

WCCA Legislative Report: As of 08/06/2015

Assembly Bills

Proposal	Description	Status	WCCA Position	Position Explanation
2015 Assembly Bill 21 Also see SB 21	Relating to state finances and appropriations, constituting the executive budget act of the 2015 legislature.	February 3, 2015 - Introduced by Joint Committee on Finance, by request of Governor Scott Walker. Referred to Joint Committee on Finance. ACT 55 – Signed into law by Governor Walker on July 12, 2015, effective July 14, 2015.	OPPOSED	The WCCA is opposed to the elimination of the Wisconsin Fund Grant Program. SECTION 3482 of the proposed budget would repeal s. 145.245 of Wis. Stats. if passed. Does the WCCA want to take a stance on moving the POWTS program from DSPS to the DNR?? WCCA strongly opposed to the shoreland zoning standards.
2015 Assembly Bill 25 Also see SB 23	Relating to regulating air pollution from residential and commercial wood heaters	February 5, 2015 - Introduced by Representatives CRAIG, CZAJA, BORN, BRANDTJEN, E. BROOKS, HUTTON, JACQUE, JARCHOW, KLEEFISCH, KNODL, KNUDSON, KOYENGA, KREMER, KRUG, KULP, T.LARSON, MURSAU, A. OTT, SANFELIPPO, SWEARINGEN, THIESFELDT and TITTL, cosponsored by Senators LASEE, LAZICH, NASS, ROTH and TIFFANY. Passed the Assembly 63-35, last action 6/9/15	NEUTRAL	Regulated by the EPA, DNR and local Health Departments.
2015 Assembly Bill 54 Also see SB 25	Relating to: the authority of a county to zone shorelands in a town that is located entirely on an island and authorized to exercise village powers. Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. Under this bill, a county may not enact an ordinance zoning shorelands in a town that is located entirely on an island and authorized to exercise village powers and may not enforce an existing	February 23, 2015 - Introduced by Representative MEYERS, cosponsored by Senator BEWLEY. Referred to Committee on State Affairs and Government Operations. Last action 2/23/15	SUPPORT	

	ordinance zoning shorelands in such a town.			
2015 Assembly Bill 105 Also see SB 72	<p>Relating to: groundwater management, approval of high capacity wells, and granting rule-making authority.</p> <p>This bill requires DNR to develop and adopt a groundwater management plan for the groundwater management area. The groundwater management plan must be designed to protect surface water and groundwater and to ensure that by the target date the area no longer qualifies as a groundwater management area. The groundwater management plan must contain measurable goals, requirements for reporting to DNR, water conservation measures, and any other provision that DNR determines is necessary to meet the sustainable hydrologic conditions.</p>	<p>March 20, 2015 - Introduced by Representatives Mason, Hebl, Kolste, Hesselbein, Berceau, Considine, Brostoff, Sargent, Sinicki, Meyers, Pope, Genrich, Milroy, Subeck, C. Taylor, Ohnstad, Spreitzer, Wachs, Goyke, Stuck, Kahl and Bowen, cosponsored by Senators Miller, Carpenter, Risser, Vinehout, Erpenbach, C. Larson and Harris Dodd. Referred to Committee on Environment and Forestry.</p> <p>March 31, 2015 Fiscal estimate received</p> <p>Last action 3/31/15</p>		To be regulated by the DNR.
2015 Assembly Bill 111 Also see SB 87	<p>Relating to: inspection of certain renovations of one-family and two-family dwellings and requiring the exercise of rule-making authority.</p> <p>Under this bill, those rules must require an inspection of any addition to, or any remodeling, improvement, or other alteration, except repair, of, such a one-family or two-family dwelling the cost of which exceeds 20 percent of the assessed value of the dwelling.</p>	<p>March 20, 2015 - Introduced by Representatives Kulp, Allen, Jagler, Edming, Murtha, A. Ott and Tittl, cosponsored by Senators Roth, Farrow, Nass and LeMahieu. Referred to Committee on Housing and Real Estate.</p> <p>June 3, 2015 Placed on Committee on Rules for June 9, 2015</p> <p>Last action 6/3/15</p>		<p>This is a building inspection issue; however, as proposed this statute would define a major renovation of an existing structure.</p> <p>s. 101.635 Inspections of major renovations. (1) In this section, "major renovation of an existing structure" means an addition to, or a remodeling, improvement, or other alteration of, an existing one- or 2-family dwelling if the total cost of the addition, remodeling, improvement, or other alteration exceeds 20 percent of the assessed value of that one- or 2-family dwelling for property tax purposes. "Major renovation of an existing structure" does not include repair.</p>
2015 Assembly Bill 121 Also see SB 94	<p>Relating to: standards for the construction and inspection of camping units; for installing, repairing, and maintaining electrical wiring in camping units; and for plumbing in camping units; providing an exemption from emergency rule procedures; and granting rule-making authority.</p>	<p>March 27, 2015 - Introduced by Representatives RIPP, BALLWEG, BERNIER, CZAJA, EDMING, HUTTON, JACQUE, KITCHENS, KLEEFISCH, KRUG, MURPHY, MURSAU and THIESFELDT, cosponsored by Senators OLSEN, COWLES, HARSDORF, MARKLEIN, TIFFANY and BEWLEY. Referred to Committee on Housing and Real Estate.</p> <p>May 13, 2015 Laid on table</p>		
2015 Assembly Bill 131 Also see SB 50	<p>Relating to: industrial zoning requirements in tax incremental districts, planning commission notice for tax incremental district amendments, obsolete references relating to tax incremental districts, allocation of tax increments, joint</p>	<p>March 27, 2015 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Ways and Means.</p> <p>April 13 , 2015 Assembly amendment,</p>		

