



# PROPERTY RIGHTS AND LAND USE IN WISCONSIN

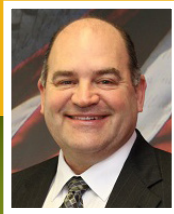
SYMPOSIUM  
THURSDAY, JULY 20, 2017

UW Madison Law School  
975 Bascom Mall, Madison

## FEATURED SPEAKERS



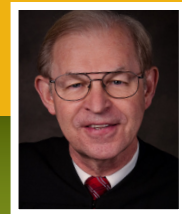
**ATTY. MIKE BERGER**  
Partner/Appellate Lawyer,  
Manatt Phelps & Phillips LLP



**ATTY. JOHN GROEN**  
EVP, General Counsel  
Pacific Legal Foundation



**ATTY. MISHA TSEYTLIN**  
Solicitor General, Dept. of Justice  
State of Wisconsin



**JUS. DAVID PROSSER**  
Retired Wisconsin  
Supreme Court Justice

## PROGRAM HIGHLIGHTS

- Legislators discuss recent and possibly **new statutory changes in property rights and land use law.**
- **Discussion of U.S. Supreme Court property rights and land use decisions** of the past term by noted land use attorney Michael Berger.
- **Analysis of U.S. Supreme Court decision this term in *Murr v. Wisconsin*** by the attorneys who argued the case.
- **Analysis of Wisconsin Supreme Court decision this term in *McKee v. Fitchburg*** by the attorneys who argued the case.
- Luncheon address by retired WI Supreme Court **Justice David T. Prosser Jr.**
- **Beer and wine reception** at Memorial Union at conclusion of program.



## REGISTRATION

**\$100/PERSON**

**ONLINE REGISTRATION:**

**[LAW.WISC.EDU/CLEW/SEMINARS](http://LAW.WISC.EDU/CLEW/SEMINARS)**





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SYMPOSIUM  
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Over the past several years, the Wisconsin Legislature has made significant statutory changes in the areas of property rights and land use law. Also, the U.S. Supreme Court and Wisconsin Supreme Court have recently decided some important property rights and land use cases. Practitioners, judges, planners and administrators who have not closely followed these changes will find that the law is no longer what they understood it to be. This symposium is designed for the professionals who deal with the law in these areas and will bring them up to date regarding these changes and how the changes will affect the regulation of land going forward. Property rights and land use law tend to be taught as two separate subjects, when in reality, they are inextricably intertwined. The sponsors hope that this symposium will be the first in what will become an annual review of the evolution of the law, both legislative and judicial.

## AGENDA

8:45 a.m. – 9:15 a.m. **Registration**

9:15 a.m. – 9:30 a.m. **Welcome**  
Atty. John A. Kassner

9:30 a.m. – 10:15 a.m. **Recent Legislative Changes**  
Atty. Thomas D. Larson  
Sen. Tom Tiffany  
Rep. Adam Jarchow

10:15 a.m. – 10:30 a.m. **Morning Break**

10:30 a.m. – 11:15 a.m. **Practitioners Discuss Impact of Legislative Changes**  
Atty. Ronald M. Trachtenberg  
Atty. Andrew T. Phillips  
Atty. John P. Macy  
Atty. Matthew J. Fleming  
Atty. William C. Griffith

11:15 a.m. – 12:00 p.m. **Discussion: *McKee v. Fitchburg***  
Appellant's Atty. Matthew J. Fleming  
Respondent's Atty. Lisa M. Lawless

12:00 p.m. – 1:00 p.m. **Box Lunch and Lunch Speaker**  
Retired Justice David T. Prosser, Jr.

