**MINUTES FROM COMMUNITY DEVELOPMENT AUTHORITY**
**April 30, 2018**

Present: Kjell Erlandsson; Fran Martin, Lee Wishau, Marla Wishau, Jim Dobbs, Bill Streeter, Dave Gobis
Absent:
Also Present: Martha Hutsick

1. Meeting was called to order by Fran Martin at 5:01 p.m. at the Caledonia Village Hall meeting room.
2. Approval of Minutes from March 26, 2018. Motion to approve Lee Wishau; Second by Kjell Erlandsson. Motion Carried
3. Selection/ Election – New CDA Chair to replace newly elected Trustee Fran Martin. No one wanted to be president. Marla Wishau said she would serve as **Pro tempore** until a permanent replacement is found. Kjell made the motion that Marla Wishau serve as Pro tempore, William Streeter made a motion to approve, Fran Martin seconded. Motion Carried.
4. Blighted Property update: Looking for copy of ordinance coming from the Legislative Committee that incorporates all existing property safety and maintenance ordinances with new verbiage to create an all encompassing blight ordinance that would be very clear as to how to enforce, when and what actions the Village may take to seek compliance. This is still being worked on. Marla is working with the County Treasurer to get a list of foreclosures in Caledonia on a semi-annual basis. Marla found on the county site, under GIS – Racine County Foreclosures/Sheriff Sale information we could link to. It appears to be more difficult to find lists of vacant commercial/business properties in Caledonia.
5. I-94 Rezoning with Foth Engineering / Planning/Public Comment: Jeff Merkle is having a public Information Meeting and it was suggested to Jim Dobbs that we include an hour before the meeting for presentation and public hearing to include and encourage public input.
   It is of concern to CDA committee members that since Act 67, there are changes to the Conditional Use Power. If the zoning description includes the business seeking to develop in that area, there is little we can do to prevent that development. It has not been that way in the past, so all of our current zoning should be reviewed, particularly in large open/agricultural areas, so we can encourage the development we want to have and not have regrets that we did not look closer before new development arrives. Fran suggested everyone read Act 67- see end of minutes.
6. Land use discussion in light of Foxconn and the SEWRPAC 2050 Plan- Lee provided us the VISION 2050 Summary. It is prompting us to move faster with our 2006 Land Use Plan review. Marla, Kjell, Dave and Sue Schuitt are trying to compare the 2006 Village of Caledonia Land Use Plan that is not currently being enforced to the 2035 SEWRPC Plan. There are 3 objectives as part of the initial review of the 2006 plan 1) Identify and remove all outdated language (like plans for train) – make sure it is removed from 2035 plan 2) Identify and update plans the are still desirable to Caledonia – make sure it is included in the 2035 plan 3) Identify and bring to the CDA committee ( and eventually full board) any areas in the 2006 land use plans that you would question or think needs clarification – find it in the 2035 Plan and make sure it is included with the current wording the Committee and Board desire.
   Elaine joined us via phone. She is currently working to rewrite the Zoning Code in Caledonia. She is part of an Ad Hoc group whose goal it is to get rid of obsolete ordinances and propose new ordinances . The spoke of updating the 9 elements required in the 2050 plan.
7. Development Checklist update: Marla is using Burlington and Mt Pleasant as a guide for a checklist. The first draft/outline will be provided for comment at the next meeting
8. Western Publishing/ O-Brown Building update: Per Jim Dobbs, the offer to purchase has fallen apart and another plan is being discusses. Tom Christensen is meeting with Unified. Due to the costs now required when building on the lakefront, a teardown versus an addition is much more costly. Fran asked that residents remain involved.
9. New Business: Martha Hutsick reported that the Douglas Avenue Business District is really struggling with the roadwork on Douglas Avenue. The group is also working on the current project of Summer Flower Pots, and they are using flyers now to make businesses aware of the program. Without a response from Franksville for their business district, we may have additional funds available for new Douglas Avenue promotion or other CDA requirements.
10. Marla Wishau moved to adjourn the meeting at 5:58 p.m. Kjell Erlandsson made motion to approve. Seconded by Lee Wishau. Motion Carried.

Respectfully submitted by Marla Wishau

APPELLATE PRACTICE , MUNICIPAL LAW

# 2017 WISCONSIN ACT 67 MAKES MAJOR CHANGES TO WISCONSIN LAND USE LAW

Published by **Jeffrey A. Mandell**, **Matthew Dregne** on December 1, 2017

A new law signed by Governor Walker makes major changes to how private property can be regulated in Wisconsin. This new law, 2017 Wisconsin Act 67 (the "Act"), makes broad changes. This post addresses two aspects of the Act: changes to conditional use permits and preemption of clauses that merge substandard lots.

**Conditional use permits**

Before the Act, conditional use permit regulations were a flexible zoning tool that allowed potentially objectionable land uses, but only if the community determined that the use would meet specified standards. For example, a community might use a conditional use process to authorize a restaurant or nightclub in a neighborhood business district, but first require the applicant to demonstrate that the proposed operation will not lead to noise, traffic, or other conflicts with neighboring properties.

