

From: wcca@googlegroups.com on behalf of Everson, Daniel
<Everson.daniel@countyofdane.com>
Sent: Wednesday, June 21, 2017 11:47 AM
To: wcca@googlegroups.com
Subject: [WCCA Board] RE: Shoreland Zoning may be Optional?

Good question Dan. Unfortunately, myself or the Executive Board have only been made aware of a thought, a consideration or a proposal. Nothing has been introduced and one of two things can happen within this type of gamesmanship:

Specific language can be introduced at the Assembly level and a bill can run its due course with various stakeholders weighing in, which we, WCCA would strongly support and will most likely have several comments for hopefully a future discussion.

Or

Specific language will be inserted into the Governor's budget, which we have stated we do not support. That sentiment has been shared with WCA simply because this "proposal" is not a budget related item. However, that hasn't stopped either side of the aisle to go forward with that approach in the past.

Here is what I received on June 2, 2017, from Dan Bahr, nothing more or nothing less.

Just heard that Rep. Jarchow is considering a bill/budget amendment to eliminate NR 115 and devolve shoreland zoning to counties via non-mandatory ordinances. First, is this true, and second, if so, what do you think about it?

Here is what I have.

County Shoreland Zoning Package

- Adoption of Shoreland Zoning Ordinances would be optional rather than mandatory.
- DNR would no longer have the authority to draft minimum Shoreland Zoning standards. NR 115 would serve as more of a model ordinance.
- Eliminate the requirement for Counties to submit ordinances for review to the DNR.
- Specify that county zoning departments may inspect and review replacement, repair/remodel, and vertical expansions of structures (and allow a county to charge a modest fee for the service) for compliance with shoreland, floodplain, wetland, and general zoning standards. Property owners, title insurers and lenders would all benefit from certification of zoning compliance. (Rep. Jarchow will assist us in the determination of the fee structure.)
- Specify that counties may adopt a shoreland zoning ordinance that restricts the height of any structure other than a principal structure within the 75- foot setback from the Ordinary High Water Mark (OHWM). Retain language that would allow vertical expansion of a principal structure up to 35 feet only if the structure is at least 35 feet from the OHWM. (Rep. Jarchow will assist in developing a height limitation for the non-principal structures.)
- Rep. Jarchow's office will assist in the drafting of these provisions.

Jim VandenBrook

Executive Director

Wisconsin Land+Water

131 W. Wilson St., Suite 601

From: Wisconsin Counties Association <mail@wicounties.org>
Sent: Monday, September 11, 2017 11:25 AM
To: Rob Klotz
Subject: This Week's "WCA Capitol Watch"



Capitol Watch

The Weekly Legislative Update

Published by the Wisconsin Counties Association

September 11, 2017

WEEK OF SEPTEMBER 11, 2017

JOINT COMMITTEE ON FINANCE

Last week the Joint Committee on Finance (JCF) completed its work on the 2017-19 state biennial budget. Major action of interest to counties includes the following:

- Provided the Department of Transportation (DOT) \$2,500,000 SEG in FY18 for a tolling implementation study.
- Created a \$75 fee for hybrid-electric vehicles and a \$100 fee for electric vehicles, effective January 1, 2018.
- Modified the Governor's recommendation (\$7,000,000 annual increase) to instead provide \$5,000,000 SEG annually for the local roads improvement (LRIP) and \$5,000,000 SEG-L annually to reflect the local government share of project costs; deleted the Governor's recommended increase in required local share of project cost provisions from 50% to 60%.
- Modified the Governor's recommendation (\$2,500,000 SEG annually) to provide an additional \$7,500,000 annually for the local bridge assistance program. The total funding increase would be \$10,000,000 annually.
- Required DOT to study and report on the effects of consolidating SEG in the surface transportation program and replacing these funds with FED from the state highway program (federal swap"); permitted DOT to submit a 13.10 request to the JCF that would accomplish such transfers; DOT must submit the final report no later than May 1, 2018.

- Eliminated the January 1, 2020 sunset provisions related to weight allowances and permitting provisions applicable to implements of husbandry and agricultural commercial motor vehicles.
- Created a provision under Chapter 66 to prohibit a political subdivision, defined as a county, city, village, or town, from enforcing an ordinance if any of the following applies: (a) a statutory provision expressly prohibits the political subdivision from enforcing the ordinance; (b) the ordinance logically conflicts with a statutory provision; (c) the ordinance defeats the purpose of a statutory provision; or (d) the ordinance violates the spirit of a statutory provision.
- Limits the authority of political subdivisions to place limits or conditions on the operations of a quarry.
- Exempted machinery, tools, and patterns, not including such items considered manufacturing property under current law, from the property tax effective with property assessed as of January 1, 2018; created a state aid program administered by DOR to make payments to each local taxing jurisdiction; estimated total payments at \$74,400,000 GPR annually, beginning in FY19.
- Required the language of a municipal levy limit referendum to include language identifying the specific purpose for which the additional funds levied would be used.
- Authorized the joint provision of local government services (joint agency agreement).

For additional information on last week's actions by the JCF, you can view today's WCA's Weekly Budget Webinar here:

- [**WCA's Weekly Budget Webinar from September 11, 2017**](#)
- [**Presentation used during the September 11, 2017 webinar**](#)

The full Wisconsin State Assembly is expected to take up the budget on Wednesday, September 13. The Senate has not yet scheduled the budget for full floor action, but members were told to keep the next two weeks open.

WCA ANNUAL BUSINESS MEETING RESOLUTIONS AVAILABLE



The 61 resolutions submitted for consideration at the WCA Annual Business Meeting on Sunday, September 24, 2017 at 1:00 p.m. are now available.

The Annual Business Meeting will be held at the Kalahari Resort & Convention Center. [**Access the resolutions here.**](#)

COMMITTEE HEARINGS FOR THE WEEK OF SEPTEMBER 11, 2017

Note: The Committee hearings and bills listed below reflect action on legislation impacting county government. [**See a complete listing of weekly hearings here.**](#)

There are no bills impacting counties up for public hearing this week.

NOTE: The Speaker's Task Force on Foster Care will hold its next meeting on Wednesday, September 20 at 10:00 a.m. in Dodgeville at Iowa County Health and Human Services. Testimony will be accepted from invited speakers and the general public on matters relating to the foster care system. The hearing will end at 4:00 p.m.

[**For a listing of all bills impacting county government and WCA's positions on those bills,**](#)

Embargoed H1
introduced

Representative Nygren
Senator Darling

SHARED REVENUE, TAX RELIEF, LOCAL GOVERNMENT
AND BUDGET MANAGEMENT

Omnibus Motion

Motion:

Move the following:

Shared Revenue -- Tax Relief

1. *Personal Property Tax Exemption -- Non-Manufacturing Machinery, Tools, and Patterns.* Exempt machinery, tools, and patterns, not including such items considered manufacturing property under current law, from the property tax effective with property assessed as of January 1, 2018 [the 2018(19) property tax levy]. Create a state aid program administered by DOR to make payments to each local taxing jurisdiction, including tax increment districts, that imposed property taxes on machinery, tools, and patterns that was not manufacturing property in 2017(18). Estimate total payments at \$74,400,000 GPR annually, beginning in 2018-19.

For purposes of the exemption, define machinery as a structure or assemblage of parts that transmits force, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means, and specify that machinery does not include a building. Authorize taxing jurisdictions to include the value of personal property located in the jurisdiction as of the January 1, 2017, assessment for purposes of complying with debt limitations applicable to the jurisdiction.