1:00 p.m. – 1:45 p.m. **Discussion: *Murr v. Wisconsin***  
Appellant's Atty. John M. Groen  
Respondent's Atty. Misha Tseytlin

1:45 p.m. – 2:30 p.m. **U.S. Supreme Court Update**  
Atty. Michael M. Berger

2:30 p.m. – 2:45 p.m. **Afternoon Break**

2:45 p.m. – 3:30 p.m. **10 Cases**  
Atty. Kraig A. Byron  
Atty. John A. Kassner

3:30 p.m. – 4:00 p.m. **Open Discussion**

4:30 p.m. – 5:30 p.m. **Beer and Wine Reception**  
at Memorial Union



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Please note: This program has been submitted for continuing education credits for lawyers, judges and planners.



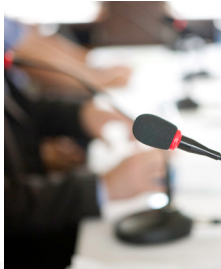
# DESCRIPTION OF PROGRAMS

## RECENT LEGISLATIVE CHANGES



Over the past several years, the Wisconsin Legislature has been very active in adopting changes to Wisconsin's land use and shoreland zoning laws and the rights of property owners affected by those laws. It is anticipated that there will be more changes in the coming years. The first program will be a panel discussion by two of the legislators who were instrumental in adopting these changes: state Sen. Tom Tiffany and Assembly Rep. Adam Jarchow. They will be joined by attorney Thomas D. Larson, the Wisconsin REALTORS® Association's Senior Vice President of Legal and Public Affairs, who actively followed and contributed to those legislative changes. They will discuss the most significant changes made to the law and offer insights into areas of the law for which changes are contemplated.

## PRACTITIONERS DISCUSS IMPACT OF LEGISLATIVE CHANGES



Following the first legislative panel discussion about the content and intent of the legislative changes, a panel discussion will offer the insight of practicing attorneys who must deal with these legislative changes going forward. Attorney Ronald M. Trachtenberg will serve as the moderator of a discussion between two attorneys with experience representing local units of government and two attorneys who typically represent citizens seeking land use approvals. Attorney Andrew T. Phillips will offer a county perspective while attorney John Macy will offer a city perspective on the impact of these legislative changes. Attorney Matthew J. Fleming and attorney William C. Griffith will offer a private property owner perspective on the impact of these legislative changes.

## DISCUSSION: *McKEE v. FITCHBURG*



The Wisconsin Supreme Court recently heard oral argument on *McKee v. Fitchburg*, which dealt with the rights of a property owner of lands located in a planned unit development (PUD) zoning classification after the municipality has decided it wants to change the existing PUD zoning classification on the property. The court just decided the case a few weeks ago, and the attorneys who argued that case before the Supreme Court, attorney Matthew J. Fleming, who represented the property owner, and attorney Lisa M. Lawless, who represented the municipality, will discuss their respective takes on the issues presented by the case as well as their thoughts on how that ruling will impact the use of PUD zoning going forward.

## LUNCH SPEAKER: RETIRED JUSTICE DAVID T. PROSSER JR.



Recently retired Wisconsin Supreme Court Justice David T. Prosser Jr. will be the lunch speaker. Justice Prosser was the author of a number of Supreme Court cases that directly affect land use and property rights.

## DISCUSSION: *MURR v. WISCONSIN*



The U.S. Supreme Court heard oral argument in April of a Wisconsin land use case, *Murr v. Wisconsin*. That case involved the takings implications of a county ordinance that requires the merger of contiguous, legal nonconforming lots, such that the owner of such lots is precluded from offering them for sale as separate parcels. A decision on that case is anticipated before the end of the current term, which ends on June 30, 2017. Two of the attorneys who argued that case before the U.S. Supreme Court will discuss their respective takes on the issues presented by the case as well as their thoughts on how the anticipated ruling of that case will affect property rights going forward. The presenters will be attorney John M. Groen of the Pacific Legal Foundation, who argued on behalf of the property owner, and attorney Misha Tseytlin, the Wisconsin Solicitor General, who argued on behalf of the State of Wisconsin.



