ADAM JARCHOW
STATE REPRESENTATIVE • 28TH ASSEMBLY DISTRICT

Testimony on AB 582/SB 464 – Statewide Uniformity
Assembly Committee on Housing and Real Estate
Public Hearing: Thursday, January 7, 2016 – 10:01 a.m.
State Capitol – 412 East

One of this country's founding fathers, Thomas Jefferson said, ***"The right to procure property and to use it for one's own enjoyment is essential to the freedom of every person, and our other rights would mean little without these rights of property ownership. It is also for these reasons that the government's power to tax property is placed in those representatives most frequently and directly responsible to the people, since it is the people themselves who must pay those taxes out of their holdings of property."***

I believe in that statement and what it means. This country has been built on the freedom to own and protect one's own property. This country has been built on being able to rise up from nothing, work hard, and being able to leave something great to future generations. A person's property is likely one of the biggest investments someone can make. People do not buy property so that the government could tell them what to do with it.

Creating an environment where people want to live and raise a family is good for this state. Creating an environment where entrepreneurs see value in starting a business here is essential to the viability of this state. This bill is not just about property rights, but about jobs and the economy. The economy, certainly in Northwestern Wisconsin, is fragile. Bringing more certainty to regulations and government overreach can mean more certainty in the business climate and the economy North of Highway 29 and all across our great state.

Some of you have probably received phone calls and emails from town, county, city and village board members expressing concerns about this bill. I can't tell you how much we appreciate the hard work they do and their input. As a result of their input, we were able to work constructively with Wisconsin Towns Association, Wisconsin Counties Association, and the League of Wisconsin Municipalities. The sub you have in front of you represents weeks of very good dialogue and work. As a result of that dialogue, all three groups have officially changed their positions to neutral. We still have a bit of technical clean-up work to do, but you are looking at a bill that represents the best parts of our system. This sub represents a number of groups representing hundreds of thousands of citizens with dramatically differing points of view, getting together and working collaboratively to find common ground.

Capitol Office: Post Office Box 8952 • Madison, WI 53708-8952 • (608) 267-2365 • Toll-Free: (888) 529-0028 • Fax: (608) 282-3628
Rep.Jarchow@legis.wi.gov

Some of the provisions in the sub do the following:

Requires that a municipality notify a property owner of any zoning changes being made to their property that would change the density or change the allowable use of the property. If there are zoning changes to someone's property, the property owner should at least be notified before that happens. This provision gives property owners the peace of mind that they will know when these things are happening beforehand. It has been reworked in a manner that is palatable to the municipal groups.

This bill also gives property owners the certainty of knowing that in a contested court case, if a local ordinance is unclear and challenged in court, the ruling shall favor property owner. This means, "a tie goes to the property owner." If a local ordinance is unclear, then the property owner deserves free use of their private property.

If a property owner's property is "down-zoned" by local ordinance, then a 2/3 majority of the municipal board is required. This means that a vote on down zoning a property cannot be passed without a large majority of voting members. This is a place, again where we made changes at the request of municipal groups to make it work better.

This bill states that cities, villages, towns, and counties cannot restrict property owners from transferring or selling ownership or interest in their property. Part of being a property owner means that you are able to sell or transfer that property to someone else without the government telling you no. Property rights includes the right to sell said property, not just owning it or maintaining it. This codifies current case law.

If land that is platted and zoned as residential, commercial, or manufacturing with no improvements, this bill clarifies that that land is assessed at it unimproved value until a building permit is issued. Until there is a permit, that land is just that – land. While it is in the stage prior to building a structure, the property owner should have the right to pay taxes based on its unimproved value, not based on something that may be built there in the future. We have worked with assessors and municipal groups to improve this provision. There are likely some additional tweaks necessary to perfect this provision.

In the most recent budget, restrictions were created in regards to time of sale requirements. Restrictions were still imposed on buyers in the form of "time of occupancy" restrictions. This defeats the purpose of the statute put in place in the budget. No person who purchases a property should have to make changes to that property just because the property changed hands. This bill closes that loophole in favor of the property owner.

Finally, this bill allows for the substitution of a hearing examiner when a contested case hearing is granted. Criminal defendants and civil litigants currently have the right to a free substitution of a judge and so should property owners. Shouldn't property owners be treated at least as well as criminal defendants?

Putting the relationship between the government and property owners in balance is important. It is only right to restore the rights of property owners that have been wrongly taken away over the years. Allowing the current climate to continue will only allow the government to continue to infringe on property rights.

Philosopher John Locke said, **"The reason why men enter into society is the preservation of their property."** Here in Wisconsin, in 2016, over 300 years after John Locke said that, hardworking taxpayers are fighting for their property rights. This bill seeks to give those rights back to the people that worked so hard for that property while still protecting the environment and others access to property.

I want to thank all of the groups, including the Wisconsin Realtors Association, Wisconsin Builders Association, Wisconsin Towns Association, Wisconsin Counties Association, League of Wisconsin Municipalities, and others who have worked so hard to get this sub to the place that it is today.

I will be happy to take your questions.

Wisconsin REALTORS® Association

To: Assembly Housing and Real Estate Committee Members

From: Tom Larson, Senior Vice President of Legal and Public Affairs

Date: January 7, 2016

RE: Private Property Rights – AB 582/SB 464

The Wisconsin REALTORS® Association supports AB 582/SB 464, legislation aimed at strengthening private property rights by, among other things, codifying current case law, clarifying the intent of current statutes, and enhancing the due process protections for property owners who seek to use and enjoy their property in a reasonable manner.