	review board review, and calculation of levy limits following dissolution of a tax incremental district.	Last action: 4/13/15		
2015 Assembly Bill 149 Also see SB 99	Relating to: county authority relating to exploration for a type of industrial sand.	April 8, 2015 - Introduced by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK, cosponsored by Senators VINEHOUT, BEWLEY, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH. Referred to Committee on Mining and Rural Development. April 17, 2015 Fiscal estimate received Last action 4/17/15		
2015 Assembly Bill 150 Also see SB 100	Relating to: listing frac sand mining as a conditional or prohibited use in certain types of zoning ordinances.	April 8, 2015 - Introduced by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK, cosponsored by Senators VINEHOUT, BEWLEY, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH. Referred to Committee on Mining and Rural Development. April 17, 2015 Fiscal estimate received Last action 4/17/15		
2015 Assembly Bill 151 Also see SB 101	Relating to: notice requirements for zoning actions related to frac sand mining.	April 8, 2015 - Introduced by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK, cosponsored by Senators VINEHOUT, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH. Referred to Committee on Mining and Rural Development. April 17, 2015 Fiscal estimate received Last action 4/17/15		
2015 Assembly Bill	Relating to: disclosure of contracts for frac sand	April 8, 2015 - Introduced by Representatives DANOU,		

<p>152</p> <p>Also see SB 102</p>	<p>mining on neighboring properties.</p>	<p>BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK, cosponsored by Senators VINEHOUT, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH. Referred to Committee on Mining and Rural Development.</p> <p>April 8, 2015 Referred to Committee on Mining and Rural Development</p> <p>Last action: 4/8/15</p>		
<p>2015 Assembly Bill 154</p> <p>Also see SB 104</p>	<p>Relating to: the authority of a town and of a county to zone shorelands in a town that is located entirely on an island in Lake Superior and authorized to exercise village powers.</p>	<p>April 8, 2015 - Introduced by Representative MEYERS, cosponsored by Senator BEWLEY. Referred to Committee on State Affairs and Government Operations.</p> <p>Last action: 4/8/15</p>		
<p>2015 Assembly Bill 165</p> <p>Also see SB 113</p>	<p>Relating to: town zoning ordinances affecting shorelands.</p>	<p>April 15, 2015 - Introduced by Representatives JACQUE, SPREITZER, BORN, JARCHOW, KAHL, E. BROOKS, TITTL, LOUDENBECK, RIPP, KOLSTE, BILLINGS, MURPHY, KULP, ROHRKASTE, DOYLE, ALLEN, BERNIER, DANOU, THIESFELDT, NOVAK, KRUG, MURTHA and MACCO, cosponsored by Senators GUDEX, RINGHAND, OLSEN, LASSA, COWLES, VINEHOUT, LASEE, ROTH and WIRCH. Referred to Committee on State Affairs and Government Operations.</p> <p>June 9, 2015 Received from Senate concurred in.</p> <p>2015 Wisconsin Act 41, Published 7/2/15</p>		

