WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Assembly Bill 442	Assembly Substitute Amendment 1
Memo published: **February 20, 2004**	*Contact*: **Mark C. Patronsky, Senior Staff Attorney (266-9280)**

Current law has a number of provisions regarding zoning boards of appeals and adjustment, including the designated functions of these boards, membership and appointing authorities, authorization for alternate members, and the number of members required to take action.

Assembly Bill 442 modifies the current statute which authorizes the appointment of two alternate members to the board of appeals or adjustment, so as to make the appointment of two alternate members mandatory for these boards. The bill requires a quorum equal to the number of all members of the board (i.e., if one or two members are absent, the alternates must be present). The bill changes the voting requirements for the city, village, or town board of appeals to require a majority vote, and retains the majority voting requirement for the county board of adjustment.

Assembly Substitute Amendment 1 modifies the quorum and voting requirements of the bill. Under the substitute amendment for both the board of adjustment and board of appeals, a simple majority of board members is required for a quorum, and the board may take action by a majority vote of members present.

Legislative History

On November 19, 2003, the Assembly Committee on Property Rights and Land Management offered Assembly Substitute Amendment 1. On December 5, 2003, the Assembly Committee on Property Rights and Land Management recommended adoption of Assembly Substitute Amendment 1 by a vote of Ayes, 5; Noes, 2.

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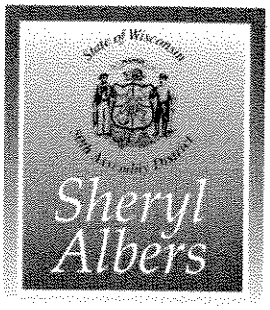

2003 Assembly Bill 442 – Quorum Requirements for Zoning Boards of Appeals or Adjustment

Testimony of State Representative Sheryl K. Albers before the Senate Committee on Homeland Security, Veterans and Military Affairs, and Government Reform

March 3, 2004

Thank you Sen. Brown for the opportunity to appear before your community to discuss an unfortunate – and I believe unintended – consequence of state law. It's one that I hope to fix with this bill.

A constituent of mine recently went before a county Board of Adjustment to appeal a ruling on a zoning matter. Two members of the committee voted for her; one voted against. Common logic would dictate that she wins her appeal, right?

In this case however, she didn't. The board argued that a majority was required of all members of the committee. There are five members on the board. Two of them didn't show up for the meeting. The board argued that their absentee votes are automatically "no" votes, regardless of how those particular members might actually feel. In other words, she would have needed a vote from one of the two people who didn't bother to show up.

Many of us are full-time legislators. The salaries we are paid allow us the luxury, if we choose, to focus 100% of our efforts on representing our constituents. However, we understand that this something not afforded to most local government officials. Many of these men and women devote countless hours and work tirelessly in exchange for very little compensation. They do it because they love their communities and want to give something back – in addition to their everyday jobs. But they've also got families and other commitments that need their attention as well.

That's why in instances like this, state law provides for the use of alternates. It clearly dictates the process for appointing alternates and indicates how they are to be used. In this

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case, the use of two alternates may have given my constituent the "extra" vote she needed to win her appeal.

There's a catch. State law dictates how and when the alternates are to be used – but it doesn't actually dictate that they have to be used. The county board or the mayor "may" appoint alternates. If they choose to do so, there's a whole list of requirements that must be followed. But they don't have to – and unfortunately, these are the little things that go unnoticed until they cause real harm to a person.

In some instances, decisions can be delayed until all five members can be present. In many instances, especially with time-sensitive matters, decisions cannot be put off until the next meeting. Common sense would dictate that the board instructs those who come before it of the alternatives that are available to them. This would allow individuals and groups the opportunity to make an informed decision that is best for them. They can wait for a time when all of the standing members of the committee are available, or they can move ahead and alternates can replace those standing members who cannot be present.

This bill makes that small change. It changes "may appoint" to "shall appoint." Our constituents deserve to have their appeals heard and voted on by a full panel in a timely and considerate manner.

The amended bill also makes an additional change, allowing for boards of appeals or adjustment to take action with a majority vote of all members present, provided that a quorum has been established. In my constituent's case, that means winning an appeal on a 2-1 vote of a five member committee. Most individuals would expect a majority vote of those present to prevail – not a majority vote including members who are absent, or in the case of some municipalities, a 4/5ths majority.

It is my hope that these changes will allow fair decisions to be made in a manner that is more easily interpreted by our constituents.

Thank you for the opportunity to testify. I would be happy to take questions on this bill at this time.

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Assembly Bill 442

quorum requirements for a zoning board of appeals or adjustment.

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