City of Stoughton, 207 S. Forrest Street, Stoughton WI 53589

RESOLUTION OF THE COMMON COUNCIL

Resolution to support LRB-5204/1, relating to: condemnation authority for recreational trail.

Committee Action:

Fiscal Impact: None

File Number:	**Date Introduced:**

WHEREAS, the City of Stoughton has been encountering difficulty to gain easements from private property owners which leaves gaps in City owned public trails; and,

WHEREAS, current law prohibits the condemnation to acquire land or interests in land for the purpose of establishing or extending recreational trails, bicycle ways or lands, or pedestrian ways; and,

WHEREAS, LRB-5204/1 would reverse past law changes and allow for the condemnation to acquire land or interest in land for the purpose of establishing or extending recreational trails, bicycle ways or lands, or pedestrian ways; and,

WHEREAS, the City of Stoughton would benefit from this law change and would allow the City to connect missing links of current trails to create a more cohesive trail system; and,

THEREFORE, BE IT RESOLVED, that the City of Stoughton supports LRB-5204/1.

_____

Timothy Swadley, Mayor Date

Published:

Council Action: _____ ☐ **Override** **Vote** _____

State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5204/1
SWB:skw

2021 BILL

AN ACT ***to repeal*** 32.015, 61.34 (3) (b), 62.22 (1) (b) and 62.23 (17) (am); ***to renumber and amend*** 61.34 (3) (a) and 62.22 (1) (a); and ***to amend*** 23.09 (2) (d) (intro.), 27.01 (2) (a), 27.019 (10), 27.05 (3), 27.065 (1) (a), 27.08 (2) (b), 27.08 (2) (c), 32.51 (1) (intro.), 59.52 (6) (a), 60.782 (2) (d), 62.23 (17) (a) (intro.), 85.09 (2) (a) and 990.01 (2) of the statutes; **relating to:** condemnation authority for recreational trails.

Analysis by the Legislative Reference Bureau

This bill allows certain entities, such as a county board, village board, or the Department of Transportation, to use the power of condemnation to acquire land or interests in land for the purpose of establishing or extending recreational trails, bicycle ways or lanes, or pedestrian ways. Current law prohibits the exercise of condemnation power to acquire land or interests in land for those purposes.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 23.09 (2) (d) (intro.) of the statutes is amended to read:

23.09 **(2)** (d) *Lands, acquisition.* (intro.) Acquire by purchase, lease or agreement, and receive by gifts or devise, lands or waters suitable for the purposes enumerated in this paragraph, and maintain such lands and waters for such purposes; and~~, except for the purpose specified under subd. 12.,~~ may condemn lands or waters suitable for such purposes after obtaining approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof:

SECTION 2. 27.01 (2) (a) of the statutes is amended to read:

27.01 **(2)** (a) Acquire by purchase, lease or agreement lands or waters suitable for state park purposes and may acquire such lands and waters by condemnation after obtaining approval of the senate and assembly committees on natural resources. ~~The power of condemnation may not be used for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~

SECTION 3. 27.019 (10) of the statutes is amended to read:

27.019 **(10)** ACQUISITION OF LAND. Any county in which there does not exist a county park commission acting through its rural planning committee may acquire by gift, grant, devise, donation, purchase, condemnation or otherwise, with the consent of the county board, a sufficient tract or tracts of land for the reservation for public use of river fronts, lake shores, picnic groves, outlook points from hilltops, places of special historic interest, memorial grounds, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same, and to develop and maintain the same for public use. ~~The power of condemnation may not be used for the purpose of establishing or extending a~~

~~recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~

SECTION 4. 27.05 (3) of the statutes is amended to read:

27.05 **(3)** Acquire, in the name of the county, by purchase, land contract, lease, condemnation, or otherwise, with the approval and consent of the county board, such tracts of land or public ways as it deems suitable for park purposes; including lands in any other county not more than three–fourths of a mile from the county line; but no land so acquired shall be disposed of by the county without the consent of said commission, and all moneys received for any such lands, or any materials, so disposed of, shall be paid into the county park fund hereinafter established. ~~The power of condemnation may not be used for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~