Senate Bills

Proposal	Description	Current Status	WCCA Position	Position Explanation
2015 SENATE BILL 21 Also see AB 21	Relating to state finances and appropriations, constituting the executive budget act of the 2015 legislature.	February 3, 2015 - Introduced by Joint Committee on Finance, by request of Governor Scott Walker. Referred to Joint Committee on Finance. ACT 55 – Signed into law by Governor Walker on July 12, 2015, effective July 14, 2015.	OPPOSED	The WCCA is opposed to the elimination of the Wisconsin Fund Grant Program. SECTION 3482 of the proposed budget would repeal s. 145.245 of Wis. Stats. if passed. Does the WCCA want to take a stance on moving the POWTS program from DSPS to the DNR?? WCCA strongly opposed to the shoreland zoning standards.
2015 SENATE BILL 23 Also see AB 25	Relating to regulating air pollution from residential and commercial wood heaters.	February 5, 2015 - Introduced by Senators LASEE, LAZICH, NASS, ROTH and TIFFANY, cosponsored by Representatives CRAIG, CZAJA, BORN, BRANDTJEN, E. BROOKS, HUTTON, JACQUE, JARCHOW, KLEEFISCH, KNODL, KNUDSON, KOOYENGA, KREMER, KRUG, KULP, T. LARSON, MURSAU, A. OTT, SANFELIPPO, SWEARINGEN, THIESFELDT and TITTL. Referred to Committee on Natural Resources and Energy. April 7, 2015 Public hearing held (last action)		Regulated by the EPA, DNR and local Health Departments.
2015 SENATE BILL 25 Also see AB 54	Relating to the authority of a county to zone shorelands in a town that is located entirely on an island and authorized to exercise village powers. Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. Under this bill, a county may not enact an ordinance zoning shorelands in a town that is located entirely on an island and authorized to exercise village powers and may not enforce an existing ordinance zoning shorelands in	February 6, 2015 - Introduced by Senator BEWLEY, cosponsored by Representative MEYERS on February 6, 2015. Referred to Committee on Natural Resources and Energy. Last action: 2/6/15		

	such a town.			
2015 SENATE BILL 50 Also see AB 131	Relating to: industrial zoning requirements in tax incremental districts, planning commission notice for tax incremental district amendments, obsolete references relating to tax incremental districts, allocation of tax increments, joint review board review, and calculation of levy limits following dissolution of a tax incremental district.	February 27, 2015 - Introduced by Joint Legislative Council. Referred to Committee on Economic Development and Commerce. May 6, 2015 Senate 33-0 Last Action: 5/6/15		
2015 SENATE BILL 72 Also see AB 105	Relating to groundwater management, approval of high capacity wells, and granting rule-making authority. This bill requires DNR to develop and adopt a groundwater management plan for the groundwater management area. The groundwater management plan must be designed to protect surface water and groundwater and to ensure that by the target date the area no longer qualifies as a groundwater management area. The groundwater management plan must contain measurable goals, requirements for reporting to DNR, water conservation measures, and any other provision that DNR determines is necessary to meet the sustainable hydrologic conditions.	March 10, 2015 - Introduced by Senators Miller, Carpenter, Risser, Vinehout, Erpenbach, C. Larson and Harris Dodd, cosponsored by Representatives Mason, Hebl, Kolste, Hesselbein, Berceau, Considine, Brostoff, Sargent, Sinicki, Meyers, Pope, Genrich, Milroy, Subeck, C. Taylor, Ohnstad, Spreitzer, Wachs, Goyke, Stuck, Kahl and Bowen. Referred to Committee on Natural Resources and Energy March 27, 2015 Fiscal estimate received Last action: 3/27/15		
2015 SENATE BILL 87 Also see AB 111	Relating to: inspection of certain renovations of one-family and two-family dwellings and requiring the exercise of rule-making authority.	March 27, 2015 - Introduced by Senators ROTH, FARROW, NASS and LEMAHIEU, cosponsored by Representatives KULP, ALLEN, JAGLER, EDMING, MURTHA, A. OTT and TITTL. Referred to Committee on Insurance, Housing, and Trade. May 13, 2015 Public hearing held 7/2/15 Available for Scheduling		
2015 SENATE BILL 94 Also see AB 121	Relating to: standards for the construction and inspection of camping units; for installing, repairing, and maintaining electrical wiring in camping units; and for plumbing in camping units; providing an exemption from emergency rule procedures; and granting rule-making authority	March 27, 2015 - Introduced by Senators OLSEN, COWLES, HARSDORF, MARKLEIN, TIFFANY and BEWLEY, cosponsored by Representatives RIPP, BALLWEG, BERNIER, CZAJA, EDMING, HUTTON, JACQUE, KITCHENS, KLEEFISCH, KRUG, MURPHY, MURSAU and THIESFELDT. Referred to Committee on Labor and Government Reform. May 1, 2015 Committee on Labor and Government Reform 5-0 ACT 49, signed into law on 7/2/15		
2015 SENATE BILL 98	Relating to: disclosure of contracts for frac sand mining on neighboring properties.	March 27, 2015 - Introduced by Senators VINEHOUT, CARPENTER, ERPENBACH, LASSA,		