For purposes of the aid payment, set each jurisdiction's payment equal to the amount of property taxes levied in the 2017(18) property tax year by that jurisdiction on personal property assessed as non-manufacturing machinery, tools, and patterns as of January 1, 2017. Discontinue payments to tax increment districts in the year after the district closes. Require each municipality to report to DOR the amount of property taxes it imposed on non-manufacturing machinery, tools, and patterns in 2017 on behalf of itself and other local taxing jurisdictions. Authorize DOR to require local taxing jurisdictions to report any other information it considers necessary to administer the aid payment in the time and manner determined by DOR. In 2019, require the Department of Administration (DOA), upon certification from DOR, to make payments to local taxing jurisdictions on or before the first Monday in May. Create a sum sufficient appropriation to make the aid payments. Payments would remain at the initial payment amount in future years, except total payments would decrease somewhat as tax increment districts that receive payments are closed.

Include the state aid payment in the calculation of county and municipal levy limits, school revenue limits, and technical college district revenue limits. Modify current law provisions related to school finance to include references to the aid payment in the definitions of net cost and state aid.

Decrease the transfer from the general fund to the conservation fund by \$580,100 in 2018-19 to reflect a lower state equalized value in 2018 due to the exemption. This is reflected as a decrease both in GPR expenditures and SEG revenues.

2. *State Aid for Tax Exempt Computers, Cash Registers, and Fax Machines.* Modify the Committee's action regarding state aid for tax exempt computers, cash registers, and fax machines (Motion #212) by eliminating the inflationary adjustment to the payment beginning in 2020-21.

3. *Village of Maine - Expenditure Restraint Payment.* Increase funding for the expenditure restraint payment program by \$583,000 GPR in 2018-19, and each year thereafter through 2022-23 (five years), to make a payment to the Village of Maine (Marathon County). Specify that the payment would be in addition to any formula amount received under the program and would not be included in the total funding amount distributed to all municipalities under the formula.

4. *Lottery and Gaming Credit Reestimate.* Decrease funding for the credit by \$2,792,100 SEG in 2017-18 and increase funding for the credit by \$36,270,600 SEG in 2018-19. These adjustments represent (a) decreases \$10,491,700 in 2017-18 and \$2,682,900 in 2018-19 due to a reestimate of the lottery fund condition statement, (b) decreases of \$300,400 in 2017-18 and \$1,046,500 in 2018-19 due to the Committee's modification to the Governor's recommendation to increase funding for advertising, and (c) an increase of \$8,000,000 GPR in 2017-18 and \$40,000,000 GPR in 2018-19 to reflect the Committee's decision to partially fund retailer compensation payments from the general fund. With these modifications, funding for the credit would equal an estimated \$164,640,800 in 2017-18 and \$205,360,300 in 2018-19.

5. *Property Tax Exemption for Property of Churches and Religious Associations.* Modify the current property tax exemption for property owned and used by churches and religious associations to specify that the exemption includes property necessary for the location and convenience of a building that the church or religious association intends to construct to replace a building destroyed by fire, natural disaster, or criminal act, regardless of whether preconstruction planning or construction has begun. Specify that this modified exemption would apply only for the first 25 years after the year in which the building is destroyed. Extend the provision to property assessments as of January 1, 2018, and thereafter.

6. *Municipal Levy Limit Referenda.* Require the language of a municipal levy limit referendum to include language identifying the specific purpose for which the additional funds levied would be used. This provision would first apply to a resolution to exceed the levy limit that is adopted on the effective date of the bill.

7. *Village of Kimberly Tax Incremental Financing District.* Move to authorize the Village of Kimberly to adopt a resolution requesting the Department of Revenue (DOR) to redetermine the tax incremental base of tax incremental financing (TIF) District 6, which was created on September 12, 2016, despite that TIF district having been in a decrement situation for fewer than two consecutive years.

8. *Preventing BID Assessments on City of Milwaukee Residential Properties.* Specify that

if a first class city (Milwaukee) specially assesses a mixed-use property located in a business improvement district (BID), that is real property and is partly tax-exempt or residential, or both, the special assessment may be imposed only on the percentage of the real property that is not tax-exempt or residential. This provision would apply to a special assessment that is imposed on the effective date of the bill.

Local Government

9. *Joint Provision of Local Government Services.* Authorize county departments of human services or social services, or the Department of Children and Families (DCF) in the case of Milwaukee County, to enter contracts with each other to perform certain child protective services. Authorize a county department to contract with other county departments or with DCF and authorize DCF in Milwaukee County to contract with one or more county departments to perform certain duties regarding child protective services on behalf of the county department or on behalf of DCF in Milwaukee County. Clarify that for any county or local unit of government that enters into an intergovernmental cooperation contract with the state, a county, or another local unit of government to jointly perform a responsibility or carry out a certain function, as permitted under current law, any jointly established agency, department, commission, office, or position would be required to fulfill that responsibility or carry out that function until the contract expires or is terminated. Further, specify that if two or more counties or local units of government enter into an intergovernmental cooperation contract and create a commission to jointly or regionally administer a function or project, the commission would be a single entity that represents, and may act on behalf of, the joint interests of the participating units of government. Specify that with regard to a contract entered into between two or more counties which relates to the provision of services or facilities under a contract with an officer or agency of the state, the contract may not take effect unless it is approved in writing by the officer or chief of the agency that has authority over the contract for the provision of services or facilities. In addition, specify that the contract must be approved or disapproved in writing by the officer or chief of the agency with regard to matters within the scope of the contract for the provision of services or facilities within 90 days after receipt of the contract. Require any disapproval of the contract to detail the specific respects in which the proposed contract fails to demonstrate that the signatories intend to fulfill their contractual responsibilities or obligations. Specify that the contract shall be considered approved by the officer or chief of the agency if that individual fails to approve or disapprove of the contract within 90 days after its receipt. Extend these provisions to contracts entered into on the effective date of the bill.

10. *Primitive Cabin Building Code Exemption.* Exempt primitive cabins from the state one- and two-family dwelling code, electrical wiring code, and plumbing code. Define "primitive cabin" as a structure that satisfies all of the following: (a) the structure is used as a sleeping place and not as a home or residence; (b) the structure is used principally for recreational activity; (c) excluding a basement, the structure does not exceed two stories in height; and (d) the structure was constructed before the effective date of the bill. Specify that a primitive cabin would not be included in the definition of "dwelling" or "dwelling unit" under the one- and two-family dwelling code. Authorize the owner of a primitive cabin to alter or replace the structure on or after the effective date of the bill if the structure continues to meet the other definitions of primitive cabin. Prohibit cities, villages, towns, and counties from exercising jurisdiction over the construction or inspection of primitive cabins. Currently, the Department of Safety and Professional Services (DSPS)

administers state building codes, including the one- and two-family dwelling code, electrical wiring code, and plumbing code. The statutes authorize cities, villages, towns, and counties to enact ordinances to administer the one- and two-family dwelling code.

11. *County Board Approval for Sale or Lease of Land Owned by Milwaukee County.* Specify that, with regard to the sale or lease of property owned by Milwaukee County, the Milwaukee County Executive's action must be consistent with established county board policy and must be approved by the county board to take effect. Provide that the county board may only approve or reject a contract for the sale or lease of county property as negotiated by the county executive. Delete language that permits the Milwaukee County Executive, together with either the Milwaukee County Comptroller or an appointed real estate executive, to form a majority signed agreement to lease, sell or convey any non-park county property regardless of board policy and without board approval. Specify that the provision first applies to a land transaction for which a contract has not been entered into on the effective date of the bill.

12. *Duties of the Milwaukee County Comptroller.* Specify that the duties and responsibilities of the Milwaukee County Comptroller include administering accounts payable, payroll, accounting, and financial information systems, in addition to those duties and responsibilities specified under current law.

13. *Lodging Marketplace Sales and Room Tax Collections.* Expand the applicability of the local room tax so that a municipality may impose the tax on lodging marketplaces and owners of short-term rentals.