Background

The private ownership of property is a fundamental right upon which the United States was founded. The right to use property is among the basic elements of property ownership known as "the bundle of rights," which includes the right to possess, control and dispose of the property. While state and local governments have broad authority to restrict these rights, this authority is not unlimited. State and local regulations must be fair and reasonable, and they must be enacted in accordance with due process requirements such as fair notice and public hearings. Moreover, even if created with the best intentions, regulations affecting the use of property, at some point, can go "too far."

Moreover, regulatory certainty and predictability are critical components of successful real estate markets. When regulatory uncertainty exists, real estate markets and prices become unstable. Property owners want to know how a property can be used prior to purchasing it because the allowable uses of a property will in large part determine the property's value.

Proposed Legislation

To establish a better balance between local control and private property rights. AB 582/SB 464 contains the following provisions:

1. Ambiguities in local ordinances – Property owners should be able to determine the meaning of a regulation and how it impacts the use of their property. As recognized by current case law, local regulations must be clear and specific so that inconsistent and unfair applications of those regulations do not occur. AB 582/SB 464 codifies this current case law by providing that any ambiguities in local ordinances should be resolved in favor of a property owner's free use of property. *See* Cohen v. Dane County Bd. of Adjustment, 74 Wis. 2d 87, 91 (1976). In other words, if there is confusion about how a local regulation affects the use of property, the tie goes to the property owner.

2. Right to alienate any interest in property -- As recognized by Wisconsin courts, property owners have a fundamental right to freely dispose of or alienate property, which includes the

right to sell, lease or give it away. *See* Le Febvre v. Ostendorf, 87 Wis. 2d 525, 531-32 (Ct. App. 1979). While local governments have the right to regulate how a property can be used, they should not be able to regulate how a property is owned. If all 1,800 local units of government in Wisconsin had different requirements for how property could be owned, real estate transfers would be horribly confusing. Accordingly, AB 582/SB 464 codifies current case law by prohibiting local governments from restricting the ability of property owners to freely alienate any interest in property.

3. Direct notice for zoning changes – Current law requires local governments to provide direct notice to property owners of any proposed change to zoning regulations that would change the allowable use or density of a property. However, to receive this notice, the property owner must first notify the community that they want to receive notice and agree to pay for any costs associated with sending that notice. To better inform property owners about their right to receive direct notice of proposed zoning regulations, AB 582/SB 464 requires local governments to publish information annually in a class 1 notice, community website, community newsletter, or general mailing to all property owners about a property owner's ability to receive direct upon request to a local community.

4. Supermajority vote to downzone property – When a community engages in "downzoning" of property, the allowable development density of the property is reduced (e.g., from 4 dwelling units per lot to 2 dwelling units per lot) and the property's value generally decreases. Despite this decrease in value, the property owner rarely receives just compensation. To better protect the rights of property owners to use property in the manner in which was allowed at the time of purchase, AB 582/SB 464 requires a supermajority vote (2/3) by local units of government to downzone a property.

5. Development moratoria for counties – Because a moratorium on land development (rezonings, subdivisions, and land divisions) completely shuts down development for a specified period of time, it can have a devastating impact on the growth of jobs, tax base, and economic growth in general. Accordingly, legislation was enacted a few years ago (2011 Wis. Act 144) to authorize cities, villages and towns to enact development moratoria only under certain limited circumstances. This authority was not extended to counties because of the large geographic region that could be impacted, and the fact that cities, villages and towns within the county were able to enact moratoria if necessary. Accordingly, AB 582/SB 464 clarifies current law by specifying that counties cannot enact development moratoria.

The WRA respectfully requests your support for AB 582/SB 464. If you have questions or need additional information, please contact us at (608) 241-2047.

State of Wisconsin

2011 Senate Bill 504

Date of enactment: **March 21, 2012**
Date of publication*: **April 4, 2012**

2011 WISCONSIN ACT 144

AN ACT *to create* 66.1002 of the statutes; **relating to:** limiting the authority of a city, village, or town to enact a development moratorium ordinance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.1002 of the statutes is created to read:

66.1002 Development moratoria. (1) DEFINITIONS. In this section:

(a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(b) "Development moratorium" means a moratorium on rezoning or approving any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance if the municipality has enacted a comprehensive plan, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period in which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

(b) The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity specified under sub. (4), except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health professional stating that in his or her opinion the proposed or anticipated activity specified under sub. (4) presents such a significant threat to the public health or safety that the need for a moratorium is justified.

(3) ORDINANCE REQUIREMENTS. (a) An ordinance enacted under this section shall contain at least all of the following elements:

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* Section 991.11, WISCONSIN STATUTES 2009–10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. A statement describing the problem giving rise to the need for the moratorium.

2. A statement of the specific action that the municipality intends to take to alleviate the need for the moratorium.

3. Subject to par. (b), the length of time during which the moratorium is to be in effect.

4. A statement describing how and why the governing body decided on the length of time described in subd. 3.

5. A description of the area in which the ordinance applies.

6. An exemption for any activity specified under sub. (4) that would have no impact, or slight impact, on the problem giving rise to the need for the moratorium.

(b) 1. A development moratorium ordinance may be in effect only for a length of time that is long enough for a municipality to address the problem giving rise to the need for the moratorium but, except as provided in subd. 2., the ordinance may not remain in effect for more than 12 months.

2. A municipality may amend the ordinance one time to extend the moratorium for not more than 6 months if the municipality's governing body determines that such an extension is necessary to address the problem giving rise to the need for the moratorium.