SECTION 5. 27.065 (1) (a) of the statutes is amended to read:

27.065 **(1)** (a) The county board of any county which shall have adopted a county system of parks or a county system of streets and parkways, pursuant to s. 27.04, may acquire the lands necessary for carrying out all or part of such plan by gift, purchase, condemnation or otherwise; provided, however, that no lands shall be acquired by condemnation unless and until the common council of the city or the board of trustees of the village or the board of supervisors of the town wherein such land is situated shall consent thereto. ~~The power of condemnation may not be used for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~ The cost of acquiring such lands by purchase or condemnation may be paid in whole or in part by the county or by the property to be

benefited thereby, as the county board shall direct but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto; provided, that no assessment for paying the cost of acquiring lands may be levied or collected against the property to be benefited until the governing body of the city, village or town where such lands are located has by resolution determined that the public welfare will be promoted thereby. Title to all lands acquired hereunder shall be an estate in fee simple.

SECTION 6. 27.08 (2) (b) of the statutes is amended to read:

27.08 **(2)** (b) To acquire in the name of the city for park, parkway, boulevard or pleasure drive purposes by gift, devise, bequest or condemnation, either absolutely or in trust, money, real or personal property, or any incorporeal right or privilege~~; except that no lands may be acquired by condemnation for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a)~~. Gifts to any city of money or other property, real or personal, either absolutely or in trust, for park, parkway, boulevard or pleasure drive purposes shall be accepted only after they shall have been recommended by the board to the common council and approved by said council by resolution. Subject to the approval of the common council the board may execute every trust imposed upon the use of property or property rights by the deed, testament or other conveyance transferring the title of such property to the city for park, parkway, boulevard or pleasure drive purposes.

SECTION 7. 27.08 (2) (c) of the statutes is amended to read:

27.08 **(2)** (c) Subject to the approval of the common council to buy or lease lands in the name of the city for park, parkway, boulevard or pleasure drive purposes within or without the city and, with the approval of the common council, to sell or

exchange property no longer required for its purposes. Every city is authorized, upon recommendation of its officers, board or body having the control and management of its public parks, to acquire by condemnation in the name of the city such lands within or without its corporate boundaries as it may need for public parks, parkways, boulevards and pleasure drives. ~~The power of condemnation may not be used for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~

SECTION 8. 32.015 of the statutes is repealed.

SECTION 9. 32.51 (1) (intro.) of the statutes is amended to read:

32.51 **(1)** PURPOSES. (intro.) In addition to the powers granted under subch. I ~~and subject to the limitations under s. 32.015~~, any city may condemn or otherwise acquire property under this subchapter for:

SECTION 10. 59.52 (6) (a) of the statutes is amended to read:

59.52 **(6)** (a) *How acquired; purposes.* Take and hold land acquired under ch. 75 and acquire, lease or rent property, real and personal, for public uses or purposes of any nature, including without limitation acquisitions for county buildings, airports, parks, recreation, highways, dam sites in parks, parkways and playgrounds, flowages, sewage and waste disposal for county institutions, lime pits for operation under s. 59.70 (24), equipment for clearing and draining land and controlling weeds for operation under s. 59.70 (18), ambulances, acquisition and transfer of real property to the state for new collegiate institutions or research facilities, and for transfer to the state for state parks and for the uses and purposes specified in s. 23.09 (2) (d). ~~The power of condemnation may not be used to acquire property for the purpose of establishing or extending a recreational trail; a bicycle~~

~~way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~

SECTION 11. 60.782 (2) (d) of the statutes is amended to read:

60.782 **(2)** (d) Lease or acquire, including by condemnation, any real property situated in this state that may be needed for the purposes of s. 23.09 (19), 23.094 (3g) or 30.275 (4). ~~The power of condemnation may not used to acquire property for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).~~