Lodging Marketplace Tax Collections. Require a lodging marketplace to register with the Department of Revenue (DOR), on forms prepared by the Department, for a license to collect taxes imposed by the state related to a short-term rental and to collect room taxes imposed by a municipality. Require a lodging marketplace, after applying for and receiving a license, to do all of the following if a short-term rental is rented through the lodging marketplace; (a) collect sales and use taxes from the occupant and forward such amounts to DOR, (b) if the rental property is located in a municipality that imposes a room tax, collect the room tax from the occupant and forward it to the municipality, and (c) notify the owner of the rental property that the lodging marketplace has collected and forwarded to DOR the sales and room taxes described in (a) and (b). Specify that a municipality would not be allowed to impose and collect a room tax from the owner of a short-term rental if the municipality collects the room tax on the residential dwelling from a lodging marketplace. These provisions would first apply to a lodging marketplace that registers with DOR on the effective date of the budget bill.

Prohibit Limits on Residential Dwelling Rentals. Specify that a political subdivision would not be allowed to enact an ordinance that would prohibit the rental of a residential dwelling for seven consecutive days or longer.

Allow a political subdivision to limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days, if a residential dwelling is rented for periods of more than six but fewer than 29 consecutive days. Specify that the political subdivision could not specify the period of time during which the residential dwelling may be

rented, but the political subdivision may require that the maximum number of allowable rental days within a 365-day period must run consecutively. Require a person who rents the person's residential dwelling to notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins.

Require any person who maintains, manages, or operates a short-term rental, for more than 10 nights each year, to: (a) obtain from the Department of Agriculture, Trade and Consumer Protection a license as a tourist rooming house, as defined in s. 97.01(15k), and (b) obtain from a political subdivision a license for conducting such activities, if a political subdivision enacts an ordinance requiring such a person to obtain a license.

Specify that if a political subdivision has in effect on the effective date of the bill, an ordinance that is inconsistent with this provision, the ordinance would not apply and could not be enforced. Specify that none of these provisions would limit the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with this provision.

Definitions. Define the following: (a) a "lodging marketplace" to mean an entity that provides a platform through which an unaffiliated third party offers to rent a short-term rental to an occupant and collects the consideration for the rental from the occupant; (b) a "short-term rental" to mean a residential dwelling that is offered for rent for a fee and for fewer than 29 consecutive days; (c) an "occupant" to mean a person who rents a short-term rental through a lodging marketplace;; (d) an "owner" to mean the person who owns the residential dwelling that has been rented; (e) a "residential dwelling" to mean any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, to the exclusion of all others; and (f) a "political subdivision" to mean any city, village, town, or county.

14. *Repeal Local Authority to License Soda Water Beverages.* Repeal a current law provision that permits a town board, village board, or common council of any city to grant licenses and assess a \$5 license fee to sellers of soda water beverages (defined as soft drinks or soda water, whether carbonated, uncarbonated, sweetened, or flavored), to be consumed on or off the premises where sold. Delete various statutory cross references to class B liquor licenses that refer to the local soda water beverage seller's license.

15. *Special Prosecutor Case Assistance.* Move to modify current law to allow a special prosecutor to be appointed to provide case assistance in counties with a population of less than 45,000 with a significant case backlog as certified by the Department of Administration, if a petition for such an appointment is approved by the affected county board. Sunset the provision on December 31, 2019. Provide \$41,000 GPR in 2017-18 and \$82,100 GPR in 2018-19 in the District Attorneys' salaries and fringe benefits appropriation.

16. *Arts Center Grant.* Provide an additional \$100,000 GPR for state aid for the arts under the Arts Board (budgeted in the Department of Tourism) in 2017-18. Require that the funds be used for the purposes of improvement or expansion of an existing arts center, and that the recipient must provide an equal matching amount from public or private sources. Specify that the funds be

awarded as a grant to a county that: (a) borders Illinois; (b) has a population between 35,000 and 40,000 as of the 2010 U.S. Census; and (c) has an existing arts center. It is anticipated the only eligible recipient of the grant would be the Monroe Arts Center in Green County.

17. *Railroad Gate Crossing on Fire Lane 12 Near the Village of Fox Crossing Wisconsin.* Direct the Department of Transportation, in consultation with the Office of the Railroad Commissioner, to install a railroad gate crossing on Fire Lane 12, south of STH 114, near the Village of Fox Crossing (formally the Town of Menasha). Require that the railroad crossing be installed no later than January 1, 2018.

Budget Management

18. *Budget Stabilization Transfer.* Delete the Governor's recommendation to transfer \$20,000,000 in 2017-18 from the general fund to the budget stabilization fund.

19. *Joint Finance Committee Supplemental Appropriation.* Delete \$50,000,000 GPR in 2018-19 that previous Committee action placed in the JFC supplemental appropriation.

Note:

Change to Bill:

	<u>2017-18</u>	<u>2018-19</u>
GPR	\$8,141,000	\$64,485,000
GPR-Transfer	-20,000,000	0
SEG	-2,792,100	36,270,600
SEG-REV	0	-580,100



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4157/P1
EHS:emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 87.30 (1) (b); and *to create* 87.30 (1) (e) of the statutes;
2 **relating to:** conforming a floodplain zoning ordinance to a federal letter of map
3 amendment.

Analysis by the Legislative Reference Bureau

This bill requires that a floodplain determination and floodplain zoning ordinance conform with a letter of map amendment issued by the Federal Emergency Management Agency.

Current law prohibits any person from placing or maintaining any structure, building, fill, or development within any floodplain in violation of a floodplain zoning ordinance adopted by a county, city, or village or by a Department of Natural Resources order or determination. Under current law and DNR rule, a county, city, or village may only amend a floodplain map if it also amends its water surface profiles and floodplain zoning ordinance and submits these amendments to DNR for approval.

Under current federal law, FEMA may not offer flood insurance through the National Flood Insurance Program in a community unless that community adopts and enforces floodplain management regulations that meet certain NFIP criteria and are based on flood maps produced by FEMA. Under current federal law, upon the submittal of scientific or technical information showing that a property's designation in relation to a flood zone should be changed, FEMA may issue to the applicant a letter of map amendment (LOMA) that amends the federal flood map with respect to that property.

Under this bill, on the request of a property owner who has obtained a LOMA, the county, city, or village in which the property is located is required to amend its

floodplain determination and floodplain zoning ordinance as necessary to conform with the LOMA and is prohibited from enforcing a floodplain determination or floodplain ordinance that is contrary to the LOMA. The bill also requires DNR to consent to such a determination or ordinance amendment.

For further information see the *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.** 87.30 (1) (b) of the statutes is amended to read:

2 87.30 (1) (b) All final orders, determinations, or decisions made under this
3 subsection shall be subject to review under ch. 227 and be effective 20 days after the
4 same have been served unless such order, determination, and decision specifies a
5 different date upon which the same shall be effective. Such floodplain determination
6 and zoning ordinance shall be of the same effect as if adopted by the county, city, or
7 village. Thereafter it is the duty of the county, city, village, and town officials to
8 administer and enforce the ordinance in the same manner as if the county, city, or
9 village had adopted it. Floodplain Except as provided in par. (e), floodplain
10 determinations and zoning ordinances so adopted may be modified by the county,
11 city, or village concerned only with the written consent of the department except that,
12 Except as provided in par. (e), nothing in this subsection may be construed to prohibit
13 a county, city, village, or town from adopting a floodplain ordinance more restrictive
14 than that adopted by the state.

15 **SECTION 2.** 87.30 (1) (e) of the statutes is created to read:

16 87.30 (1) (e) 1. On the request of a property owner who has obtained a letter
17 of map amendment from the federal emergency management agency under 44 CFR
18 70, the county, city, village, or town in which the property is located shall amend its
19 floodplain determination and floodplain zoning ordinance as necessary to conform

1 with the letter of map amendment. The county, city, village, or town may not enforce
2 a floodplain zoning ordinance that is contrary to a letter of map amendment.

