

## **WAPA LEGISLATIVE UPDATE**

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### **A. New Legislation**

#### **1. Representatives Mursau, Albers, Gunderson, Hines, Kestell, Lothian, Musser and Pettis Introduce Legislation Regarding Outdoor Advertising**

On February 20, 2006, Representatives Lothian, Owens and Shilling introduced AB 1040, legislation that creates an additional exception to the federal Highway Beautification Act's requirement that state law prohibit the erection or maintenance of outdoor advertising signs within 660 feet of (or further away but visible from) an interstate or federally funded primary highway.

AB 1040 allows for signs erected in business areas after March 18, 1972, and before the effective date of the bill if, with respect to the sign, all of the following apply:

1. The sign is located within a stadium, racetrack, or other sporting event arena in a zoned commercial or industrial area.
2. The sign is erected with the purpose of its message being read by spectators in the stadium, racetrack, or other arena.
3. The sign is consistent in size, lighting, and location with customary use in the zoned area as determined by the local zoning authority.
4. Allowing the sign will not result in reduction of federal highway aid to the state.

AB 1040 was read for the first time on February 20, 2006 and referred to the Committee on Transportation. To review a copy of AB 1040, go to <http://www.legis.state.wi.us/2005/data/AB-1040.pdf>

#### **2. Representative Albers Introduces Legislation Exempting Certain Cities and Villages from the Smart Growth Statute**

On February 27, 2006, Representative Albers introduced AB 1061. This legislation exempts from the Smart Growth statute any city or village that does not border a town.

AB 1061 was read for the first time on February 27, 2006 and referred to the Committee on Property Rights and Land Management. A public hearing was also held on February 27, 2006. To review a copy of AB 1061, go to <http://www.legis.state.wi.us/2005/data/AB-1061.pdf>.

AB 1061 has a companion bill in the Senate, SB 607, which was introduced on February 20, 2006 by Senators Lazich, Darling and Reynolds. SB 607 was read for the first time on February 20, 2006 and referred to the Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform. A public hearing was held on

March 1, 2006. The bill was read a second and third time, and passed the Senate on March 7, 2006 with a vote of 18 to 15.

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

### **1. AB 657 – Prohibiting Condemnation of Property Under Certain Circumstances**

Introduced by Representative M Williams, AB 657 prohibits the condemnation of property that is not blighted if the condemnor intends to convey or lease the acquired property to a private entity. The bill defines “blighted property” and provides that property that includes one or more dwelling units 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.

Two amendments were adopted to AB 657. Senate Amendment 1 limits the scope of the prohibition by applying it only to a county, town, village, city, or school district, the Department of Health and Family Services, the Department of Corrections, the Board of Regents of the University of Wisconsin System, other public boards or commissions, a housing authority, a redevelopment authority, a community development authority, a local cultural arts district, or a local exposition district. Senate Amendment 2 amends the second condition for determining whether a property with only one dwelling unit is blighted. The amendment provides that the property will be considered blighted if the crime rate in, on, or adjacent to the property is at least three times the crime rate in the remainder of the municipality in which the property is located.

Senate Amendments 1 and 2 were adopted by the Senate on January 26, 2006 and were concurred in by the Assembly on March 9, 2006. AB 657 was reported correctly enrolled on March 16, 2006.

### **2. AB 760 – Changing Comprehensive Zoning Statute to Authorize Towns to Withdraw from County Zoning**

Introduced by Representatives Albers, Musser, Ainsworth and Hahn on October 17, 2005, AB 760 which makes significant changes to the Comprehensive Zoning Statutes, as outlined in the November Legislative Update. On March 2, 2006, the Assembly Committee on Property Rights and Land Management offered Assembly Substitute Amendment 1 to the bill, and Assembly Amendment 1 to Assembly Substitute Amendment 1. ASA 1 makes significant changes to the bill, including the following:

Under the substitute amendment, the comprehensive planning statute requires a local governmental unit to issue written findings, that include its reasons and its reasoning, that indicate how the actions it undertakes are consistent with its own comprehensive plan. If a circuit court case challenges the validity of a comprehensive plan, including whether an allowable action is consistent with a local governmental unit’s comprehensive plan, the

substitute amendment requires a court to conclude that the plan is valid. The substitute amendment also requires a court to presume that the action is valid if the local governmental unit issues written findings that describe their reasons for its action. And the substitute amendment requires a court to conclude that the action is consistent with the plan unless there is no rational basis for the action in any aspect of any of the elements of the comprehensive plan. In addition, only property owners have standing to file an action.

The substitute amendment also requires a local governmental unit, at the initial stage of the preparation of a comprehensive plan, to invite and consider written comments from property owners on their proposed or contemplated uses for their property over the next ten years. Under the substitute amendment, a county is required, approximately every two years, to repeal an existing county zoning ordinance and reenact a comprehensive revision by a single ordinance. The bill requires the repeal and reenactment to occur within approximately 24 months after the county's comprehensive plan is updated, which current law requires every 10 years. Also under the substitute amendment, a town board that is authorized to exercise village powers may enact an ordinance withdrawing completely, or partially, from coverage of a county zoning ordinance and a county development plan. The withdrawal may occur only during the 24-month period during which a county is required to repeal and reenact a comprehensive zoning ordinance. The ordinance may not take effect unless the town clerk notifies the county clerk of the proposed ordinance and the town enacts, and sends copies to the county clerk, a town zoning ordinance, a comprehensive plan, and an official map. If a town does withdraw from county zoning, however, it is still subject to a county shorelands zoning ordinance. In addition, a town must provide the same level of enforcement of its zoning ordinance that the county formerly provided. County board approval of a town zoning ordinance is not required if the town has withdrawn from county zoning.

