

Whose Property Rights Are Most Important?

Written by Kathleen Vinehout, State Senator 31st District
Monday, 04 January 2016 16:14

<http://newiproggressive.com/images/stories/S5/fracsand-s5.jpg>



When does your neighbor's property right limit your own rights? What if your neighbor built a fireworks factory next door? Or a large hog operation? Or an industrial sand mine? A new bill introduced in Madison just before Christmas could take away local control over land use ordinances and zoning rules that protect our communities and the individual rights of neighbors to protect themselves.

ALMA, WI - "My neighbor likes to expand his lot," Kelly told me. "First he put up a stone fence on our property and then he built a jungle gym for his kids on his other neighbor's property." The fence stayed but the jungle gym came down.

Laws and fences help make good neighbors.

Often these "laws" are ordinances passed by local communities. We decide collectively what works for our neighborhood, and what works in some areas will not work in other areas. You can't have roosters in most cities. But in some cities, you can keep a few hens.

Moving at warp speed in the Capitol is legislation that would change what your neighbor could do on his/her property and would limit your local community from taking a position to protect you and your other neighbors.

When does your neighbor's property right limit your own rights? What if your neighbor built a fireworks factory next door? How about a large hog operation? Or an industrial sand mine?

In a bill, introduced just before Christmas and due to have a public hearing before you read this, the simple action of applying for a driveway permit or a state culvert permit could "freeze in place" any local ordinance or state law.

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For example, on the date a person applies for a driveway permit and discloses a proposed project, the ordinances and rules of all levels of local and state government could be frozen in place on that date provided the driveway is constructed within a stated deadline – even though some aspects of the project may not be completed for many years.

Expanding a little known part of the law related to housing developments, the bill (Senate Bill 464 and its companion Assembly Bill 582) creates a loophole so big that the approval of a culvert permit in Kenosha could affect a development in Eau Claire.

In addition, if the developer first sought permission from the state for a minor permit, locals might not even know the granting of that state permit would mean the entire project had become a “vested right” of the developer.

“Vested Rights” is a common law idea that means some version of – because I have the property, I have an absolute, unconditional complete right to do what I want on the property. Obviously, I can’t build on your property, as in my first example. But what if what I do affects you? What if I create an industrial site that pollutes your water and air? What if I create a new activity (like sand mining six years ago) that effects your enjoyment of your land?

The bill is written so broadly that an action in one part of the state could affect land owned by the same company in another part of the state. The bill also gives “vesting rights” retroactively. Meaning, if the bill is passed into law, the new law would apply to any project that has not yet been finally approved by the time the bill passes. The bill could also affect any pending court cases.

The provisions related to projects not yet approved and pending court cases make me think there are many unknown implications.

One consequence of the bill is to create a race between a developer, builder or contractor against a local community. If the developer can get the project started before the local community takes final action, an inappropriate “non-conforming” use is created and may be continued indefinitely.

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Other parts of the bill stop a county from taking a “breather” (development moratorium) while a comprehensive zoning amendment is considered. In addition, non-conforming structures on a lake or river could be torn down and a new (probably much larger) non-conforming structure built in its place.

Land use ordinances, zoning, subdivision and shoreland zoning rules all came about to protect our communities. We, collectively through local elected leaders – want nice places to live and raise our families.

This bill is just one of several bills that take away the collective rights of a community and the individual rights of neighbors to protect themselves. Lawmakers should reject this bill and others like it.