Also see AB 152		<p>MILLER, RISSER and WIRCH, cosponsored by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK. Referred to Committee on Sporting Heritage, Mining, and Forestry.</p> <p>April 15, 2015 Fiscal estimate received</p> <p>Last Action 3/27/15</p>		
<p>2015 SENATE BILL 99</p> <p>Also see AB 149</p>	<p>Relating to: county authority relating to exploration for a type of industrial sand.</p>	<p>March 27, 2015 - Introduced by Senators VINEHOUT, BEWLEY, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH, cosponsored by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK. Referred to Committee on Sporting Heritage, Mining, and Forestry.</p> <p>April 15, 2015 Fiscal estimate received</p> <p>Last Action 4/15/15</p>		
<p>2015 SENATE BILL 100</p> <p>Also see AB 150</p>	<p>Relating to: listing frac sand mining as a conditional or prohibited use in certain types of zoning ordinances.</p>	<p>March 27, 2015 - Introduced by Senators VINEHOUT, BEWLEY, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH, cosponsored by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK. Referred to Committee on Sporting Heritage, Mining, and Forestry.</p> <p>April 15, 2015 Fiscal estimate received</p> <p>Last Action 4/15/15</p>		
<p>2015 SENATE BILL 101</p> <p>Also see AB 151</p>	<p>Relating to: notice requirements for zoning actions related to frac sand mining.</p>	<p>March 27, 2015 - Introduced by Senators VINEHOUT, CARPENTER, ERPENBACH, LASSA, MILLER, RISSER and WIRCH, cosponsored by Representatives DANOU, BERCEAU, BILLINGS, BOWEN, BROSTOFF, CONSIDINE, GOYKE, HEBL, KOLSTE, OHNSTAD, POPE, SINICKI, SPREITZER, SUBECK, C. TAYLOR, WACHS and ZEPNICK. Referred to Committee on Sporting Heritage, Mining, and Forestry.</p> <p>April 15, 2015 Fiscal estimate received</p> <p>Last Action 4/15/15</p>		
<p>2015 SENATE BILL 104</p> <p>Also see AB 154</p>	<p>Relating to: the authority of a town and of a county to zone shorelands in a town that is located entirely on an island in Lake Superior and authorized to exercise village powers.</p>	<p>March 27, 2015 - Introduced by Senator BEWLEY, cosponsored by Representative MEYERS. Referred to Committee on Elections and Local Government.</p> <p>June 5, 2015 Committee on Elections and Local Government 5-0</p> <p>Last Action 6/5/15</p>		
<p>2015 SENATE BILL 113</p>	<p>Relating to: town zoning ordinances affecting shorelands.</p>	<p>April 8, 2015 - Introduced by Senators GUDEX, RINGHAND, OLSEN, LASSA, COWLES, VINEHOUT, LASEE, ROTH and WIRCH, cosponsored by Representatives JACQUE, SPREITZER, BORN, JARCHOW, KAHL, E. BROOKS, TITTL, LOUDENBECK, RIPP,</p>		

