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Preserving our
Property Rights

Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

AB675, Wisconsin's Fair Answer to the Supreme Court's Disastrous Kelo Decision. State Senate Hearing, 11 AM, April 12

by Bob Bowman

Government regulation of land use for purposes of the common good really amounts to government confiscation of part of the "bundle-of-rights" that constitutes the fee-simple or allodial ownership of land. The advent and huge growth of exclusionary zoning in the U.S.A. that followed world war II, though done as part of a popular political will, in effect contravened the inalienable right protected in the fifth amendment to the federal constitution that assured that private property (e.g., land) could not be taken save for public use and even then, required just compensation.

With the abdication by the U.S. Supreme Court of its duty to uphold that civil right, despite guarantee of that right in the federal constitution, local governments took only a few decades to become abusive in their regulatory confiscation of land for the common good. This confiscatory trend peaked in the summer of 2005 when the Court ruled in *Kelo v The City of New London* that local governments could seize your private property to give to some other private owner to use if the government could claim even a shadow of public "benefit" for doing so. The Court said however that local governments were free to act to protect your private property.

The State of Oregon had already so acted. Oregon citizens can pass state statutes by direct vote in a general election, and in November of 2004, 61% of Oregon voters voted to enact "Measure 37", whereby landowners who lose any of the value of their land via a government regulation restricting its use for the common good can file a claim demanding the government to pay for that takings. If the government fails to pay, that regulation on that parcel of land is thereby waived, thus letting the landowner develop the land. In 2006, the Oregon Supreme Court resoundingly declared Measure 37 to be constitutional. That Court did not rule so because it is conservative; it is one of the nation's liberal courts.

The only way to curb government greed for land is to require the government to pay a just market value for the land use it takes. That is so in Wisconsin, too. Hence, a bill similar to Oregon's Measure 37 was introduced in the Wisconsin Assembly in 2005 by Sheryl Albers, and was passed by the Assembly on a 54 to 38 vote.

On Wednesday, April 12, 2006, at 11 a.m., the State Senate Committee on Housing and Financial Institutions, will hold a public hearing on a number of bills. Third on their agenda is AB675. State Senator Cathy Stepp is the chair of that committee.

Persons interested in the passage of this bill are urged either to attend the hearing, or if they cannot attend it, to contact Sen. Stepp's office at once to arrange to send in written comments on the bill.

AB675 is titled: "An Act to create 895.45 of the statutes, relating to: compensation for the reduction in the fair market value of private real property." The contents of the bill are described in a memo dated April 4, 2006, from the Wisconsin Legislative Council, Mark Patronskey, Senior Staff Attorney, ph 266-9280.

Patronskey's analysis notes:

"The bill applies to land use regulations that restrict the use of private real property. The regulation may be a statute, administrative rule, ordinance, or local plan. Compensation is available under the bill for regulations that either restrict the use of property or prohibit development of property that could otherwise be developed, and also reduce the fair market value of the property. ..."

"The bill does not apply to land use regulations that restrict or prohibit nuisances, regulate for public health or safety, are required to comply with federal law, prohibit the possession or sale of pornography, or were enacted before the current owner acquired the property unless the owner took title from a family member."

"Compensation is for the reduction and fair market value of the property, the value of improvements that are ordered removed by a governmental unit, and the reasonable costs of removing the improvements."

"The procedures to obtain compensation start with the owner making a written demand to the governmental unit for compensation. ..."

As Patronskey goes on to note, there are various time limits and windows that apply to the procedures, and the governmental unit has the choice either to pay the compensation or to amend or waive the regulations that result in the loss of value of the property. I should add that the bill was written with, and profited from, advice given by a lawyer involved in crafting the Oregon law. All in all, it seems a very fair bill for everyone.

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