(c) A municipality may not enact a development moratorium ordinance unless it holds at least one public hearing at which the proposed ordinance is discussed. The public hearing must be preceded by a class 1 notice under ch. 985, the notice to be at least 30 days before the hearing. The municipality may also provide notice of the hearing by any other appropriate means. The class 1 notice shall contain at least all of the following:

1. The time, date, and place of the hearing.

2. A summary of the proposed development moratorium ordinance, including the location where the ordinance would apply, the length of time the ordinance would be in effect, and a statement describing the problem giving rise to the need for the moratorium.

3. The name and contact information of a municipal official who may be contacted to obtain additional information about the proposed ordinance.

4. Information relating to how, where, and when a copy of the proposed ordinance may be inspected or obtained before the hearing.

(4) APPLICABILITY. A development moratorium ordinance enacted under this section applies to any of the following that is submitted to the municipality on or after the effective date of the ordinance:

(a) A request for rezoning.

(c) A plat or certified survey map.

(d) A subdivision plat or other land division.

SECTION 2. Initial applicability.

(1) This act first applies to any request for rezoning, plat or certified survey map, or subdivision plat or other land division that is submitted to a municipality on the effective date of this subsection, unless the municipality and a developer agree to apply the municipality's development moratorium ordinance retroactively.

Wisconsin Farmers Union
UNITED TO GROW FAMILY AGRICULTURE

TO: Members of the Assembly Committee on Housing and Real Estate
DATE: January 7, 2016
RE: Assembly Bill 582
FROM: Kara O'Connor, Wisconsin Farmers Union,
koconnor@wisconsinfarmersunion.com; 608-514-4541

Wisconsin Farmers Union appreciates the opportunity to testify today on Assembly Bill 582.

On behalf of the farm families that make up our organization, I am testifying in opposition to Sections 24 and 25 of the Substitute Amendment, which provide a discounted tax rate for developers converting farmland to residential, commercial, or manufacturing uses. This "Developer's Discount" will create an incentive to convert agricultural land to other uses by creating a lower-tax category for the period after agricultural use has ended, but before the alternate use actually commences. Under the terms of the Substitute Amendment, there is no limit on the length of time that this reduced tax rate would apply.

As a farm organization, our chief concern with this provision is that it will negatively impact farmland preservation. From 1992 to 2010, Wisconsin lost a total of 396,583 acres of farmland to urban development. Agriculture is an $88 Billion industry in Wisconsin, but stated quite simply, without farmland, there is no agriculture. The sheer size of agriculture's economic impact in the state is amplified by the fact that the agricultural sector is often counter-cyclical, offsetting the booms and busts in other sectors such as manufacturing and real estate. Our state benefits from agriculture's leveling effect on the economy.

As an organization representing rural residents, Wisconsin Farmers Union is also concerned that the reduction in property taxes paid by developers will be shifted to other taxpayers. For a given municipality, especially in rural areas, the loss of tax revenues as a result of this tax change could be significant. The budgets for rural roads and schools are already at a breaking point; giving a year or more of property tax discounts to real estate developers will place local governments in the difficult position of deferring local road maintenance even further, or imposing a commensurate property tax increase on residential ratepayers.

I do want to acknowledge that the Substitute Amendment restores the conversion fee for converting ag land to other uses, which applies after ag land has been converted to another use. But on behalf of the farmers that make up our organization, we would urge that the state would be better served by proactively preserving the farmland acres we have left.

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WISCONSIN BUILDERS ASSOCIATION

660 John Nolen Drive, Suite 320
Madison, Wisconsin 53713-1469

DATE: **January 7, 2016**

TO: **Members of the Assembly Committee on Housing and Real Estate**

FROM: **Brad Boycks**
Executive Director
Wisconsin Builders Association

SUBJECT: Wisconsin Builders Association Support for **Assembly Substitute Amendment 1 (ASA 1) to Assembly Bill 582 (AB 582)** relating to government actions affecting rights to real property, the regulation of shoreland zoning, the substitution of hearing examiners in contested cases, and the property tax treatment of unoccupied property

On behalf of the 4,500 members of the Wisconsin Builders Association (WBA), we ask for your support of **ASA 1 to AB 582** authored by Representative Adam Jarchow and Senator Frank Lasee to address a number of important property rights issues and to provide greater statewide uniformity to the development and taxation of property in Wisconsin.

WBA members have been working on a number of issues contained in ASA 1 to AB 582 during this and previous sessions, and we are hopeful that this bill can advance and be passed by this committee and the full state assembly before the end of this legislative session.

The highlights of ASA 1 to AB 582 for the WBA are:

1. **Clarification that counties are not authorized to enact county-wide development moratoria.**
2. **"Tie goes to the property owner"** – Codifies current case law by stating that if a local ordinance is challenged in court, and the ordinance is unclear, the ruling shall favor the property owner's free use of private property.
3. **If a professional land surveyor, in measuring a setback from an OHWM of a navigable water, relies on a map, plat, or survey that incorporates or approximates the OHWM, the setback measured is the setback with respect to a structure constructed on that property. This provision only applies if the map, plat, or survey relied upon is prepared by a professional land surveyor and DNR has not identified the OHWM on its internet site at the time the setback is measured.**
4. **Clarification that land that is platted and zoned for residential, commercial, or manufacturing use is assessed at its unimproved value until a building permit is issued.**

Point number four above is something that has been discussed for a number of years in various forms by WBA members. The provision would create a new "tier" of taxation for land that was in agriculture use value for at least two consecutive years but is not yet fully developed.

ASA 1 to AB 582 will add land that that is platted and zoned for residential, commercial, or manufacturing use until such time that a permit is issued for constructing a building or other structure on the land. This land will be assessed at its unimproved value and would still be subject to a conversion charge when changing from "agriculture" to "undeveloped land". Only land that "was in agricultural use for 2 consecutive years immediately prior to being converted to residential, commercial, or manufacturing use" falls into this category. Finally, all "undeveloped land" would then be taxed at "50 percent of its full value" because homes under construction that do not yet have families living in them do not require the same municipal services as when the home is completed and occupied.