SECTION 12. 61.34 (3) (a) of the statutes is renumbered 61.34 (3) and amended to read:

61.34 **(3)** ACQUISITION AND DISPOSAL OF PROPERTY. ~~Except as provided in par. (b), the~~ The village board may acquire property, real or personal, within or outside the village, for parks, libraries, recreation, beautification, streets, water systems, sewage or waste disposal, harbors, improvement of watercourses, public grounds, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the village, by means other than condemnation, for industrial sites; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for instruction, recreation, amusement and other public purposes; and may sell and convey such property. Condemnation shall be as provided by ch. 32.

SECTION 13. 61.34 (3) (b) of the statutes is repealed.

SECTION 14. 62.22 (1) (a) of the statutes is renumbered 62.22 (1) and amended to read:

62.22 **(1)** PURPOSES. ~~Except as provided in par. (b), the~~ The governing body of any city may by gift, purchase or condemnation acquire property, real or personal, within or outside the city, for parks, recreation, water systems, sewage or waste disposal, airports or approaches thereto, cemeteries, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the city, by means other than condemnation, for industrial sites; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for public purposes; and may sell and convey such property. The power of condemnation for any such purpose shall be as provided by ch. 32.

SECTION 15. 62.22 (1) (b) of the statutes is repealed.

SECTION 16. 62.23 (17) (a) (intro.) of the statutes is amended to read:

62.23 **(17)** (a) (intro.) ~~Except as provided in par. (am), cities~~ Cities may acquire by gift, lease, purchase, or condemnation any lands within its corporate limits for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same or any lands adjoining or near to such city for use, sublease, or sale for any of the following purposes:

SECTION 17. 62.23 (17) (am) of the statutes is repealed.

SECTION 18. 85.09 (2) (a) of the statutes is amended to read:

85.09 **(2)** (a) The department of transportation shall have the first right to acquire, for present or future transportational or recreational purposes, any property used in operating a railroad or railway, including land and rails, ties, switches, trestles, bridges, and the like located on that property, that has been abandoned. The department of transportation may, in connection with abandoned

rail property, assign this right to a state agency, the board of regents of the University of Wisconsin System, any county or municipality, or any transit commission. Acquisition by the department of transportation may be by gift, purchase, or condemnation in accordance with the procedure under s. 32.05~~, except that the power of condemnation may not be used to acquire property for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a)~~. In addition to its property management authority under s. 85.15, the department of transportation may, subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), lease and collect rents and fees for any use of rail property pending discharge of the department's duty to convey property that is not necessary for a public purpose. No person owning abandoned rail property, including any person to whom ownership reverts upon abandonment, may convey or dispose of any abandoned rail property without first obtaining a written release from the department of transportation indicating that the first right of acquisition under this subsection will not be exercised or assigned. No railroad or railway may convey any rail property prior to abandonment if the rail property is part of a rail line shown on the railroad's system map as in the process of abandonment, expected to be abandoned, or under study for possible abandonment unless the conveyance or disposal is for the purpose of providing continued rail service under another company or agency. Any conveyance made without obtaining such release is void. The first right of acquisition of the department of transportation under this subsection does not apply to any rail property declared by the department to be abandoned before January 1, 1977. The department of transportation may acquire any abandoned rail property under this section regardless of the date of its abandonment.

SECTION 19. 990.01 (2) of the statutes is amended to read:

990.01 **(2)** ACQUIRE. "Acquire," when used in connection with a grant of power to any person, includes the acquisition by purchase, grant, gift or bequest. It includes the power to condemn ~~only~~ in the cases specified in s. 32.02 ~~and subject to the limitations under s. 32.015~~.

SECTION 20. Initial applicability.

(1) This act first applies to condemnation proceedings in which title to the subject property has not vested in the condemnor on the effective date of this subsection.

(END)