Also see AB 165		KOLSTE, BILLINGS, MURPHY, KULP, ROHRKASTE, DOYLE, ALLEN, BERNIER, DANOU, THIESFELDT, NOVAK, KRUG, MURTHA and MACCO. Referred to Committee on Elections and Local Government. June 5, 2015 Committee on Elections and Local Government, 5-0 2015 Wisconsin Act 41, Published 7/2/15		

Assembly/Senate Joint Resolutions

Proposal	Description	Current Status	WCCA Position	Position Explanation

Clearinghouse Rules

Proposal	Description	Current Status	WCCA Position	Position Explanation

Recent Court Decisions

Appeal #	Issue	Date / Court
Heef Realty and Investments, LLP v. City of Cedarburg Board of Appeals	Regulation of Short-term rentals In Heef Realty and Investments, LLP v. City of Cedarburg Board of Appeals, the Wisconsin Court of Appeals addressed the question of whether short-term rental is a permitted use for property in a single-family residential district under the City of Cedarburg's zoning ordinance. The owners of two homes initiated the lawsuit after the City's Board of Appeals decided that the City's zoning ordinance did not permit the short-term rental of homes in a single-family district. The circuit court disagreed with the Board's interpretation of the City's zoning ordinance and reversed the decision of the Board. The Court of Appeals	The Court of Appeals noted that the language of the City's ordinance is about the use of property, not the duration of that use. The Court stated this case was about whether a zoning board can arbitrarily impose time/occupancy

	<p>affirmed the order of the circuit court.</p> <p>In their argument before the Court, the homeowners pointed out that the City's zoning ordinance allowed long-term rentals and that there was no definition of the minimum time period allowed. The city's building inspector also testified that second homes and vacation homes are permitted uses within residential zones. The City's zoning ordinance listed "single-family dwellings" as a permitted use in the single-family residential district. The ordinance defined "dwelling" as "[a]ny building or portion thereof designed or used exclusively as a residence and having cooking facilities, but not including boarding or lodging houses, motels, hotels, tents, cabins, or mobile homes."</p>	<p>restrictions in a residential zone where there are none adopted by the City. Here the Court found the Board lacked that authority given that the concept of "residential" did not distinguish between short-term and long-term occupancy. According to the Court, "[i]f the City is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law."</p> <p>The case is recommended for publication in the official reports.</p>
<p>Oneida Seven Generations Corporation and Green Bay Renewable Energy, LLC, v. City of Green Bay</p>	<p>Decision to Rescind Conditional Use Permit Not Based on Substantial Evidence</p> <p>2015 WI 50, involved a challenge to the City of Green Bay Common Council's decision to rescind a conditional use permit (CUP) issued to Oneida Seven Generations for a proposed waste to energy facility. The Common Council initially voted to grant the permit but citizens concerned about the environmental impact of the facility subsequently convinced the Common Council to rescind the CUP on the grounds that Oneida Seven Generations misrepresented the environmental impact of the facility. Following a review of the record, the Wisconsin Supreme Court concluded that the City's decision to rescind the CUP was not based on substantial evidence. The Court's decision affirmed a similar conclusion by the Wisconsin Court of Appeals reversing the City's decision to rescind the CUP.</p>	
<p>Muellenberg v. State of Wisconsin DOT</p>	<p>Court Had Discretionary Authority to Modify Easement</p> <p>The Muellenbergs live north of Hudson and have an easement over adjacent parcels that provides access to the St. Croix River. They accessed the easement from Highway 35 by using a neighboring driveway. The owners of the neighboring property had given them permission to use the driveway. As part of the new Stillwater Bridge project, the Wisconsin Department of Transportation (DOT) planned to remove the driveway and create a new trail to allow access to the easement. The Muellenbergs brought this lawsuit to stop the DOT from changing the access to the easement. The circuit court found that the new trail was comparable to the original access to the easement. The circuit court then determined it had discretionary authority to modify the original easement to include the new trail. The Muellenbergs then filed this appeal arguing the circuit court did not have the authority to modify the original easement. After reviewing applicable law, the Court of Appeals agreed that the circuit court had the authority to modify the easement on the ground that the fulfillment of its original purpose was no longer possible. The Court of Appeals also concluded that the circuit court had not erroneously exercised its discretion in modifying the easement.</p>	<p>This case was recommended for Publication in the official reports.</p>