Current law requires that the county development plan include the master plan and official map of a city or village in the county, and that a city or village master plan and official map control in the city's or village's extraterritorial zoning jurisdiction over a county development plan that affects that same area. A city's or village's extraterritorial zoning jurisdiction consists of unincorporated areas (town or county territory) within three miles of the corporate limits of a first, second, or third class city or within one and a half miles of a fourth class city or a village. Under the substitute amendment, the development plan includes the master plan and official map of a city or village only up to their incorporated limits, unless the city or village has entered into a cooperative boundary agreement with the adjacent town.

The substitute amendment also requires that the county development plan include the official map of any town in the county that has adopted a comprehensive plan. Also under the substitute amendment, a city's or village's master plan and official map control in the city's or village's extraterritorial zoning jurisdiction only if an official town map is not part of the county development plan.

Current law allows a town to adopt an official map under certain situations if the town is located in a county that has not enacted a county zoning ordinance. This substitute amendment authorizes a town that may exercise village powers to adopt an official map

at any time. Under current law if two or more governing bodies or agencies have the authority to approve or object to a plat and the requirements of the bodies or agencies conflict, the plat must comply with the most restrictive requirement. This substitute amendment qualifies this provision by allowing a county to object to a town plat only if the plat is subject to a county plan or a boundary agreement to which the county is a party.

AB 760 continues to undergo revision in the Committee on Property Rights and Land Management. To review a copy of the bill, go to:  
<http://www.legis.state.wi.us/2005/data/AB-760.pdf>.

### **3. AB 675 – Providing Compensation for the Reduction in Fair Market Value of Private Property**

Introduced on September 19, 2005 by Representative Albers, AB 675 allows an owner of private property to seek compensation from the state or a political subdivision of the state (governmental unit) if the governmental unit enacts or enforces a statute, administrative rule, ordinance, or plan (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 was read for a second time on March 7, 2006. The Assembly adopted Substitute Amendments 1 and 2 to Assembly Amendment 1 on the same date. Substitute Amendment 1 made the most significant changes to the bill, including the following:

The substitute amendment requires that the regulation must be of a type that applies to a parcel of land rather than to the owner of a parcel of land. The substitute amendment allows the governmental unit to request additional information and make offers to settle in the 90 days following receipt of the written demand for compensation or a waiver from regulation. The compensation is due if the applicable land use regulation continues to be enforced against private real property 90 days after the final written demand for compensation or a waiver or, if the governmental unit had no justification to request substantiation of the claim, 90 days after the written demand was submitted.

Under the bill, the governmental unit may withdraw applicability of the regulation to the property. The substitute amendment adds a requirement for the governmental unit to file an approved resolution describing the removal of the land use regulation with the register of deeds. The bill allows the property owner to bring action in circuit court if the land use regulation that restricts the use of the property continues in effect more than 180 days after the property owner has made a written demand for compensation. The substitute amendment clarifies that the owner may bring the action in circuit court if 180 days have passed and the property owner has not received an offer of compensation or has not accepted compensation that was offered or has not received a written offer to waive applicability of the land use regulation. The substitute amendment allows the property owner to use a comparative sales analysis to substantiate the claim for compensation. The bill provides that compensation is not available for land use regulations that restrict

or prohibit nuisances. The substitute amendment deletes this provision and substitutes a provision that requires the governmental unit, if it bases its response to the action brought by the owner on grounds that the regulation is necessary to prevent a public nuisance, and the court finds that the property was not creating a public nuisance, to pay the property owner's reasonable attorneys fees and costs.

Under the bill, compensation is not available if the regulation was enacted before the date that the owner acquired the real property. An exception to this is provided in the bill if the current owner of the real property took title from a family member and the regulation was enacted after the family member took title. The substitute amendment requires the governmental unit, if the exception applies, to file a statement that the land use regulation does not apply with the register of deeds.

AB 675 was read for a third time and passed the Assembly on March 7, 2006. It was messaged to the Senate, read for the first time, and is now before the Committee on Housing and Financial Institutions. To view a copy of AB 675, go to: <http://www.legis.state.wi.us/2005/data/AB-675.pdf>.

#### **4. AB 904 – Changing the Method of Appointing Town Planning Commission Members**

Introduced by Representative Owens, AB 904 requires appointments to a town plan commission be subject to confirmation by the town board. The town board chairperson continues to select the commission chairperson. The bill authorizes a majority of the town board to remove appointees from the town plan commission. All other current law provisions relating to the appointment of citizen members of the commission, terms of the commission members, and authority of the commission remain unchanged and the bill applies only to towns with a population of at least 2,500.

AB 904 was read for a third time and passed the Assembly on March 3, 2006. It was read for the first time in the Senate and had a public hearing on March 6, 2006. The Senate read the bill for a second and third time and concurred in AB 904 on March 9, 2006. It was reported correctly enrolled on March 17, 2006. To view a copy of AB 904, go to <http://www.legis.state.wi.us/2005/data/AB-904.pdf>.

#### **5. SJR 33 – Prohibiting Partial Vetoes from Creating New Sentences**

Introduced by Senator Harsdorf, SJR 33 is a proposed constitutional amendment, proposed to the 2005 legislature on first consideration, and prohibits partial vetoes from creating new sentences by combining parts of 2 or more sentences of the enrolled bill. A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

On March 2, 2006, the Assembly read SJR 33 for a third time. It passed on a vote of 74 to 24. It was messaged back to the Senate on March 3, 2006. It was then placed on the calendar for March 9, 2006. No further information was available, however, after that date. To review a copy of SJR 33, go to: <http://www.legis.state.wi.us/2005/data/SJR-33.pdf>.