We look forward to the testimony and debate on ASA 1 to AB 582 and look forward to working with committee members.

We ask for your support of this important piece of legislation.

Phone: 608-242-5151 | Fax: 608-242-5150 | **www.wisbuild.org**

Rhonda Carrell

From: "Rhonda Carrell" <dandrcarrell@solarus.biz>
Date: Thursday, January 7, 2016 12:39 AM
To: "Rhonda Carrell" <dandrcarrell@solarus.biz>
Subject: Rm 412E - AB582/SB464 9:45 am Housing and Real Estate

Hi, my name is Rhonda Carrell. I'm a member of a fourth generation farming family, a business owner and a lot of other things (Stream flow monitor, Citizen Water Advisory

Committee, HSUS Ag Council For State of Wisconsin, a Founder of Protect Wood County and Its Neighbors, Member of Sustain Rural Wisconsin Network, etc.). Both, the

family farm and my business require clean pure water. I cannot express enough gratitude for hearing the people of Saratoga. Thank you for the work that has been done on the

amendments. We strongly believe that the bill should not include vested rights authority on non-contiguous parcels, should not be retroactive and should not favor large entities like

the Wysocki Family of Companies over the interests of the residents of Saratoga or the citizens of Wisconsin. It should absolutely not remove local decision-making and local

control over these issues. **Thank you.**

For those who weren't in attendance at Tuesday's Senate hearing on this bill, I want to reiterate the reasons this issue matters so much to the residents and businesses in the town

of Saratoga. Eight people from Saratoga and Rome testified (with several others in attendance) and written testimony was provided from at least two others,

including one Town supervisor and a member of the Town's Planning Commission at Tuesday's Senate hearing. Their testimony underscores the importance of this

bill to Saratoga and the surrounding area.

On June 6, 2012 (43 months ago) the Wysocki Companies blindsided our community of 5,200 residents by announcing on TV, in newspapers:

*They had already submitted applications for permit to the DNR even though Saratoga had implemented a Comprehensive Plan in 2007 (to protect our susceptible groundwater because sandy permeable soils) and Zoning Ordinance was nearly completed.

*they were siting a (Concentrated Animal Feeding Operation) 6,130 animal unit (5,300 cow) dairy on 12 square miles of Saratoga (1/4 of our Town)

*deforesting thousands of acres for crop growth.

*49 high capacity wells (now reduced to 33)

*YEARLY this operation would be producing 25,000 tons of solid manure and 55,000,000 gallons of liquids that would be shot out of center pivot irrigation systems all around our homes and businesses – 500 homes within 1/4 mile of proposed fields.

*This company aerially sprays pesticides. herbicides, etc.

Saratoga:

*5,200 residents (Saratoga has 2nd highest population density for Towns in Wood County)

*Shallow wells and sand points supply all residents and businesses with their drinking water.

*Communitywide water testing proved Saratoga has pristine water

*10 Monitoring wells installed collecting data on water quality and quantity

* Residential

*Recreational

*Wooded (4,660 acres which would be clear cut)

*Beautiful Class A trout streams

*30,000,000 organic cranberry growing operation that could easily be ruined

*Sportsman's paradise

* Many small businesses, churches/schools and camps

*Wonderful quality of life

We have been living our dream until Wysocki companies announced their plans for the takeover of our community and started seeking vested rights. We have already lost

between $70,000- $100,000 on our home JUST AT THE ANNOUNCEMENT OF A CAFO SITING IN Saratoga, based on what our neighbors have been able to sell their

homes for. It's very concerning because I hear residents saying they will let their homes go back to the bank if they cannot sell if the Wysocki Companies moves in.

The reasons we are concerned about this situation:

*Our sandy soil simply cannot protect the groundwater from contamination. It's simply the wrong place to site a CAFO, regardless of what Livestock Siting Law says. Livestock operations and irrigated farming are listed ad not suitable for this area because of the shallow sandy soils.

*Some parcels in Saratoga are contiguous others are miles apart. A driveway and an agreement to purchase should not vest a corporations rights to thousands of acres.

*Just across the Wisconsin River, the Wysocki Companies own the Central Sands Dairy

*Proposed Golden Sands Dairy would be a mirror image of CSD

* Same sandy, permeable soils as Saratoga

*USGS maps show Saratoga's permeable, sandy soils make our groundwater highly susceptible to contamination. The WORST place for large scale row crop farming and livestock operations.

*According to CSD's own water testing, a monitoring well recently tested at 77mg/l. The EPA/state standard for health 10mg/l.

