

Opposing Assembly Bill 582, Regulating Property Rights and Shoreland Zoning

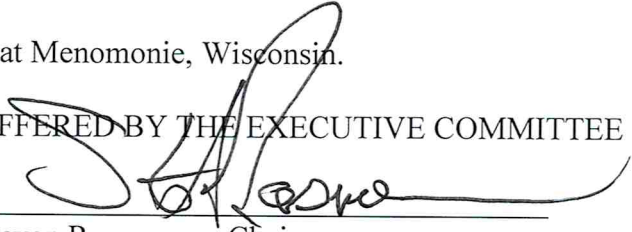
NOW, THEREFORE, BE IT RESOLVED by the Dunn County Board of Supervisors opposes AB582 and urges the legislature not to adopt it.

BE IT FURTHER RESOLVED that the Dunn County Clerk is directed to send a copy of this Resolution to the State Senators and Representatives serving Dunn County Constituents, and the Wisconsin Counties Association.

DATED this 20th day of January, 2016, at Menomonie, Wisconsin.

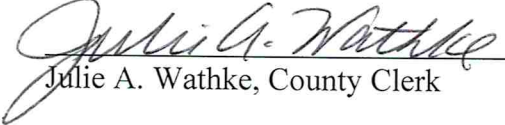
OFFERED BY THE EXECUTIVE COMMITTEE

Adopted on: January 20, 2016


Steven Rasmussen, Chair

ATTEST:

Approved as to Form and Execution:


Julie A. Wathke, County Clerk


Nicholas P. Lange, Corporation Counsel

Budget Impact: Approval of this resolution will have no impact on the 2016 budget.

Background Information: In the context of zoning and other land use regulation, the concept of “vested rights” has, for time immemorial, been the idea that once a landowner receives permission through existing regulations to develop or use land, the government cannot be take it back or change it arbitrarily or unfairly. Instead, changes must be made through use of established procedures and for the good of the public welfare. Assembly Bill 582 [hereinafter ‘AB582’] subtly recasts the concept of “vested rights” as the idea that a landowner can do anything they want with their land with little regard to the public welfare and without government regulation. AB582 contains language that significantly limits local regulation of land use, including land in shoreland zoning districts. Although many of the more damaging limitations contained in the original proposal have been removed in Assembly Substitute Amendment 1 and Assembly Substitute Amendment 2, there are still substantial impacts on local regulation of land use including, but not limited to, the following:

1. Prohibiting local governments from adopting moratoria on approval or rezoning, subdivision, or other land division.
2. Imposing a requirement of a 2/3 vote for approval of “downzoning,” which is rezoning that would decrease development density or the number of permitted uses.
3. Limiting local government authority to regulate non-conforming structures by expanding the prohibition against regulation of the maintenance, repair, replacement, restoration, rebuilding, or remodeling of certain nonconforming structures to include structures of which any part is legally located within a shoreland setback area prior to July 13, 2015.
4. Requiring the judges in all state courts to resolve any ambiguous provisions in zoning ordinance or shoreland zoning ordinance “in favor of the free use of private property.”

5. Prohibiting the judges in all state courts from giving deference to an administrative agency where an agency decision restricts a property owner's free use of their property.

Changes in land use over time, environmental changes in land and water, advancements in science that give greater understanding of health issues relating to land and water use, improved technologies, increasing populations, need for new land uses or changes in land use density, and other circumstances require that land use planning and regulation be evaluated on an ongoing basis and modified where appropriate. New land uses and new land use regulations should be considered carefully. A moratorium on development or division can be an important tool to give local government time to consider and/or study the impact of proposals to change land use regulations based on all or any of the above factors. A prohibition on "downzoning" limits the ability of local governments to change land use plans in certain cases where the change would appropriately be based on any of the above factors.

Regulation of non-conforming structures is important for the same reasons. Legal non-conforming structures and uses are legal. If land use plans or land uses change, local governments need the flexibility to permit an existing use or structure, but impose an appropriate change at that time when an existing use or structure come to an end. The Wisconsin Supreme Court, in Marris v. City of Cedarburg, 176 Wis.2d 14 (1993), has held that "ordinances governing the improvement of a structure that has legal nonconforming use status are intended to balance two competing policies: protection of property ownership rights and protection of the community's interest in the speedy elimination of nonconforming uses. These ordinances avoid imposing undue hardship on property owners by allowing them to continue the nonconforming use of the property and to make reasonable renovations to prevent deterioration. However, to ensure that the life of the structure is not extended indefinitely and that the nonconforming use is gradually eliminated, these ordinances also limit the amount of structural repairs or alterations property owners can make. The underlying policy goal is to encourage at least some improvement and modernization of nonconforming buildings at the expense of extending the life expectancy of nonconforming uses." [Internal citations omitted].

And in Just v. Marinette County, 56 Wis.2d 7 (1972), the Wisconsin Supreme Court noted that: "Wisconsin has long held that laws and regulations to prevent pollution and to protect the waters of this state from degradation are valid police-power enactments. The active public trust duty of the state of Wisconsin in respect to navigable waters requires the state not only to promote navigation but also to protect and preserve those waters for fishing, recreation, and scenic beauty. To further this duty, the legislature may delegate authority to local units of the government, which the state did by requiring counties to pass shoreland zoning ordinances." [Internal citations omitted]. Shoreland areas are, in many parts of the state, most in need of regulation due to the environmental and human health issues that we are facing.

County governments have administered shoreland zoning ordinances to protect and improve their waters for decades and they have considerable experience with the implementation of NR 115 in its various incarnations. Likewise, the Wisconsin Dept. of Natural Resources has developed expertise through long experience of protecting and improving waters of the state through administrative oversight and regulation. Prohibiting state court judges from giving deference to the DNR and other state agencies is contrary to longstanding law.

"The concept that an owner of real property can, in all cases, do as he pleases with his property is no longer in harmony with the realities of our society. We have long recognized that the police power – the power of government to implement its concern for the general welfare – may severely curtail the use to which real property may be put." State v. Deetz, 66 Wis.2d 1 (1974).