



207 East Buffalo Street, Suite 325
Milwaukee, WI 53202

July 26, 2010

Mayor Jack F. Chiovatero
New Berlin Plan Commission
3805 S. Casper Drive
New Berlin, WI 53151

Re: Bylaws Change Prohibiting Comments at Plan Commission

Dear Mayor Chiovatero:

The ACLU of Wisconsin has learned that recently - in the midst of the robust public debate regarding affordable housing construction in New Berlin - the Plan Commission altered its bylaws to prohibit anyone other than “residents” and “land owners,” and, in limited circumstances, applicants and their consultants, from speaking at its meetings. Until this point, the Plan Commission had allowed testimony by any member of the public on issues before the Commission. We are concerned about the chilling effect of this policy, the timing and content of which suggest it was enacted to suppress or limit speech from a viewpoint with which some New Berlin residents and officials disagreed.

In a democracy, no one viewpoint should be permitted to shut out other perspectives when public policy matters are being discussed. “To permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees. . . . [W]hen the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of their employment, or the content of their speech.” *City of Madison, Joint School Dist. No. 8 v. Wisconsin Employment Relations Commission*, 429 U.S. 167, 175-6 (1976).

It is disheartening to see government attempt to limit speech on public issues, rather than encouraging the expression of a diversity of views. “[E]xpression on public issues ‘has always rested on the highest rung of the hierarchy of First Amendment values.’ ‘[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.’ There is a ‘profound national commitment’ to the principle that ‘debate on public issues should be uninhibited, robust, and wide-open.’” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (internal citations omitted); *see also*; *Connick v. Myers*, 461 U.S. 138, 145 (1983).

The fact that the speech creates controversy in the community is no reason to suppress it.

Indeed, in a marketplace of ideas, controversy is necessary for progress. “[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects. . . . [T]he alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (emphasis added).

While it may be reasonable to seek to ensure that the Plan Commission can efficiently conduct its business by, for example, limiting the amount of time given for each person to speak, restricting the ability to speak based on the residence of the speaker does nothing to enhance the quality of the debate. *Cf. Citizens United v. Fed. Election Comm’n*, 130 S.Ct. 876, 905 (2010) (“[T]he First Amendment generally prohibits the suppression of political speech based on the speaker’s identity.”). Certainly, no one would suggest that New Berlin residents have a monopoly on good ideas that may be useful in the Plan Commission’s decision-making.

I look forward to the Commission’s response to our concerns.

Sincerely,

Christopher Ahmuty
Executive Director

cc: Plan Commission Members:

David A. Ament
Marta Broge
William Christel
Brian J. Felda
Jenalyn Groeschel