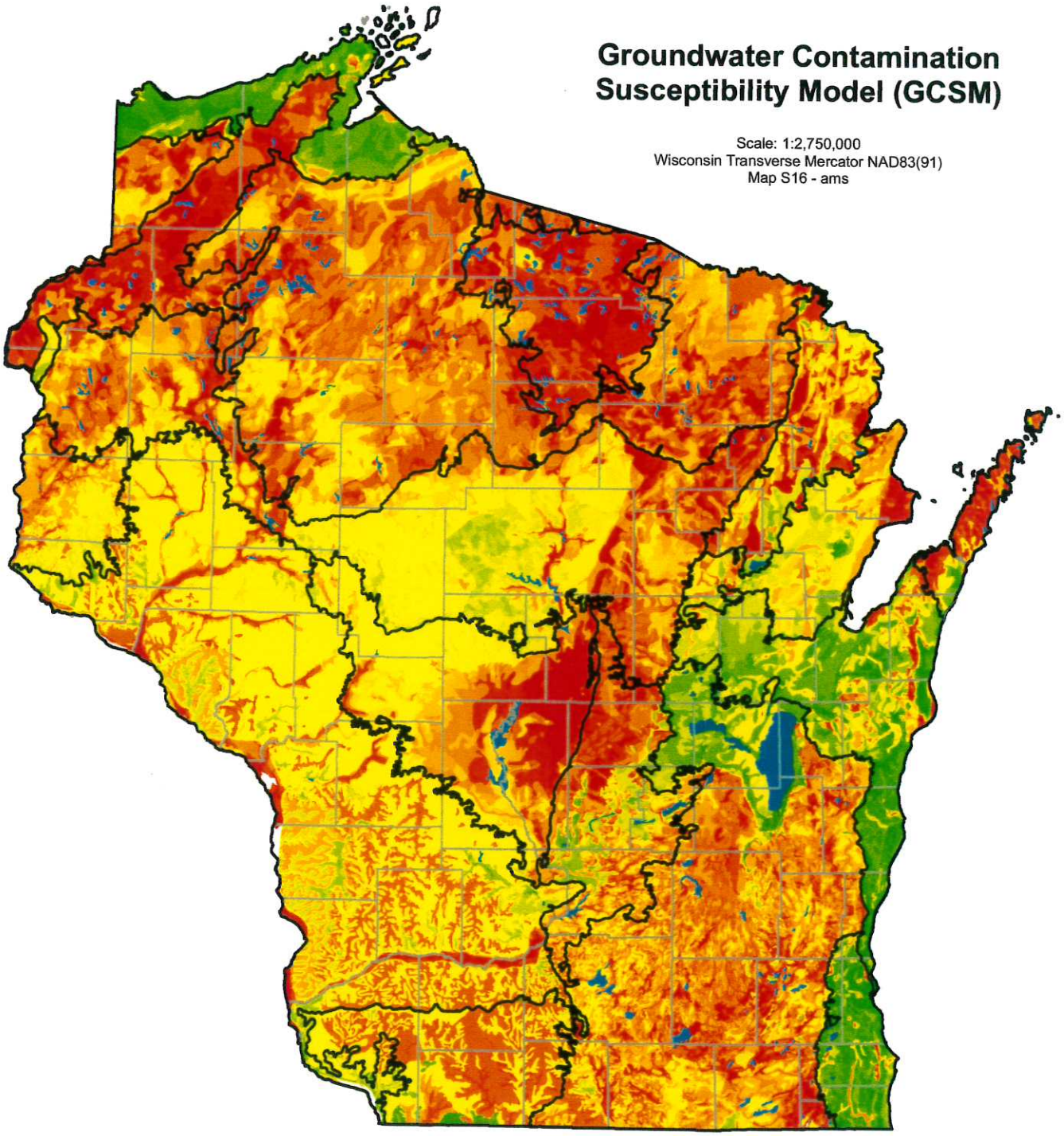
*Residents living around CSD driven from their homes – manure irrigation/air quality and water quality & quantity.

Thank you for your time and I respectfully request the amendments stay with this Bill.

Rhonda Carrell
2320 Evergreen Ave.
Wisconsin Rapids, WI 54494
715-325-2467

Groundwater Contamination Susceptibility Model (GCSM)

Scale: 1:2,750,000
Wisconsin Transverse Mercator NAD83(91)
Map S16 - ams



The Groundwater Contamination Susceptibility Model (GCSM) for Wisconsin estimates the susceptibility of the state's groundwater to contamination from surface activities. The GCSM was developed by the DNR, the US Geological Survey (USGS), the Wisconsin Geological & Natural History Survey (WGNHS), and the University of Wisconsin – Madison in the mid-1980s. The results of the GCSM are illustrated in a map published in 1987 at a scale of 1:1,000,000 (available from the Wisconsin Geological & Natural History Survey: http://www.uwex.edu/wgnhs/maps.htm).