## DESCRIPTION OF PROGRAMS (CONTINUED)

### U.S. SUPREME COURT UPDATE



Attorney Michael M. Berger has argued a number of landmark land use and property rights cases before the U.S. Supreme Court. He will offer a Supreme Court practitioner's analysis of the significance of the Supreme Court's decisions of the current term as well as other important recent federal cases related to land use and property rights.

### 10 CASES

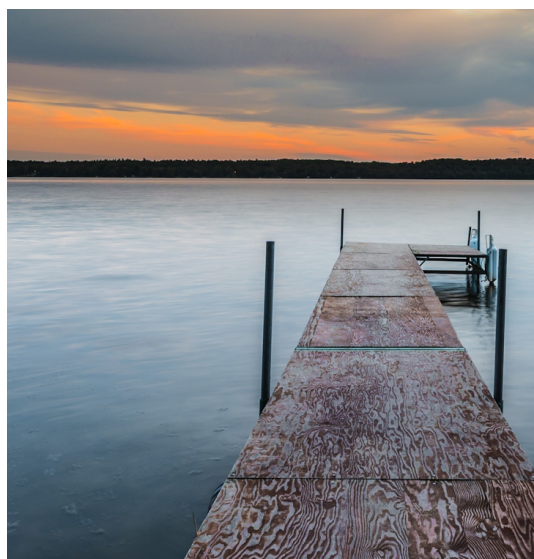


The final program will feature a more detailed discussion of 10 cases that practitioners should be aware of and fully understand in order to practice effectively in the areas of land use and property rights law. The opening speaker, attorney Kraig A. Byron, will select and discuss in detail five cases that an attorney practicing eminent domain law in Wisconsin should fully understand. The concluding speaker, attorney John A. Kassner, will select and discuss in detail five cases that shape the constitutional rights of property owners in Wisconsin. Each year at the symposium, attorneys will discuss 10 additional cases so that practitioners, regulators, land use planners and the bench can over time accumulate a fuller understanding of the case law affecting the rights of the government and those they govern when dealing with property rights and land use.

### BEER AND WINE RECEPTION AT UW MEMORIAL UNION



See the recent reconstruction of Memorial Union, enjoy the view of Lake Mendota and savor some of Wisconsin's adult beverages in mid-July, when all of these are most appreciated. The reception will provide an opportunity to talk to or become acquainted with fellow attorneys, administrators, land planners and judges.





## SPEAKERS

**Michael M. Berger** co-chairs the Appellate Practice Group at Manatt, Phelps & Phillips. A member of American College of Real Estate Lawyers, American Academy of Appellate Lawyers, and California Academy of Appellate Lawyers, his practice has focused on eminent domain and takings. He received the Brigham-Kanner Prize from the Property Rights Project at William & Mary Law School for 45 years of practice and scholarship devoted to property rights, and the Crystal Eagle Award from Owners Counsel of America for 40 years of protecting and advancing the rights of property owners. He has argued four property takings cases in the U.S. Supreme Court.

**Kraig A. Byron** is a shareholder in the Madison office of von Briesen & Roper, S.C. Kraig has a broad-based civil litigation practice, with a focus on eminent domain and outdoor advertising law. Kraig generally represents property owners in condemnation proceedings, including members of the outdoor advertising industry whose property has been taken in conjunction with highway improvement projects. Representing the owners of outdoor advertising structures requires familiarity with the unique treatment of billboards under Wisconsin condemnation law. Kraig also has a busy civil appellate practice with a similar focus.

**Matthew J. Fleming** is a shareholder at Murphy Desmond, S.C. representing both public and private sector clients in municipal law and related areas including land use regulation, tax incremental financing, real estate, special assessments and general litigation, with a special focus with respect to private clients on property tax assessment and eminent domain disputes. Mr. Fleming has given numerous continuing legal education lectures on topics relating to local government law including through the League of Wisconsin Municipalities and the State Bar of Wisconsin, has lectured at the University of Wisconsin Law School on Local Government Administrative Practice, and is recognized by Martindale-Hubbell and lawyers.com with an AV rating.