[Vilas County v. Accola](#)

Short term rentals

The Court of Appeals provided an interesting(?) example of what it means by “clear and unambiguous law” in the case [Vilas County v. Accola](#). The Accola’s purchased a single family detached home on a lake in the Town of Presque Isle. Shortly after they purchased the property, the Accolas began advertising it for rent on the internet for stays as short as two nights. The Town has

adopted County Zoning and the home is on a parcel zoned R-1 under the Vilas County Zoning Ordinance. The County later notified the Accolas that single-family residences in the R-1 district could not be rented for periods of less than one month. The County argued that rental of single-family residences for a period of less than a month could only occur in the R-L district and began an enforcement action to prevent the rental of the property.

The Accolas argued that the County’s ordinance did not unambiguously prohibit rental of single-family detached units in the R-1 district for periods of less than one month. Citing the *Heef* case, the Wisconsin Court of Appeals agreed that if the Court only looked at the R-1 district, the ordinance did not unambiguously prohibit the short-term rental of single-family dwelling units. The Court, however, said that the R-1 district must be read in context with the RL district. The Court notes that although the RL district does not distinguish between short-term and long-term rentals, the Court agreed with the County’s interpretation that the phrase “rental of residential dwelling unit” must be read in context with the definition of transient lodging in the purpose statement of the RL district which contains a one month time limitation.

In holding that the Zoning Ordinance “unambiguously prohibits short-term rentals of single-family detached units in the R-1 district” of the County’s general zoning ordinance, the Court notes that all permitted uses in the R-1 district are also permitted uses in the RL district. The Court then concludes that when the ordinance “states that rental of residential dwelling units is permitted in the RL district, it actually means that rental of single-family detached dwelling units is permitted in the RL district.” Considering the language of the R-1 district with the RL district “leads to the inescapable conclusion that the rental of single-family detached dwelling units for periods of less than one month is not a permitted use in the R-1 district.”

The case is not recommended for publication in the official reports.

Wisconsin Realtors
Assoc. v. Public
Service Commission
of Wisconsin

Housing Impact Report Not Required For State Wind Energy Rules

In [Wisconsin Realtors Assoc. v. Public Service Commission of Wisconsin](#), 2015 WI 63, the Wisconsin Supreme Court held that housing impact report was not required as a matter of law when the Public Service Commission (PSC) developed the wind facility siting rules in 2012.

The Wisconsin Administrative Procedures Act requires that if any rule proposed by a state agency (including the PSC) "directly or substantially affects the development, construction, cost, or availability of housing in this state," then the Department of Commerce [now the Department of Administration] shall prepare a "housing impact report" before that rule is submitted to the Legislative Council staff. Wis. Stat. § 227.115(2).

The Wisconsin Realtors Association initiated this lawsuit arguing that the wind energy rules, Wis. Admin. Code ch. PSC 128, titled "Wind Energy Systems," were invalid because the PSC failed to prepare a housing impact report during the promulgation of the rules.

In a decision written by Justice Abrahamson, the Wisconsin Supreme Court concluded that the texts of the governing statutes and the wind energy rules did not demonstrate as a matter of law that the rules directly or substantially affect the development, construction, cost, or availability of housing in Wisconsin. Chief Justice Roggensack and Justice Ziegler dissented in the case.

[The Journal Times v. City of Racine Board of Police and Fire Commissioners](#)

Attorney Fees Not Allowed in Public Records Case

[The Journal Times v. City of Racine Board of Police and Fire Commissioners](#) , 2015 WI 56, involved an action by the Journal Times to recover reasonable attorney fees related to the newspaper's efforts to collect information related to a meeting held in closed session by the Commission. The Commission initially denied the records requests but later provided the requested information. At the time of the request and at the time that the information was provided, no record existed that could have been responsive to the request. The Wisconsin Supreme Court concluded the newspaper had not prevailed in "substantial part" and was therefore not entitled to attorney fees.