GCSM Value

Low susceptibility

High susceptibility

Ecological Landscape

County Boundaries

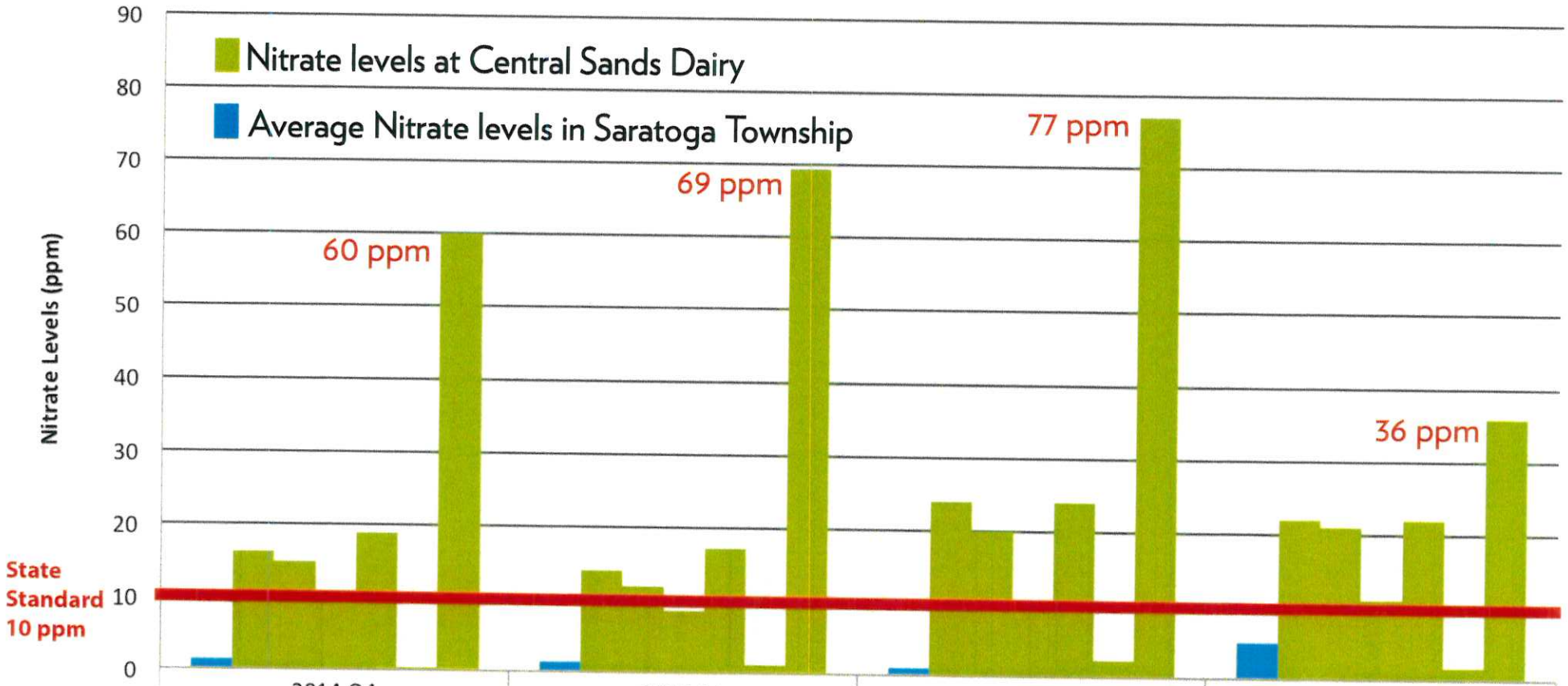
Open water - not susceptible

0 12.5 25 50 75 100 Miles

0 20 40 80 120 160 Kilometers

N W E S

Nitrate Levels at Central Sands Dairy Far Exceed State Standard



	2014 Q4	2015 Q1	2015 Q2	2015 Q3
STGA	1.28	1.37	1.06	5
CSD-1S	16.1	14	24	22
CSD-1D	14.9	11.9	20	21
CSD-2	10.8	8.5	9.6	11
CSD-3S	18.8	17.2	24	22
CSD-D3	0.3	1.25	2.3	1.7
CSD-4	60	69.3	77	36

SB464/AB582

Facts to Consider; Impact to the Town of Saratoga and other municipalities

January 5, 2016

INTRODUCTION: SB464/AB582 include a provision that would retroactively apply an expanded concept of vested rights and in so doing limit a local government's ability to protect the property rights and health of its residents. These bills put at risk property values, groundwater quality and the health and well-being of more than 5000 residents in the Town of Saratoga and can have far-reaching negative impacts for municipalities across Wisconsin.

- In 2012 The Wysocki Family of Companies proposed siting a 5300-cow dairy facility in the Town of Saratoga. As proposed, Golden Sands Dairy would encompass almost 6000 acres in the Town, some 4660 of which is managed pine forest that would be clear-cut for vegetable production.

- If the proposed vested rights language passes, the original Wysocki building permit for six buildings on 98 acres could apply to thousands of additional acres in the Town.

- The Town of Saratoga's 2007 Comprehensive plan and subsequent zoning was designed to address legitimate concerns about land use and groundwater. Its purpose is to protect the health and property values of its 5385 residents. SB464/AB582 is an attempt by the Wysocki Family of Companies to legislatively override the Town of Saratoga's zoning ordinances.

- The Town's zoning was designed to protect the area's fragile aquifer and sandy soils and was initiated in its 2007 Comprehensive Plan long before Golden Sands Dairy was proposed.

- The Town of Saratoga, as designated by the U.S. Geological Survey, is 'highly susceptible to groundwater contamination,' and more than 5000 residents depend on the quality of that groundwater. The zoning was intended to protect public health and the property rights of those residents.

- The Wysocki proposal includes application of 55 million gallons of liquid manure and 25,000 tons of solid manure annually on the 4660 acres for vegetable production.

- Manure application to that extent on those 4660 acres will compromise the soil and the groundwater and threaten more than 500 residential wells in close proximity to those fields as well as the health of nearby organic cranberry bogs. Those cranberry bogs generate more than $15 million in revenue for the area each year.

- In recent months, monitoring wells at Wysocki's Central Sands Dairy, which is sited on similar soil and located just across the Wisconsin river from Saratoga, have demonstrated nitrate levels as high as 77 parts per million (ppm), or nearly eight times the drinking water standard of 10 ppm.

About the Town of Saratoga

A township in Wood County, Wisconsin, Saratoga is home to 5385 residents. It is situated in the southeast corner of the county, bordering Juneau and Adams counties and includes Ten Mile Creek, Ross Lake, a portion of Nepco Lake and Five Mile Creek. Its predominate land uses are woodlands owned by private landholders, residential subdivisions, limited agriculture (cranberry bogs), commercial developments along highways 13 & 73 and open spaces. The Town is listed on the US Geological Survey map as an area highly susceptible to groundwater contamination. The main aquifer consists of glacial sands and gravels resting approximately 20 feet below the land surface.