**William C. Griffith**, president of Larkin, Hoffman, Daly & Lindgren, has advised local and national clients on legal and policy issues affecting land use, zoning, real estate, environmental review, municipal law, regulatory matters and government relations. He has been legal counsel to Mall of America in all its phases, and serves as city attorney for the city of Columbus. He is a trusted advisor on real estate development and public funding for both private clients and municipalities. Bill is a frequent speaker at seminars on land use, zoning and environmental law, and he has served as an adjunct professor in land use law at the University of St. Thomas School of Law. He has been published in the *Minneapolis Star Tribune*, *St. Paul Pioneer Press* and the *Minnesota Real Estate Journal* and is a frequent panelist on the *Minneapolis St. Paul Business Journal's* Table of Experts for Commercial Real Estate.

**John M. Groen**, Executive Vice President and General Counsel of Pacific Legal Foundation, has extensive experience in public policy litigation before all levels of federal and state courts. On March 20, 2017, he argued *Murr v. Wisconsin* at the United States Supreme Court, and is now awaiting decision. He began his law career with Pacific Legal Foundation in 1987. After 10 years on staff, he shifted to private practice with the formation of Groen Stephens & Klinge LLP, in Bellevue, Washington, where he litigated land use issues and takings claims arising from government regulation of private property. After 19 years in private practice, and two years as a trustee on the PLF Board of Trustees, it was time to return to his passion for public interest law in support of private property rights. He is now PLF's Executive Vice President and General Counsel.

**Representative Adam Jarchow** graduated from the University of South Florida with a B.S. in Finance in 2001. In 2004, he earned his J.D. from the University of Florida Law School. After practicing in Florida and Minnesota, Adam and his wife Barbara returned home to Wisconsin. They now live in Balsam Lake with their four-year-old twins. Adam was elected to the state Assembly in 2014 and re-elected in 2016. Adam also serves as a volunteer member of the Apple River Fire Department and sits on the board of the Polk County Economic Development Corporation.

**John A. Kassner**, a shareholder in the Madison office of von Briesen & Roper, S.C., has a statewide practice focused on protecting the constitutional and legal rights of property owners dealing with government in complex litigation and appellate work dealing with eminent domain, inverse condemnation, regulatory takings of property, property rights and land use. He is a member of the State Bar of Wisconsin and practices before all Wisconsin courts as well as before the Western District of Wisconsin, the 7th Circuit Court of Appeals and the United States Supreme Court. He is a member of the National Association of Home Builders, where he serves on its Litigation Oversight Group and its Legal Action Committee.

**Thomas D. Larson**, Senior Vice President of Legal and Public Affairs, is the chief lobbyist for the Wisconsin REALTORS® Association. Mr. Larson began his career with the WRA in 1996 and oversees the WRA's lobbying, political operations and legal services. Tom has been actively involved in the creation and enactment of numerous state laws and policies impacting property owners and the real estate industry. He is a member of the State Bar of Wisconsin, admitted to practice before the U.S. Supreme Court, and often serves on various committees and task forces for the State of Wisconsin and the National Association of REALTORS®.

## SPEAKERS (CONTINUED)

**Lisa M. Lawless** is Senior Counsel at Husch Blackwell LLP, formerly Whyte Hirschboeck Dudek SC. A substantially experienced appellate lawyer, she has argued before the Wisconsin Supreme Court in land use/property rights cases, including representing the City of Fitchburg in *McKee v. Fitchburg*, 2017 WI 34, and a lakefront property owner in *Konneker v. Romano*, 2010 WI 65. She received her J.D. in 1992 from Indiana University School of Law at Bloomington, first in her class and summa cum laude, and a B.A. from the University of Virginia in 1989 in history and American studies.

**John P. Macy** is a shareholder with the law firm of Arenz, Molter, Macy, Riffle & Larson, S.C. The firm is engaged in the general practice of law, with a heavy emphasis on municipal law throughout southeastern Wisconsin. The firm currently represents some 50 municipal entities. Mr. Macy is a graduate of the Marquette University Law School, and received his bachelor's degree in English and political science cum laude from Carroll College. Mr. Macy is a frequent instructor for municipal seminars throughout the state of Wisconsin. Mr. Macy currently attends over 140 municipal night meetings a year.