[The Voice of Wisconsin Rapids, LLC v. Wisconsin Rapids Public School District](#)

Notes Are Not “Records” Under State’s Public Records Law

[The Voice of Wisconsin Rapids, LLC v. Wisconsin Rapids Public School District](#), involved a request by the newspaper for access to records involving the school district’s investigation into allegations of impropriety surrounding a school athletic program. As part of the investigation, district employees conducted interviews of people related to the program. The newspaper sought disclosure of the notes but the district refused to release the notes. The newspaper then sued the district. The Wisconsin Court of Appeals held that the district did not need to produce the documents because they fell within the exemption under the public records law for notes prepared for the originator’s personal use.

The case is recommended for publication in the official reports.

Court Affirms Dismissal of Class of One Equal Protection Claim in Failed Development Project

The Seventh Circuit Court of Appeals once again expressed its reluctance to review local land use matters in *Miller v. City of Monona*.

In September 2004, Stephanie Miller applied to the City of Monona for permission to build a four-unit condominium project on a lot she owned in Monona. At the prompting of the City, Miller purchased a neighboring lot and resubmitted her application as a request to build a 10-unit project. The plan commission subsequently suggested changes to Miller's plan and Miller's architect again revised the plans and resubmitted them in September 2005.

In January 2006, an inspection uncovered asbestos on both of her lots. In March 2006, Miller's architect informed the City that the project had stalled because Miller was in negotiations with neighboring property owners about their involvement in a still larger development project. Later that month, Miller's negotiations with the neighbors broke down.

In June 2006, Miller obtained permission from the State of Wisconsin to demolish the buildings and remove the asbestos. The exterior asbestos removal was completed in July but then the City's building inspector issued citations to Miller for creating a public nuisance and working without a proper permit from the City. The City also informed Miller that she needed a local razing permit to demolish the houses. She then obtained a permit allowing demolition through July 30, but the Wisconsin Department of Natural Resources (DNR) issued a "stop work" order because of asbestos debris and interior asbestos on Miller's property.

On July 20, a professional contractor removed the interior asbestos in compliance with DNR requirements. The City then ordered Miller to erect a fence around her property and warned her that a fine of \$2,000 per day was being imposed for the code violations on her property. The City provided Miller with a letter from the Building Inspector stating that the property was a public nuisance because of the partial demolition.

In August, Miller erected the fence and completed the asbestos abatement. In September, Miller tried to contact DNR to confirm compliance with the DNR orders, but the appropriate staff person at DNR was unavailable. She sought to move forward on her project without this final approval, but was told by City officials that she had to wait until the DNR approved the asbestos removal and until she paid outstanding fines.

On October 3, 2006, before approval of the asbestos removal, the City's building inspector informed Miller that she needed to remove a garage, pier, boat hoist, and driveway from her property. Six days later, the building inspector issued Miller citations for not razing these structures and for not filling the lots to the proper grade. Miller obtained a razing permit for the garage within two days and razed the garage within two weeks. In November, the building inspector reported to the plan commission that the final inspection of Miller's property had been satisfactory.

Despite the satisfactory inspection, the City would not allow Miller to continue construction until her outstanding citations were resolved. In April 2007, the City ordered Miller to take down the fence, which she did. Miller went to trial in municipal court on her citations for code violations.

In February 2009, the municipal court issued a decision rejecting three of the four citations against Miller. The court upheld the citation for starting demolition without a proper permit, and ordered Miller to pay \$671 to the City. After the trial, the City refused to adjust the taxes on Miller's property to reflect the demolitions. Miller contacted the Dane County Treasurer, who had the assessment corrected.

In April 2010, Miller filed this lawsuit, alleging that the City of Monona had intentionally treated her differently than others similarly situated without a rational basis. For a comparator, she pointed to Kevin Metcalfe—the son of another former Monona mayor—and alleged that he had applied and gained approval for a 45-unit condominium development on the same street as her project without opposition. Miller alleged that the City's actions violated the Equal Protection Clause of the 14th Amendment to the United States Constitution. The U.S. Supreme Court has held that the Equal Protection Clause can protect a class of one.

The Seventh Circuit Court of Appeals acknowledged that state and local land use decisions are entitled to great deference when constitutional claims are raised in federal court: "Thus even if we disagree with a land-use decision made by local officials, there is no class-of-one claim unless the plaintiff is able to show that there was no rational basis for the officials' actions." Citing the asbestos and building code problems, the Court concluded there was a rational basis for the City's actions and agreed that Miller's Equal Protection claim failed.