WMC

WISCONSIN MANUFACTURERS & COMMERCE

To: Assembly Committee on Housing and Real Estate
From: Lucas Vebber, Director of Environmental and Energy Policy – WMC
Date: January 7, 2016
RE: Testimony in Favor of Assembly Bill 582

Chairman Jagler and Committee Members:

Thank you for the opportunity to testify today. My name is Lucas Vebber and I am the Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). WMC is the state's chamber of commerce and manufacturers' association. We have almost 4,000 members of all sizes and across all sectors of the state's economy. One in four private sector employees in Wisconsin works for a WMC member company. WMC is dedicated to making Wisconsin the most competitive state in the nation. I am here today to testify in favor of Assembly Bill (AB) 582.

AB 582 along with AB 600, which is not before this committee, have been collectively referred to as the "Property Rights Package." These bills make a number of important changes that will positively impact our state's business climate by clarifying the law and empowering private property owners.

Legal challenges and an ever-changing regulatory environment have discouraged development and investment throughout our state. Private property owners have faced constant regulatory and legal uncertainty which have been a significant hindrance to economic growth.

AB 582 as originally drafted made several changes to clarify state and local authority, provide greater legal certainty, and empower private property owners looking to invest in and improve their lands. The substitute amendment represents a compromise amongst many of the stakeholders, and still provides some significant and meaningful reforms, including:

- Clarifies local authority and makes it easier to buy and sell property by limiting local government's ability to restrict or condition land transfers between private parties
- Prohibits a county from enacting a development moratorium
- Makes it easier for property owners to register with local governments to receive notices of potential zoning changes, and clarifies the types of changes for which notice can be requested to include size or density requirements
- Ensures that approvals from state agencies for projects are decided based on law and regulations in place when the application is submitted
- Requires a supermajority vote (2/3) to "down-zone" a parcel of land
- Codifies current case law that ambiguities in zoning law are to be resolved in favor of the free use of the property
- Allows for the substitution of a hearing examiner in contested case hearings

WMC asks that you support these important reforms. Thank you for your time today. I would be happy to answer any questions from committee members.

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Assembly
PUBLIC HEARING
Committee on Housing and Real Estate

Thursday, January 7, 2016
10:01 AM
412 East
Assembly Bill 582

Mr. Chairman; members of the committee, my name is Joel Haubrich and I am here on behalf of WEC Energy Group's two Wisconsin utilities, We Energies and Wisconsin Public Service. We support AB 582 because Section 10 will help reduce utility project delays and costs.

Compliance with a variety of Natural Resource regulations is a substantial part of routine utility construction, maintenance operations. Applicable environmental regulations include requirements related to wetlands, waterways, shoreland zoning, stormwater/erosion control, and endangered resources reviews. Therefore, for each individual project, several individual permits may be required, both from DNR, and, in the case of shoreland zoning, from counties and/or other local units of government.

This creates a substantial challenge for project planning and implementation, and can create delays in project schedules and cost increases. In the case of shoreland zoning, inconsistency across permitting authorities, and sometimes permit duplication complicate routine construction and permitting activities. A single, consistent means of

obtaining regulatory approvals is needed in order to simplify and expedite routine work and improve services to our residential and business customers.

The utility industry has worked over the years to create to the greatest extent possible, a single utility permitting approach. In 2003, utilities worked with Governor Doyle to create the utility siting process where we coordinate DNR and PSC permitting for large projects into a single contested case proceeding. In 2011, the DNR created a utility-specific general permit which further streamlined our permitting process. With SB 464, we can take another step to a streamlined permitting process.

Since the DNR ceded shoreland zoning ordinances to the counties, we've seen a wide variety of regulation from one county to the next creating a patchwork of regulation and making it difficult for project scoping and for proceeding with efficient and timely project implementation. In addition, county shoreland zoning generally adds no incremental environmental benefit beyond existing state and federal environmental requirements, and local permits or approvals for utility work are often duplicative of DNR permits.

Section 10 in AB 582 would exclude utilities from local shoreland zoning when performing routine maintenance and construction activities and would instead require us to follow already existing state and federal environmental standards. Simply put, if utilities have obtained a permit from the DNR or is using DNR mandated policies and procedures we would receive an exclusion from local shoreland zoning.

We hope you will support AB 582 and aid us in reducing project delays and costs for utility customers.

MICHAEL BEST STRATEGIES

MEMORANDUM

TO: Assembly Committee on Housing and Real Estate
Hon. John Jagler, Chairman

FROM: Robert J. Marchant

DATE: January 7, 2016

SUBJECT: Support for AB-582

Thank you for the opportunity to submit this written testimony in support of AB-582. I represent Wysocki Produce Company. Wysocki Produce Company is one of the largest potato and vegetable growers in Wisconsin and prides itself on being a modern, progressive farming operation, a good steward of the state's natural resources, and a growing employer in the central region of the state. I am submitting this testimony to express Wysocki Produce Company's support for AB-582 and in particular the vested rights language in the bill.

The vested rights provisions in this bill would provide a clear statutory codification of the common law of vested rights in Wisconsin and would ensure that rural local units of government have an incentive to proactively zone their jurisdictions. Rural development projects often require approvals from state agencies, in addition to local government approvals. A company will often need to invest significant resources to identify locations for development where current land use regulations would permit the future operation of the business, obtain ownership of necessary property, develop the necessary plans and specifications, and prepare necessary applications for approval. Unfortunately, once the company has made these significant investments—often in the millions of dollars—and submits its applications for state approvals, some local governments then attempt to change the local zoning ordinances and create new restrictions prohibiting or materially limiting the project. These local governments face no risk of civil damages from such actions under current law while the company spends untold amounts in court to vindicate their rights.