3 2. The department shall consent to an amendment to a floodplain
4 determination or floodplain zoning ordinance that is necessary to conform with a
5 letter of map amendment under subd. 1.

6 (END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2630/1
MS/EM/AM/KRP/ES:all

2017 BILL

1 AN ACT *to renumber and amend* 32.10, 59.694 (7) (c) and 62.23 (7) (e) 7.; *to*
2 *amend* 32.10 (title), 59.69 (10e) (title), 59.69 (10e) (a) 1., 59.69 (10e) (b), 59.692
3 (1) (b) (intro.), 60.61 (5e) (title), 60.61 (5e) (a) 1., 60.61 (5e) (b), 62.23 (7) (hb)
4 (title), 62.23 (7) (hb) 1. a. and 62.23 (7) (hb) 2.; and *to create* 30.20 (1g) (d), 32.09
5 (6c), 32.10 (1), 32.10 (5), 59.69 (5e), 59.692 (1) (am), 59.694 (7) (c) 1., 59.694 (7)
6 (c) 3., 60.61 (4e), 60.62 (4e), 62.23 (7) (de), 62.23 (7) (e) 7. a., 62.23 (7) (e) 7. d.,
7 66.10015 (1) (e), 66.10015 (2) (e), 66.10015 (4), 227.10 (2p) and 710.17 of the
8 statutes; **relating to:** limiting the authority of local governments to regulate
9 development on substandard lots and require the merging of lots; requiring a
10 political subdivision to issue a conditional use permit under certain
11 circumstances; standards for granting certain zoning variances; local
12 ordinances related to repair, rebuilding, and maintenance of certain
13 nonconforming structures; shoreland zoning of, and the removal of material

BILL

- 1 from the bed of, certain small, private ponds; inverse condemnation
2 proceedings; and the right to display the flag of the United States.
-

Analysis by the Legislative Reference Bureau**INTRODUCTION**

This bill makes various changes to local government zoning authority, navigable water permits, inverse condemnation proceedings, and the right to display the flag of the United States.

SUBSTANDARD LOTS

Under this bill, a city, village, town, or county may generally not prohibit a property owner from doing any of the following:

1. Conveying an ownership interest in a substandard lot.
2. Using a substandard lot as a building site if two conditions are met: the substandard lot has not been developed with one or more of its structures placed partly on an adjacent lot; and the substandard lot is developed to comply with all other ordinances of the political subdivision.

Under the bill, a substandard lot is defined as a lot that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

MERGING LOTS

This bill prohibits a state agency, city, village, town, or county from requiring that one or more lots be merged with another lot without the consent of the owners of the lots that are to be merged.

CONDITIONAL USE PERMITS

This bill requires a city, village, town, or county to issue a conditional use permit to an applicant who meets, or agrees to meet, all of the requirements and conditions specified by the political subdivision. Under the bill, both the application, and the political subdivision's decision on the permit application, must be based on substantial evidence, although public testimony alone is not substantial evidence and cannot be the sole basis for a political subdivision to deny a conditional use permit. Once granted, a conditional use permit may remain in effect as long as the conditions under which it was granted are followed, except that a political subdivision may include conditions relating to the permit's duration, and the ability of the applicant to transfer or renew a permit.

VARIANCES

Under current law, a city, a village, or a town that is authorized to exercise village powers (collectively, "municipality") or a 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.

BILL

A municipality's board of appeals or a county's board of adjustment is authorized under current law 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.

Under this bill, a property owner bears the burden of proving "unnecessary hardship" by demonstrating either of the following:

1. For an area variance, that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.
2. For a use variance, that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In both situations, the property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than personal considerations, and that the unnecessary hardship was not created by the property owner.

NONCONFORMING STRUCTURES

Under current law, zoning ordinances of cities, villages, towns, or counties may not prohibit or limit based on cost the repair, maintenance, renovation, or remodeling of a nonconforming structure. A nonconforming structure is "a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance."

This bill expands this prohibition, adding a prohibition on requiring a variance, covering rebuilding, and specifying that a part of a nonconforming structure is covered. With these modifications, no ordinance of a political subdivision may prohibit, limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

PRIVATE PONDS

This bill exempts certain small, private ponds from the permitting requirements for removing material from the bed of a navigable body of water and from shoreland zoning laws.

Current law generally prohibits a person from removing material from the bed of a navigable body of water unless the Department of Natural Resources has issued an individual permit or a general permit authorizing the removal. This bill adds an exception to these permitting requirements for the removal of material from the bed

BILL

of a self-contained pond that is five acres or less in size, has no public access, and is located on and entirely surrounded by land privately owned by the same person.

Current law requires each county to zone by ordinance all shorelands in its unincorporated area. Shorelands are defined under current law as the area within certain distances from the ordinary high-water mark of navigable waters. Navigable waters are defined under current law as Lake Superior, Lake Michigan, all natural inland lakes and all streams, ponds, sloughs, flowages, and other waters, including the Wisconsin portion of boundary waters, that are navigable. This bill excludes from the definition of navigable waters a pond that is not hydrologically connected to a natural navigable waterway, does not discharge into a natural navigable waterway except as a result of storm events, is five acres or less in size, has no public access, and is entirely surrounded by land privately owned by the same person.

REGULATORY TAKINGS; EMINENT DOMAIN

This bill codifies the standard adopted by the Wisconsin Supreme Court in *Zealy v. City of Waukesha*, 201 Wis. 2d 265, 548 N.W.2d 528 (1996), for evaluating whether a regulation enacted by a governmental entity has the effect of taking a person's property without paying just compensation.

Under current law, if a person's property is occupied by an entity that possesses the power of eminent domain (a condemnor), but the condemnor has not exercised that power (and has not, therefore, compensated the property owner), the owner may commence an inverse condemnation action against the condemnor. If the property owner is successful, the court may order the condemnor to acquire the owner's interest in the affected property, resulting in compensation being paid by the condemnor to the owner.

Currently, under *Zealy*, a property owner may receive compensation when a government restriction imposed by a condemnor deprives that owner of all or substantially all practical use of the property. In order to determine whether the government-imposed restriction deprives the owner of all or substantially all practical use of the property, the court considers three factors: 1) the nature and character of the government action; 2) the severity of the economic impact of the restriction on the plaintiff; and 3) the extent to which the regulation interferes with the plaintiff's investment-backed expectations in the property.

The bill allows a property owner to bring an action under the inverse condemnation law alleging that a restriction imposed by a governmental unit deprives the owner of all or substantially all practical use of the owner's property. If a court finds that the governmental unit has effected a regulatory taking, the court must order the governmental unit to do one of the following:

1. Pay to the owner the amount of the reduction in fair market value of the property.
2. Rescind the restriction that resulted in the regulatory taking.

Further, the bill specifies that, when a court determines the compensation that is owed to an owner whose property is taken under the eminent domain law, the court must determine the value of the property according to each individual tax parcel that is determined to have been taken in whole or in part, regardless of whether the tax

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parcel is under contiguous, common ownership with other tax parcels. Under current law, in *Spiegelberg v. State*, 2006 WI 75, 291 Wis. 2d, 717 N.W.2d 641, in the case of a partial taking that affects multiple contiguous, commonly-owned parcels, a court may determine the fair market value of the whole property based on the sum of the values of the individual tax parcels or the value of the tax parcels together as one unit, whichever value more adequately reflects the property's most advantageous use. Under the bill, the court must determine the fair market value based on each individual tax parcel that is taken in whole or in part.

RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES

Currently, the federal Freedom to Display the American Flag Act of 2005 generally prohibits a condominium association, housing cooperative, or homeowners' association (organization) from adopting or enforcing a policy, or entering into an agreement, that would restrict or prevent a member of the organization from displaying the flag of the United States on residential property that the member owns or to which the member has the right to exclusive possession and use. This bill creates a similar provision in Wisconsin law with respect to housing cooperatives and homeowners' associations. Wisconsin law currently prohibits including in any condominium documents a provision that prohibits a condominium unit owner from displaying the flag.

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.** 30.20 (1g) (d) of the statutes is created to read:

2 30.20 (1g) (d) A removal of material from a pond is exempt from the permit and
3 contract requirements under this section if all of the following apply to the pond:

4 1. It has an area of 5 acres or less.

5 2. It is not hydrologically connected to a natural navigable waterway and does
6 not discharge into a natural navigable waterway except as a result of storm events.

7 3. It has no public access.

8 4. It is entirely surrounded by land privately owned by the same person.

9 **SECTION 2.** 32.09 (6c) of the statutes is created to read:

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1 32.09 (6c) In the case of a taking under subs. (5) and (6), the value of the
2 property taken shall be evaluated based on each individual tax parcel taken, in whole
3 or in part, regardless of whether the tax parcel is under contiguous, common
4 ownership with other tax parcels.

5 **SECTION 3.** 32.10 (title) of the statutes is amended to read:

6 **32.10** (title) ~~Condemnation proceedings~~ **Proceedings** instituted by
7 **property owner.**

8 **SECTION 4.** 32.10 of the statutes is renumbered 32.10 (2) and amended to read:

9 32.10 (2) If any property ~~has been occupied~~ is taken by a restriction imposed
10 by a governmental unit or by a person possessing the power of condemnation and if
11 the person that has not exercised the power, the owner, ~~to~~ may institute
12 condemnation proceedings, shall present under this section by filing a verified
13 petition ~~to~~ with the circuit judge court of the county ~~wherein in which~~ the land
14 property is situated asking that such proceedings be commenced.

15 (3) The petition shall describe the land property, state the person against which
16 the ~~condemnation~~ proceedings are instituted and describe the ~~use to which it has~~
17 ~~been put or is designed to have been put~~ action by the person against which the
18 proceedings are instituted that is alleged to constitute a taking. A copy of the petition
19 shall be served upon the person ~~who has occupied petitioner's land, or interest in~~
20 ~~land. The petition shall be filed in the office of the clerk of the circuit court and~~
21 ~~thereupon the matter shall be deemed an action at law and at issue, with~~ against
22 which the proceedings are instituted. The petitioner as shall be the plaintiff and the
23 ~~occupying person as~~ alleged to have taken the property shall be the defendant. The
24 ~~court shall make a finding of whether the defendant is occupying property of the~~
25 ~~plaintiff without having the right to do so.~~

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1 (4) If the court determines that the defendant ~~is occupying such~~ has taken the
2 property of the plaintiff under sub. (1) (b) 1. without ~~having the right to do so~~
3 exercising the power of condemnation, it shall treat the matter in accordance with
4 the provisions of this subchapter assuming the plaintiff has received from the
5 defendant a jurisdictional offer and has failed to accept the ~~same~~ offer and assuming
6 the plaintiff is not questioning the right of the defendant to condemn the property
7 ~~so occupied~~.

8 **SECTION 5.** 32.10 (1) of the statutes is created to read:

9 32.10 (1) In this section:

10 (a) "Governmental unit" means the state or any department or agency thereof
11 or any city, village, town, or county.

12 (b) "Taking" means any of the following:

13 1. The occupation of property by a person possessing the power of
14 condemnation.

15 2. Any restriction imposed by a governmental unit that deprives an owner of
16 all or substantially all practical use of the owner's property.

17 **SECTION 6.** 32.10 (5) of the statutes is created to read:

18 32.10 (5) (a) In an action in which the plaintiff alleges that the defendant has
19 taken plaintiff's property under sub. (1) (b) 2., the court shall evaluate whether the
20 property has been taken according to the following factors:

21 1. The nature and character of the government action.

22 2. The severity of the economic impact of the restriction on the plaintiff.

23 3. The extent to which the restriction interferes with the plaintiff's
24 investment-backed expectations in the property.

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1 (b) If the court determines that the defendant has taken the property of the
2 plaintiff under sub. (1) (b) 2. without exercising the power of condemnation, the court
3 shall issue an order requiring the defendant to, at the defendant's option, do one of
4 the following:

5 1. Pay damages to the plaintiff equal to the amount of the reduction in fair
6 market value of the property that is attributable to the action under sub. (1) (b).

7 2. Rescind the government-imposed restriction that was found to have
8 resulted in the taking.

9 **SECTION 7.** 59.69 (5e) of the statutes is created to read:

10 **59.69 (5e) CONDITIONAL USE PERMITS.** (a) In this subsection:

11 1. "Conditional use" means a use allowed under a conditional use permit,
12 special exception, or other special zoning permission issued by a county.

13 2. "Substantial evidence" means evidence of such convincing power that
14 reasonable persons would accept it in support of a conclusion. "Substantial evidence"
15 does not include public comment that is based solely on personal opinion,
16 uncorroborated hearsay, or speculation.

17 (b) 1. If an applicant for a conditional use permit meets, or agrees to meet, all
18 of the requirements and conditions specified in the county ordinance, the county
19 shall grant the conditional use permit.

20 2. The requirements and conditions described under subd. 1. must be
21 reasonable and measurable, and may include conditions such as the permit's
22 duration, and the ability of the applicant to transfer or renew the permit. The
23 applicant must demonstrate that the application and all requirements and
24 conditions established by the county relating to the conditional use are, or will be,
25 satisfied, and must demonstrate such satisfaction by substantial evidence. The

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1 county must demonstrate that its decision to approve or deny the permit is supported
2 by substantial evidence. Public testimony alone is not substantial evidence and
3 cannot be the sole basis for the county to deny a conditional use permit.

4 (c) Upon receipt of a conditional use permit application, and following
5 publication in the county of a class 2 notice under ch. 985, the county shall hold a
6 public hearing on the application.

7 (d) Once granted, a conditional use permit may remain in effect as long as the
8 conditions upon which the permit was issued are followed, except that the county
9 may impose conditions relating to the permit's duration, and the ability of the
10 applicant to transfer or renew the permit, as well as any other additional, reasonable
11 conditions that are specified in the zoning ordinance.

12 (e) If a county denies a person's conditional use permit application, the person
13 may appeal the decision to the circuit court under the procedures contained in s.
14 59.694 (10).

15 **SECTION 8.** 59.69 (10e) (title) of the statutes is amended to read:

16 59.69 (10e) (title) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN
17 NONCONFORMING STRUCTURES.

18 **SECTION 9.** 59.69 (10e) (a) 1. of the statutes is amended to read:

19 59.69 (10e) (a) 1. "Development regulations" means the part of a zoning
20 ordinance ~~enacted under this section~~ that applies to elements including setback,
21 height, lot coverage, and side yard.

22 **SECTION 10.** 59.69 (10e) (b) of the statutes is amended to read:

23 59.69 (10e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
24 limit based on cost, or require a variance for the repair, maintenance, renovation,

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1 rebuilding, or remodeling of a nonconforming structure or any part of a
2 nonconforming structure.

3 **SECTION 11.** 59.692 (1) (am) of the statutes is created to read:

4 59.692 (1) (am) "Navigable waters" has the meaning given in s. 281.31 (2) (d),
5 except that "navigable waters" does not include a pond to which all of the following
6 apply:

7 1. It has an area of 5 acres or less.

8 2. It is not hydrologically connected to a natural navigable waterway and does
9 not discharge into a natural navigable waterway except as a result of storm events.