Act 67 changes or casts doubt upon several longstanding practices associated with conditional use regulations and proceedings. Historically, Wisconsin courts have upheld ordinances that contained generalized standards allowing the community to consider a proposed conditional use's impacts on public health, safety, and general welfare. Plan commissions and governing bodies have had the right to consider a broad range of testimony from concerned citizens. Communities have had the right say no to a proposed conditional use, if the applicant failed to convince the community that the proposed use met specified community standards. The Act alters all of these practices.

First, the Act requires that standards governing conditional uses be "reasonable and, to the extent practicable, measurable…." This new requirement is certain to spark litigation. We anticipate legal challenges to generalized health, safety, and welfare standards that are common in zoning codes but leave significant discretion to municipal decision-makers. Especially in the short-term, communities will likely struggle to identify standards that will withstand legal scrutiny when challenged under the Act. Even before the courts weight in, it is clear that the Act reduces the flexibility local governments had under prior law.

Second, the Act prohibits a community from basing a conditional use permit decision on "personal preferences or speculation." Much public testimony will be subject to challenge under this language. Public testimony from citizens about the impact of a proposed conditional use will be off-limits, unless it is directly tied to "reasonable" and "measurable" standards. The Act enables permit applicants to challenge adverse public testimony on the theory that it improperly expresses personal preferences or contains speculative personal opinions. Members of the public are not always experts in science or the law, and it may prove difficult for many to provide testimony that meets the requirements of the Act.

Third, the Act instructs that, where an applicant "meets or agrees to meet all of the requirements and conditions specified" in the ordinance or imposed by the decision-maker, the conditional use permit must be granted. This language appears to put the burden on the community to prove that a proposed conditional use cannot meet "reasonable" and "measurable" standards. This reverses prior law, which placed the burden on the applicant to show that it would meet the community's standards.

In light of these changes, Wisconsin communities will likely reevaluate their ordinances—and even the viability of conditional use regulations. The Act may significantly decrease the incidence of the conditional use process. It may prove much easier for local governments to delete potentially objectionable land uses from their zoning codes than to develop new conditional use standards and practices that comply with the Act.

**Merger clauses**

The Act also creates new statutory provisions, Wis. Stat. § 66.10015(4) and § 227.10(2p), that preempt any ordinance, rule, or action requiring lots to be merged without the consent of the owners. Like the treatment of conditional use permits, this is a significant departure from settled law.

As the U.S. Supreme Court noted earlier this year, merger provisions are "legitimate exercise[s] of government power, as reflected by [their] consistency with a long history or state and local merger regulations that originated nearly a century ago." *Murr v. Wisconsin*, 137 S. Ct. 1933, 1947 (2017). Merger provisions are also widespread in Wisconsin, in use by more than two-thirds of Wisconsin counties. *See* Brief of Amici Curiae Wis. Counties Ass'n, et al. at 7, *Murr v. Wisconsin*, No. 15-214 (U.S.) (filed June 16, 2016).

The state's blanket preemption of merger provisions will remove a major tool that local governments and regulatory agencies have used to reduce the number of properties too small to comply with land-use restrictions. "When States or localities first set a minimum lot size, there often are existing lots that do not meet the new requirements, and so local governments will strive to reduce substandard lots in a gradual manner." *Murr*, 137 S. Ct. at 1947. As the Supreme Court recognized, one "classic way of doing this" is "by implementing a merger provision, which combines contiguous substandard lots under common ownership, alongside a grandfather clause, which preserves adjacent substandard lots that are in separate ownership." *Id.* The Act's preemption of merger provisions removes this tool to ameliorate the number of substandard lots.

Moreover, the Act favors substandard lots over minimum lot-size regulations. It creates another new provision, Wis. Stat. § 66.10015(2)(e), which prohibits a local government from taking any action "that prohibits a property owner from…conveying an ownership interest in a substandard lot [or] using a substandard lot as a building site.…" Property regulators are thus restricted in two ways: they cannot restrict the development of properties that do not meet current restrictions and they cannot reduce the number of such properties through merger. Under the new rules, once a property has been created and recognized by law, it is largely immune from later-enacted restrictions on development or sale.

Municipalities should review their ordinances for provisions restricting substandard lots or providing for merger of such lots that are now inconsistent with state law.

While Act 67's changes are substantial, they do not go as far as the sponsors of the legislation initially proposed. The legislation that became Act 67—2017 Assembly Bill 479—was initially introduced as an effort to reverse the outcome in *Murr*. There, Wisconsin state courts and then the U.S. Supreme Court affirmed the use of land use regulations and a merger clause as proper exercises of regulatory authority to protect environmentally sensitive land along the shores of the Lower St. Croix River. (For more about the *Murr* case, go here, here, and here.)

As initially proposed, the responsive legislation sought not only to protect substandard lots but also to adopt by statute a lower legal threshold for a plaintiff to prove that a land-use restriction constituted a government taking that necessitates government compensation of the landowner. The Wisconsin legislature amended the legislative language to remove the takings language. For land-use regulators, this small victory may be cold comfort given the extensive ways the Act limits the tools available to them.