

# WAPA LEGISLATIVE UPDATE

By Benjamin C. Grawe  
DEWITT ROSS & STEVENS S.C.  
October 17, 2005

## A. New Legislation

### 1. Representative Scott Suder Introduces Legislation to Determine Fair Market Value of Property Taken by Condemnation

On September 9, 2005, Representative Scott Suder introduced Assembly Bill 656. AB 656 would require a commission or court in condemnation proceedings to consider additional factors in determining the value of the property. Under current law, a property owner whose property is taken for a public purpose is entitled to the fair market value of the property taken. In determining fair market value, evidence of the income of a business is not admissible if there is evidence of the sale of comparable property. *See Leathem Smith Lodge, Inc. v. State*, 94 Wis. 2d 406 (1980). AB 656 provides that an appraisal of the property based on an income approach shall be considered even if there is evidence of the sale of comparable property.

A public hearing on AB 656 was held on September 21, 2005. It was recommended for passage by the Committee on Property Rights and Land Management on September 26, 2005 and has been referred to the Committee on Rules.

To review a copy of AB 656, go to <http://www.legis.state.wi.us/2005/data/AB-656.pdf> on the Internet. An amendment to the bill can be found at the following address:

#### **Assembly Amendment 1**

<http://www.legis.state.wi.us/2005/data/AB656-AA1.pdf>

### 2. Representative Mary Williams Introduces Legislation to Prohibit Condemnation of Property Under Certain Circumstances

On September 9, 2005, Representative Mary Williams introduced Assembly Bill 657 to provide condemnation relief to certain blighted property. Her bill prohibits the condemnation of property that is not blighted if the condemnor intends to convey or lease the acquired property to a private entity. It defines "blighted property" and provides that property that includes a dwelling unit is not blighted unless the property has been abandoned or the property has been converted from a single dwelling unit to multiple dwelling units and the crime rate in, on, or adjacent to the property is higher than in the rest of the municipality. The bill also requires a condemnor, before commencing the condemnation of property that the condemnor intends to convey or lease to a private entity, to make a written finding that the property is blighted.

AB657 was recommended for passage by the Committee on Property Rights and Land Management on September 22, 2005 by a vote of 4-2. The bill passed the House on September 27, 2005 by a vote of 88-9. It was read for the first time in the Senate on

September 30, 2005 and referred to the Committee on Natural Resources and Transportation. The bill was later withdrawn from that committee and referred to the Committee on the Judiciary, Corrections and Privacy on October 10, 2005.

To review a copy of AB 657, go to <http://www.legis.state.wi.us/2005/data/AB-657.pdf> on the Internet. Its amendments can be found at the following addresses:

**Assembly Substitute Amendment 1**

<http://www.legis.state.wi.us/2005/data/AB657-ASA1.pdf>

**Assembly Substitute Amendment 2**

<http://www.legis.state.wi.us/2005/data/AB657-ASA2.pdf>

**3. Representative Albers Introduces Legislation to Provide for Compensation for the Reduction in Fair market Value of Private Real Property**

On September 19, 2005 Representative Sheryl Albers introduced Assembly Bill 675. This bill would allow an owner of private real property to seek compensation from the state, or any governmental unit thereof, if the governmental unit enacts or enforces a statute, administrative rule, ordinance, or plan (i.e., land use regulation) that restricts the use of the property and reduces its fair value. The amount of the compensation is equal to the sum of the lost fair market value, the value of any improvements ordered removed, plus the cost of removing those improvements.

AB 675 also provides that an aggrieved property owner is entitled to compensation if the land use regulation continues to be enforced against the property 180 days after the owner sends a written demand for compensation to the governmental unit. Instead of paying the property owner compensation, the government may modify, remove, or not apply the land use regulation to allow the owner to use the property in a manner that was permitted at the time the owner acquired the property. If the land use regulation remains in effect 180 days after a written demand for compensation, the property owner may file suit against the government in the county in which the property is located. Finally, if court-ordered compensation is not paid within two years after the order is entered of if the government has not modified or removed or not applied the land use regulation within two years after the owner has made a written demand for compensation, the owner may use or develop the property in a manner that was permitted at the time the owner acquired the property.

This bill was read for the first time and referred to the Committee on Property Rights and Land Management on September 19, 2005. A fiscal estimate was received on September 23, 2005.

To review a copy of AB 675, go to <http://www.legis.state.wi.us/2005/data/AB-675.pdf> on the Internet.