10 3. It has no public access.

11 4. It is entirely surrounded by land privately owned by the same person.

12 **SECTION 12.** 59.692 (1) (b) (intro.) of the statutes is amended to read:

13 59.692 (1) (b) (intro.) "Shorelands" means the area within the following
14 distances from the ordinary high-water mark of navigable waters, ~~as defined under~~
15 ~~s. 281.31 (2) (d)~~:

16 **SECTION 13.** 59.694 (7) (c) of the statutes is renumbered 59.694 (7) (c) 2. and
17 amended to read:

18 59.694 (7) (c) 2. To authorize upon appeal in specific cases variances from the
19 terms of the ordinance that will not be contrary to the public interest, where, owing
20 to special conditions, a literal enforcement of the provisions of the ordinance will
21 result in unnecessary hardship, and so that the spirit of the ordinance shall be
22 observed and substantial justice done.

23 4. A county board may enact an ordinance specifying an expiration date for a
24 variance granted under this paragraph if that date relates to a specific date by which
25 the action authorized by the variance must be commenced or completed. If no such

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1 ordinance is in effect at the time a variance is granted, or if the board of adjustment
2 does not specify an expiration date for the variance, a variance granted under this
3 paragraph does not expire unless, at the time it is granted, the board of adjustment
4 specifies in the variance a specific date by which the action authorized by the
5 variance must be commenced or completed. An ordinance enacted after April 5,
6 2012, may not specify an expiration date for a variance that was granted before April
7 5, 2012.

8 5. A variance granted under this paragraph runs with the land.

9 **SECTION 14.** 59.694 (7) (c) 1. of the statutes is created to read:

10 59.694 (7) (c) 1. In this paragraph:

11 a. "Area variance" means a modification to a dimensional, physical, or
12 locational requirement such as a setback, frontage, height, bulk, or density
13 restriction for a structure that is granted by the board of adjustment under this
14 subsection.

15 b. "Use variance" means an authorization by the board of adjustment under
16 this subsection for the use of land for a purpose that is otherwise not allowed or is
17 prohibited by the applicable zoning ordinance.

18 **SECTION 15.** 59.694 (7) (c) 3. of the statutes is created to read:

19 59.694 (7) (c) 3. A property owner bears the burden of proving "unnecessary
20 hardship," as that term is used in this paragraph, for an area variance, by
21 demonstrating that strict compliance with a zoning ordinance would unreasonably
22 prevent the property owner from using the property owner's property for a permitted
23 purpose or would render conformity with the zoning ordinance unnecessarily
24 burdensome or, for a use variance, by demonstrating that strict compliance with a
25 zoning ordinance would leave the property owner with no reasonable use of the

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1 property in the absence of a variance. In all circumstances, a property owner bears
2 the burden of proving that the unnecessary hardship is based on conditions unique
3 to the property, rather than considerations personal to the property owner, and that
4 the unnecessary hardship was not created by the property owner.

5 **SECTION 16.** 60.61 (4e) of the statutes is created to read:

6 **60.61 (4e) CONDITIONAL USE PERMITS.** (a) In this subsection:

7 1. "Conditional use" means a use allowed under a conditional use permit,
8 special exception, or other special zoning permission issued by a town.

9 2. "Substantial evidence" means evidence of such convincing power that
10 reasonable persons would accept it in support of a conclusion. "Substantial evidence"
11 does not include public comment that is based solely on personal opinion,
12 uncorroborated hearsay, or speculation.

13 (b) 1. If an applicant for a conditional use permit meets, or agrees to meet, all
14 of the requirements and conditions specified in the town ordinance, the town shall
15 grant the conditional use permit.

16 2. The requirements and conditions described under subd. 1. must be
17 reasonable and measurable, and may include conditions such as the permit's
18 duration, and the ability of the applicant to transfer or renew the permit. The
19 applicant must demonstrate that the application and all requirements and
20 conditions established by the town relating to the conditional use are, or will be,
21 satisfied, and must demonstrate such satisfaction by substantial evidence. The town
22 must demonstrate that its decision to approve or deny the permit is supported by
23 substantial evidence. Public testimony alone is not substantial evidence and cannot
24 be the sole basis for the town to deny a conditional use permit.

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1 (c) Upon receipt of a conditional use permit application, and following
2 publication in the town of a class 2 notice under ch. 985, the town shall hold a public
3 hearing on the application.

4 (d) Once granted, a conditional use permit may remain in effect as long as the
5 conditions upon which the permit was issued are followed, except that the town may
6 impose conditions relating to the permit's duration, and the ability of the applicant
7 to transfer or renew the permit, as well as any other additional, reasonable
8 conditions that are specified in the zoning ordinance.

9 (e) If a town denies a person's conditional use permit application, the person
10 may appeal the decision to the circuit court under the procedures described in s.
11 59.694 (10).

12 **SECTION 17.** 60.61 (5e) (title) of the statutes is amended to read:

13 60.61 (5e) (title) REPAIR, ~~REBUILDING,~~ AND MAINTENANCE OF CERTAIN
14 NONCONFORMING STRUCTURES.

15 **SECTION 18.** 60.61 (5e) (a) 1. of the statutes is amended to read:

16 60.61 (5e) (a) 1. "Development regulations" means the part of a zoning
17 ordinance ~~enacted under this section~~ that applies to elements including setback,
18 height, lot coverage, and side yard.

19 **SECTION 19.** 60.61 (5e) (b) of the statutes is amended to read:

20 60.61 (5e) (b) An ordinance ~~enacted under this section~~ may not prohibit, or
21 limit based on cost, or require a variance for the repair, maintenance, renovation,
22 rebuilding, or remodeling of a nonconforming structure or any part of a
23 nonconforming structure.

24 **SECTION 20.** 60.62 (4e) of the statutes is created to read:

25 60.62 (4e) (a) In this subsection:

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1 1. "Conditional use" means a use allowed under a conditional use permit,
2 special exception, or other special zoning permission issued by a town.

3 2. "Substantial evidence" means evidence of such convincing power that
4 reasonable persons would accept it in support of a conclusion. "Substantial evidence"
5 does not include public comment that is based solely on personal opinion,
6 uncorroborated hearsay, or speculation.

7 (b) 1. If an applicant for a conditional use permit meets, or agrees to meet, all
8 of the requirements and conditions specified in the town ordinance, the town shall
9 grant the conditional use permit.

10 2. The requirements and conditions described under subd. 1. must be
11 reasonable and measurable, and may include conditions such as the permit's
12 duration, and the ability of the applicant to transfer or renew the permit. The
13 applicant must demonstrate that the application and all requirements and
14 conditions established by the town relating to the conditional use are, or will be,
15 satisfied, and must demonstrate such satisfaction by substantial evidence. The town
16 must demonstrate that its decision to approve or deny the permit is supported by
17 substantial evidence. Public testimony alone is not substantial evidence and cannot
18 be the sole basis for the town to deny a conditional use permit.

19 (c) Upon receipt of a conditional use permit application, and following
20 publication in the town of a class 2 notice under ch. 985, the town shall hold a public
21 hearing on the application.

22 (d) Once granted, a conditional use permit may remain in effect as long as the
23 conditions upon which the permit was issued are followed, except that the town may
24 impose conditions relating to the permit's duration, and the ability of the applicant

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1 to transfer or renew the permit, as well as any other additional, reasonable
2 conditions that are specified in the zoning ordinance.

3 (e) If a town denies a person's conditional use permit application, the person
4 may appeal the decision to the circuit court under the procedures described in s.
5 61.35.

6 **SECTION 21.** 62.23 (7) (de) of the statutes is created to read:

7 **62.23 (7) (de) Conditional use permits.** 1. In this paragraph:

8 a. "Conditional use" means a use allowed under a conditional use permit,
9 special exception, or other special zoning permission issued by a city.