**Andrew T. Phillips**, an attorney and shareholder in the Milwaukee office of von Briesen & Roper, S.C., has dedicated his career to assisting local governments and school districts with their most challenging legal problems. Andy brings innovative solutions to the organizational, operational, personnel and land use problems facing local governments and has been a leader in creating consortia efficiently in areas such as Medicaid programming, human services and long term care. For the past 12 years, Andy has served as outside General Counsel to the Wisconsin Counties Association, which has put him at the forefront of legal, legislative, regulatory and policy issues facing counties. Andy is also an experienced litigator with a background in complex commercial, employment and public sector litigation. He has extensive knowledge of state and federal employment laws and has represented public and private clients in administrative proceedings, arbitration, collective bargaining and employment litigation.

**Justice David T. Prosser Jr** was appointed to the Wisconsin Supreme Court in 1998 by Gov. Tommy Thompson. He served 18 years, retiring in 2016. He previously served 18 years in the state Assembly, the last two years as Speaker. Justice Prosser is a graduate of DePauw University in 1965 and the University of Wisconsin Law School in 1968. Justice Prosser's legal career includes: Lecturer, Indiana University Indianapolis Law School; Attorney-Advisor, Office of Criminal Justice Studies, U.S. Department of Justice; Administrative Assistant to Congressman Harold Froehlich; Outagamie County District Attorney; and Member, Wisconsin Tax Appeals Commission. Justice Prosser is a Life Member of the National Conference of Commissioners on Uniform State Laws.

**Sen. Tom Tiffany** was elected in November 2012 to represent the 12th Senate District. Tom was previously elected to the state Assembly in 2010 where he served as state Representative of the 35th Assembly District. Tom received a B.S. in agricultural economics from the University of Wisconsin at River Falls in 1980. Tom and his wife Chris live in the Northwoods along the Willow Flowage where they are raising their three daughters. Tom is a former small business owner of Wisconsin River Cruises, and is also the dam tender on the Willow Flowage. Sen. Tiffany is currently the chairman of the Senate Committee on Sporting Heritage, Mining and Forestry. He is the vice chairman of the Senate Committee on Agriculture, Small Business, and Tourism. He is a member of the Joint Committee on Finance, as well as the Senate Committee on Revenue, Financial Institutions, and Rural Issues, and the Joint Survey Committee on Tax Exemptions.

**Misha Tseytlin** became Wisconsin Solicitor General in December 2015, in which position he argued to the *Murr* case on behalf of the State of Wisconsin. Tseytlin previously served as General Counsel in the West Virginia Attorney General's Office. Tseytlin also clerked for United States Supreme Court Justice Anthony Kennedy. Additionally, he clerked for the Honorable Janice Rodgers Brown on the Court of Appeals for the District of Columbia Circuit in Washington, D.C., and the Honorable Alex Kozinski on the Court of Appeals for the 9th Circuit in Pasadena, California.

**Ronald M. Trachtenberg**, a shareholder in the Madison office of von Briesen & Roper, S.C., is concentrating his practice in real estate development, utilizing his 30-plus years of experience in land use, real estate, condominium, and municipal law and practice, to assist in land subdivision, zoning approvals and other government land use entitlements, as well as infrastructure and building construction contracts and real estate sales and leases for both commercial and residential properties. He is a member of the State Bar of Wisconsin and practices before all Wisconsin courts as well as before the Western District of Wisconsin. He served as an alderman for eight years on the Common Council for the City of Madison, including a term as president of the Common Council, where he also served on the plan commission, public works commission and economic development commission. He is chairman of Madison Development Corporation as well as a member of the National Association of Home Builders and NAIOP. When practicing before local government bodies, his motto is "Grovel from a position of strength."