## **B. Update on Previously Introduced Legislation**

### **1. Assembly Bill 193 Passes - Governor Signs Into Law**

Assembly Bill 193 passed the Senate on September 20, 2005 by a vote of 33-0. On October 13, 2005, Governor Doyle signed AB 193 into law. The new law, Wisconsin Act 46, provides that the project costs of a tax incremental district (TID) in the city of Kenosha may be spent on territory within a one-half mile radius of the boundary of the TID if that TID is a blighted area TID. Generally under current law, but subject to one exception, project costs are required to be expended within the boundaries of a TID. Current law also specifies that for certain TIDs, subject to a number of exceptions, the expenditure period to pay off project costs is limited to five years before the unextended termination date of the TID. This bill applies that same expenditure period, five years before the termination date of the TID, to certain donor TIDs in the city of Kenosha.

### **2. Authorizing the Restoration of a Nonconforming Structure that is Destroyed by Vandalism or Certain Natural Forces – Senate Bill 253**

As noted in the August *Update*, Senate Bill 253, sponsored by Senator Cathy Stepp makes changes to Wisconsin's law protecting the reconstruction of a nonconforming structure.

Under current law, with regard to county zoning of shorelands on navigable waters, restrictions that are contained in shoreland zoning ordinances that would apply to a damaged or destroyed nonconforming structures may not prohibit the restoration of a structure that was (1) damaged or destroyed after October 14, 1997 and (2) damaged or destroyed by violent wind, vandalism, fire, or flood, *if* the structure will be restored to the same size, location, and use it had before the damage or destruction occurred. In addition, the restrictions in the zoning ordinance may not impose limits on the costs of the repair, reconstruction, or improvement of the structure.

SB 253 expands the application of this protection to other zoning ordinances. Under the bill, restrictions contained in general city, village, town, and county zoning ordinances, and city and village zoning of wetlands in shorelands ordinances, may not prohibit the restoration of a nonconforming structure subject to the same provisions and conditions that currently apply to county shoreland zoning on navigable waters. In addition, "other natural occurrences" is added to the ways in which a structure must have been damaged in order to receive protection. Under the bill, however, with regard to the conditions that apply to the restrictions in the zoning ordinances, the structure must have been damaged or destroyed on or after the effective date of the bill.

On September 9, 2005, the Senate Committee on Housing and Financial Institutions recommended the bill for passage with the adoption of Senate Amendment 1, which changes the "or other natural occurrences" language of the bill to "ice, snow, mold or infestation." On September 21, 2005, SB 253 was read for a second time in the Senate. On September 27, 2005 it was read a third time and passed. The Assembly read the bill

for the first time and referred it to the Committee on Natural Resources on October 3, 2005.

To review a copy of SB 253, go to <http://www.legis.state.wi.us/2005/data/SB-253.pdf> on the Internet. Its amendment can be found at the following address:

***Senate Amendment 1***

<http://www.legis.state.wi.us/2005/data/SB253-SA1.pdf>

**3. Joint Resolutions to Prohibit Vetoes – Senate Joint Resolution 33 /  
Assembly Joint Resolution 52**

As discussed in the September *Update*, Senator Sheila Harsdorf and Representative Don Friske have introduced Senate Joint Resolution 33 and Assembly Joint Resolution 52, respectively, which prohibit partial vetoes from creating new sentences. Twelve Republican Senators and thirty-four Republican Representatives have signed onto these Joint Resolutions as co-sponsors. The earliest that the Constitutional amendment proposed in these resolutions could be put on a statewide ballot is April 2007. In order to get this amendment on the April 2007 ballot, it would have to be approved by the current Legislature *and* the 2007 Legislature. A public hearing was held on the Joint Resolutions on September 21, 2005.

**4. Allowing Certain Counties To Create Tax Incremental Financing  
Districts – Assembly Bill 156 / Senate Bill 153**

Companion bills AB 156 (Representative Jeffery Mursau) and SB 153 (Senator Roger Breske), which allow certain counties to create TIF districts, have both been recommended for passage by their respective committees in the House. Both bills are available for floor debate. On September 19, 2005, the Senate referred SB153 to the Joint Committee on Finance.

Link to AB 156 and AA1 to AB 156: <http://www.legis.state.wi.us/2005/data/AB-156.pdf>;  
<http://www.legis.state.wi.us/2005/data/AB156-AA1.pdf> .

Link to SB 153 and SA1 to SB 153: <http://www.legis.state.wi.us/2005/data/SB-153.pdf>;  
<http://www.legis.state.wi.us/2005/data/SB153-SA1.pdf> .

**5. Repealing the Comprehensive Planning Law – AB 645**

As noted in the September *Update*, Representative Mary Williams introduced Assembly Bill 645 on August 30, 2005. The legislation would repeal Wisconsin's comprehensive planning law, commonly known as the "Smart Growth statute," Wis. Stat. § 66.1001. This legislation has been referred to the Assembly Committee on Rural Development, chaired by Representative Williams. A public hearing has not yet been scheduled, but one is likely in mid-October. Fiscal estimates were received on September 7<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 23<sup>rd</sup>.

(Note: There have been no other changes to the status of introduced legislation described in previous issues of the *Update*.)