10 b. "Substantial evidence" means evidence of such convincing power that
11 reasonable persons would accept it in support of a conclusion. "Substantial evidence"
12 does not include public comment that is based solely on personal opinion,
13 uncorroborated hearsay, or speculation.

14 2. a. If an applicant for a conditional use permit meets, or agrees to meet, all
15 of the requirements and conditions specified in the city ordinance, the city shall grant
16 the conditional use permit.

17 b. The requirements and conditions described under subd. 2. a. must be
18 reasonable and measurable, and may include conditions such as the permit's
19 duration, and the ability of the applicant to transfer or renew the permit. The
20 applicant must demonstrate that the application and all requirements and
21 conditions established by the city relating to the conditional use are, or will be,
22 satisfied, and must demonstrate such satisfaction by substantial evidence. The city
23 must demonstrate that its decision to approve or deny the permit is supported by
24 substantial evidence. Public testimony alone is not substantial evidence and cannot
25 be the sole basis for the council to deny a conditional use permit.

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1 3. Upon receipt of a conditional use permit application, and following
2 publication in the city of a class 2 notice under ch. 985, the city shall hold a public
3 hearing on the application.

4 4. Once granted, a conditional use permit may remain in effect as long as the
5 conditions upon which the permit was issued are followed, except that the city may
6 impose conditions relating to the permit's duration, and the ability of the applicant
7 to transfer or renew the permit, as well as any other additional, reasonable
8 conditions that are specified in the zoning ordinance.

9 5. If a city denies a person's conditional use permit application, the person may
10 appeal the decision to the circuit court under the procedures contained in par. (e) 10.

11 **SECTION 22.** 62.23 (7) (e) 7. of the statutes is renumbered 62.23 (7) (e) 7. b. and
12 amended to read:

13 62.23 (7) (e) 7. b. The board of appeals shall have the following powers: To hear
14 and decide appeals where it is alleged there is error in any order, requirement,
15 decision, or determination made by an administrative official in the enforcement of
16 this section or of any ordinance adopted pursuant thereto; to hear and decide special
17 exception to the terms of the ordinance upon which such board is required to pass
18 under such ordinance; to authorize upon appeal in specific cases such variance from
19 the terms of the ordinance as will not be contrary to the public interest, where, owing
20 to special conditions, a literal enforcement of the provisions of the ordinance will
21 result in practical difficulty or unnecessary hardship, so that the spirit of the
22 ordinance shall be observed, public safety and welfare secured, and substantial
23 justice done.

24 e. The council of a city may enact an ordinance specifying an expiration date
25 for a variance granted under this subdivision if that date relates to a specific date by

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1 which the action authorized by the variance must be commenced or completed. If no
2 such ordinance is in effect at the time a variance is granted, or if the board of appeals
3 does not specify an expiration date for the variance, a variance granted under this
4 subdivision does not expire unless, at the time it is granted, the board of appeals
5 specifies in the variance a specific date by which the action authorized by the
6 variance must be commenced or completed. An ordinance enacted after April 5,
7 2012, may not specify an expiration date for a variance that was granted before April
8 5, 2012.

9 f. A variance granted under this subdivision runs with the land.

10 c. The board may permit in appropriate cases, and subject to appropriate
11 conditions and safeguards in harmony with the general purpose and intent of the
12 ordinance, a building or premises to be erected or used for such public utility
13 purposes in any location which is reasonably necessary for the public convenience
14 and welfare.

15 **SECTION 23.** 62.23 (7) (e) 7. a. of the statutes is created to read:

16 62.23 (7) (e) 7. a. In this subdivision, "area variance" means a modification to
17 a dimensional, physical, or locational requirement such as a setback, frontage,
18 height, bulk, or density restriction for a structure that is granted by the board of
19 appeals under this paragraph. In this subdivision, "use variance" means an
20 authorization by the board of appeals under this paragraph for the use of land for a
21 purpose that is otherwise not allowed or is prohibited by the applicable zoning
22 ordinance.

23 **SECTION 24.** 62.23 (7) (e) 7. d. of the statutes is created to read:

24 62.23 (7) (e) 7. d. A property owner bears the burden of proving "unnecessary
25 hardship," as that term is used in this subdivision, for an area variance, by

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1 demonstrating that strict compliance with a zoning ordinance would unreasonably
2 prevent the property owner from using the property owner's property for a permitted
3 purpose or would render conformity with the zoning ordinance unnecessarily
4 burdensome or, for a use variance, by demonstrating that strict compliance with a
5 zoning ordinance would leave the property owner with no reasonable use of the
6 property in the absence of a variance. In all circumstances, a property owner bears
7 the burden of proving that the unnecessary hardship is based on conditions unique
8 to the property, rather than considerations personal to the property owner, and that
9 the unnecessary hardship was not created by the property owner.

10 **SECTION 25.** 62.23 (7) (hb) (title) of the statutes is amended to read:

11 62.23 (7) (hb) (title) *Repair, rebuilding, and maintenance of certain*
12 *nonconforming structures.*

13 **SECTION 26.** 62.23 (7) (hb) 1. a. of the statutes is amended to read:

14 62.23 (7) (hb) 1. a. "Development regulations" means the part of a zoning
15 ordinance ~~enacted under this subsection~~ that applies to elements including setback,
16 height, lot coverage, and side yard.

17 **SECTION 27.** 62.23 (7) (hb) 2. of the statutes is amended to read:

18 62.23 (7) (hb) 2. An ordinance ~~enacted under this subsection~~ may not prohibit,
19 or limit based on cost, the repair, maintenance, renovation, or remodeling of a
20 nonconforming structure.

21 **SECTION 28.** 66.10015 (1) (e) of the statutes is created to read:

22 66.10015 (1) (e) "Substandard lot" means a legally created lot or parcel that met
23 any applicable lot size requirements when it was created, but does not meet current
24 lot size requirements.

25 **SECTION 29.** 66.10015 (2) (e) of the statutes is created to read:

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1 66.10015 (2) (e) Notwithstanding any other law or rule, or any action or
2 proceeding under the common law, a political subdivision may not prohibit a
3 property owner from doing any of the following:

4 1. Conveying an ownership interest in a substandard lot.

5 2. Using a substandard lot as a building site if all of the following apply:

6 a. The substandard lot or parcel has never been developed with one or more of
7 its structures placed partly upon an adjacent lot or parcel.

8 b. The substandard lot or parcel is developed to comply with all other
9 ordinances of the political subdivision.

10 **SECTION 30.** 66.10015 (4) of the statutes is created to read:

11 66.10015 (4) Notwithstanding the authority granted under ss. 59.69, 60.61,
12 60.62, 61.35, and 62.23, no political subdivision may enact an ordinance or take any
13 other action that requires one or more lots to be merged with another lot, for any
14 purpose, without the consent of the owners of the lots that are to be merged.

15 **SECTION 31.** 227.10 (2p) of the statutes is created to read:

16 227.10 (2p) No agency may promulgate a rule or take any other action that
17 requires one or more lots to be merged with another lot, for any purpose, without the
18 consent of the owners of the lots that are to be merged.

19 **SECTION 32.** 710.17 of the statutes is created to read:

20 **710.17 Right to display the flag of the United States. (1) DEFINITIONS.**

21 In this section:

22 (a) "Housing cooperative" means a cooperative incorporated under ch. 185 or
23 organized under ch. 193 that owns residential property that is used or intended to
24 be used, in whole or in part, by the members of the housing cooperative as their
25 homes or residences.

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1 (b) “Member of a homeowners’ association” means a person that owns
2 residential property within a subdivision, development, or other similar area that is
3 subject to any policy or restriction adopted by a homeowners’ association.

