-approval process that is fair and predictable.** Whether building an addition to a home or a new subdivision, property owners spend a lot of time and money planning and preparing for a new construction or development project. Because changes to ordinances and regulations can impact the design, cost and the viability of the project, property owners need certainty that such changes will not be made after they have submitted an application for a building permit.

**+ Protecting property rights upon the filing of a permit application is consistent with current law.** Current law already recognizes that zoning and subdivision regulations cannot be changed after a property owner submits a building permit application or preliminary plat, AB 386/SB 314 would extend this protection to other types of permits.

**+Creating more certainty in the permit-approval process will encourage greater investment in new construction and development projects.** By creating a fair and predictable permit-approval process, property owners will be more willing to make additional investments in their homes and larger economic development projects.

## Conclusion

To better protect property rights in a fair and reasonable manner, we ask you to support AB 386/SB 314. If you have any questions or comments, please contact us at (608) 241-2047.