Local government actions which effectively pull the rug out from under significant investments in reliance on current zoning law conflicts with the current statutory policy of coordinated approvals and proactive land use zoning. In addition, they require costly litigation, as applicants seek to protect their vested development rights. Wysocki Produce has encountered just such a process with regard to the siting of its proposed dairy in the Town of Saratoga. This has subjected Wysocki Produce to unnecessary litigation costs, as the company has twice initiated successful lawsuits in circuit court to protect its rights. Wysocki Produce is an example of the type of risk our rural employers face when they look to follow the letter of the law and grow their businesses.

Wisconsin now has a business climate which threatens future investment in rural areas of the state. The vested rights language in AB-582 will address this concern by codifying the common law and providing a clear statutory framework that allows rural governments to proactively zone but prevents them from changing the rules after a project application is submitted. The net result will be more orderly rural economic development—something our state desperately needs.

City of Milwaukee

Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Jennifer Gonda
Director of Intergovernmental Relations

City of Milwaukee Testimony on Assembly Bill 582
Senate Committee on Insurance, Housing, and Trade
January 5, 2016

The City of Milwaukee is opposed to AB 582, relating to: to government actions affecting rights to real property; the regulation of shoreland zoning; the substitution of hearing examiners in contested cases; and the property tax treatment of unoccupied property. The changes proposed in this legislation would restrict a local government's ability to maintain the overall health of its tax base.

The City of Milwaukee's Department of Neighborhood Services (DNS) is the agency charged with protecting the value of investments in neighborhoods and commercial properties by enforcing standards for buildings, property, and land. Over the last several years DNS has implemented inspections and enforcement programs which help support the stabilization and integrity of safe and healthy neighborhoods.

The proposed legislation will impede DNS' ability to enforce our Code Compliance program, which is designed to forewarn and protect buyers of one-and two-family dwellings against dangerous or unsatisfactory housing conditions. The program allows the City to ensure that its housing stock is well-maintained and meets applicable building safety codes. The program has helped maintained the integrity of the City's housing stock by assuring the condition of rental property does not negatively impact surrounding areas.

In addition, this bill would preempt portions of the City's current Vacant Building Registration (VBR) and Residential Rental Inspection (RRI) program ordinances. Established in 2010, the RRI program was created to address the higher than average number of complaints received in the neighborhood surrounding the UW-Milwaukee. The targeted area has a high number of rental units that often have constant turn-over of occupancy by new tenants. The program has help improve unsafe conditions and reduce nuisance behavior. Several municipalities across the State have seen the value of the program and expressed interest in the Residential Rental Inspection program to implement locally.

These are valuable tools necessary to support neighborhood stabilization and increase investment and economic vitality. Prohibiting local governments from imposing application of various programs would have a detrimental effect on the property values in neighborhoods.

Under this bill, granting vested rights to existing zoning regulations when applying for a permit is problematic due to the local government unit in which the property is located being unable from that point forward to adjust zoning or other land use regulations applicable to the parcel. The inconsistency of applying different regulations for different properties at different times would create administrative confusion. Zoning regulations should be made with a site specific development plan; otherwise, property owners cannot plan developments with reasonable certainty and cannot carry out the development they begin.

Also, if a local land use ordinance is challenged in court and the ordinance is unclear, under this bill the ruling shall favor the property owner's free use of private property, which could diminish the local government unit's ability to legally prohibit any undesirable projects that arouse neighborhood opposition. This bill significantly interferes with the ability of communities to protect residential property owners against incompatible uses occurring next door. For the reasons stated above, the City of Milwaukee opposes Assembly Bill 464 and respectfully requests the committee deny its passage.

Thank you for your consideration in this matter. If you have any questions please feel free to contact me at 414-286-8564.

Respectfully submitted,

Kimberly Montgomery

CEDAR VINEYARD
PORT WASHINGTON, WI

JANUARY 13, 2015

TABLE OF CONTENTS:

LAND PLANNING PREPARED BY:

teska
associates
627 Grove Street
Evanston, Illinois
60201-4474

PREPARED FOR:

THE HIGHVIEW GROUP, LTD.

778 N. Western Avenue, Suite 102 • Lake Forest, Illinois 60045

CEDAR VINEYARD: AERIAL CONTEXT PLAN

PORT WASHINGTON, WI

THE HIGHVIEW GROUP, LTD.
778 N. Western Avenue, Suite 102 • Lake Forest, Illinois 60045

JANUARY 15, 2015

teska associates
627 Grove Street
Evanston, Illinois
60201-4474

MAP LEGEND

- PROPERTY LIMITS*
- TRAILWAY
- BLUFF SETBACK (150')**
- TRAILHEAD

SITE DATA

SITE AREA TOTAL: 227 AC.

ACQUISITION AREA:	**101 AC. (45%)**
RESIDENTIAL AREA:	**64.5 AC. (28%)**
WEST LOTS: 40,000 SF (MIN.)	ESTATE LOTS (10)
EAST LOTS: 15,000 SF (MIN.)	VINEYARD LOTS (72)
	TOTAL LOTS: 82
VINEYARD & WINERY:	**61.5 AC. (27%)**
WEST VINEYARD & WINERY:	12.7 AC.
EAST VINEYARD:	48.8 AC.

*Property line/rights-of-way per County GIS data. All dimensions/areas approximate.

**Per WM. Roznik Survey 8/16/12 and Ozaukee County Planning and Parks

CEDAR VINEYARD: CONCEPTUAL MASTER PLAN

PORT WASHINGTON, WI

THE HIGHVIEW GROUP, LTD.
778 N. Western Avenue, Suite 102 • Lake Forest, Illinois 60045

OCTOBER 7, 2015

teska associates
627 Grove Street
Evanston, Illinois
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