4 (c) “Member of a housing cooperative” means a member, as defined in s. 185.01
5 (5) or 193.005 (15), of a housing cooperative if the member uses or intends to use part
6 of the property of the housing cooperative as the member’s home or residence.

7 **(2) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES.** (a) Except as provided
8 in sub. (3), a homeowners’ association may not adopt or enforce a covenant, condition,
9 or restriction, or enter into an agreement, that restricts or prevents a member of the
10 homeowners’ association from displaying the flag of the United States on property
11 in which the member has an ownership interest and that is subject to any policy or
12 restriction adopted by the homeowners’ association.

13 (b) Except as provided in sub. (3), a housing cooperative may not adopt or
14 enforce a covenant, condition, or restriction, or enter into an agreement, that
15 restricts or prevents a member of the housing cooperative from displaying the flag
16 of the United States on property of the housing cooperative to which the member has
17 a right to exclusive possession or use.

18 **(3) EXCEPTIONS.** A homeowners’ association or housing cooperative may adopt
19 and enforce a covenant, condition, or restriction, or enter into an agreement, that
20 does any of the following:

21 (a) Requires that any display of the flag of the United States must conform with
22 a rule or custom for proper display and use of the flag set forth in 4 USC 5 to 10.

23 (b) Provides a reasonable restriction on the time, place, or manner of displaying
24 the flag of the United States that is necessary to protect a substantial interest of the
25 homeowners’ association or housing cooperative.

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SECTION 33. Initial applicability.

(1) RIGHT TO DISPLAY THE FLAG OF THE UNITED STATES. The treatment of section 710.17 of the statutes first applies to a covenant, condition, or restriction that is adopted, renewed, or modified, or to an agreement that is entered into, renewed, or modified, on the effective date of this subsection.

(2) **CONDITIONAL USE PERMITS.** The treatment of sections 59.69 (5e), 60.61 (4e), 60.62 (4e), and 62.23 (7) (de) of the statutes first applies to an application for a conditional use permit that is filed on the effective date of this subsection.

(3) **INVERSE CONDEMNATION.** The renumbering and amendment of section 32.10 of the statutes and the creation of section 32.10 (1) and (5) of the statutes first apply to takings that occur on the effective date of this subsection.

(END)

Broadband Forward! Community Model Ordinance



Public Service Commission of Wisconsin
610 North Whitney Way
Madison, WI 53705

BROADBAND FORWARD! COMMUNITY MODEL ORDINANCE

Introduction

Broadband access is increasingly important to our economy, education and daily life. The state as a whole—citizens, governments, providers, schools and businesses—have an interest in expanding broadband access and usage in underserved areas of the state. The Public Service Commission of Wisconsin (Commission) has been authorized to certify communities as being “broadband ready” by issuing a Broadband Forward! Certification that signals a local unit of government has taken steps to reduce obstacles to broadband infrastructure investment.

Under Wis. Stat. § 196.504(4) a city, village town or county may apply to the Commission for certification as a Broadband Forward! Community. The Commission has prepared this Broadband Forward! Community Model Ordinance and application form to facilitate certification and statewide consistency. If a political subdivision adopts this model ordinance, or enacts its own ordinance and submits a certification that its ordinance meets the statutory criteria in Wis. Stat. § 196.504(5), it is eligible for Broadband Forward! Certification.

Enacting the Broadband Forward! Community Model Ordinance and obtaining Broadband Forward! Certification ensures the local unit of government has streamlined its administrative procedures by appointing a single point of contact for all matters relating to a broadband network project, adhering to a timely approval process, charging only reasonable fees for reviewing applications and issuing permits, imposing only reasonable conditions on a permit and not discriminating between telecommunications service providers.

The Commission also encourages communities seeking Broadband Forward! Certification to apply for Broadband Expansion Grants that are awarded annually. Further information about the Broadband Expansion Grant Program, including application materials, is available at: <http://psc.wi.gov/utilityinfo/tele/broadband/grants/bbGrantApplicationPage.htm>.

For further information about the application process for Broadband Forward! Certification or for any questions about the Broadband Forward! Community Model Ordinance, please contact Angie Dickison at Angie.Dickison@wisconsin.gov or (608) 267-9138.

BROADBAND FORWARD! COMMUNITY ORDINANCE

ORDINANCE NO. []

An ordinance to create Chapter []; relating to approval of broadband network projects.

The [political subdivision] does enact as follows:

Chapter 1. Broadband Network Project Applications

SECTION 1. GENERAL PROVISIONS.

1.1 Purpose and policy. The purpose of this chapter is to encourage the development of broadband access in the [political subdivision] by reducing administrative obstacles to broadband service providers and coordinating the review of applications to ensure such applications are timely processed. This chapter shall at all times be construed consistent with the aforesated purpose.

1.2 Definitions. In this chapter:

(1) “Applicant” means a person applying for a permit for a broadband network project.

(2) “Broadband network project” means the construction or deployment of wireline or wireless communications facilities to provide broadband communications services in the [political subdivision].

(3) “Permit” means any local permit, license, certificate, approval, registration, or similar form of approval required by policy, administrative rule, regulation, ordinance, or resolution with respect to a broadband network project.

(4) “Written” or “in writing” means information that is inscribed on a tangible medium or that is stored in an electronic or other intangible medium and is retrievable in perceivable form.

1.3 Point of contact. The [political subdivision] shall appoint a single point of contact for all matters related to a broadband network project. The [political subdivision] shall provide on its

1 public website the contact information, including the e-mail address, for the point of contact
2 authorized to receive a broadband network project application.

3 **SECTION 2. ELECTRONIC SUBMISSION OF APPLICATIONS.** An applicant may sign and file all
4 forms, applications and documentation related to a broadband network project electronically.

5 **SECTION 3. REVIEW OF APPLICATIONS.** Notwithstanding any other provision in the [political
6 subdivision's] ordinances, resolutions, regulations, policies or practices to the contrary, the
7 following process shall apply exclusively upon receiving a broadband network project
8 application:

9 **3.1 Completeness review.** Upon receiving a broadband network project application the
10 [political subdivision] shall:

11 (1) Determine whether an application is complete and notify the applicant of the
12 determination by the [political subdivision] in writing within 10 calendar days of receiving an
13 application. If the [political subdivision] does not notify the applicant in writing of its
14 completeness determination within 10 calendar days of receiving the application, the application
15 shall be considered complete.

16 (2) If the [political subdivision] determines that an application is not complete, the
17 written notification to the applicant shall specify in detail the required information that is not
18 complete. The applicant may resubmit an application as often as necessary until the application
19 is complete.

20 **3.2 Approval or denial of complete applications.**

21 (1) Within 60 calendar days of receiving an application that is complete, or considered
22 complete under sub. (1), the [political subdivision] shall approve or deny the application and
23 provide the applicant written notification of the approval or denial. If the [political subdivision]

1 does not notify the applicant of its approval or denial within 60 calendar days of receiving a
2 complete application, the application shall be considered approved and any required permit shall
3 be considered issued.

4 (2) If the [political subdivision] denies an application, the written notification of the
5 denial under sub. (1) shall include evidence that the denial is not arbitrary and capricious.

6 **SECTION 4. FEES.** Any fee imposed by the [political subdivision] to review an application, issue
7 a permit, or perform any other activity related to a broadband network project shall be
8 reasonable. An application fee that exceeds \$100 is unreasonable.

9 **SECTION 5. INITIAL APPLICABILITY.** The treatment of this ordinance first applies to applications
10 received by the [political subdivision] on or after the effective date of this ordinance.

11 **SECTION 6. EFFECTIVE DATE.** This ordinance takes effect on the day after publication.

Committee Meeting Sign-In Sheet

Committee/Board Name: Planning & Zoning

Date of Meeting: 10/30/17

[illegible]