

TRANS 233

TRANS 233

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Chapter Trans 233

DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY

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Note: Chapter Hy 33 was renumbered chapter Trans 233, under s. 13.93 (2m) (b) 1, Stats., Register, August, 1996, No. 488. Chapter Trans 233 as it existed on January 31, 1999, was repealed and a new Chapter Trans 233 was created effective February 1, 1999.

Trans 233.01 Purpose. Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. The ability of state trunk highways and connecting highways to serve as an efficient part of an integrated intermodal transportation system meeting interstate, statewide, regional and local needs is jeopardized by failure to consider and accommodate long-range transportation plans and needs during land division processes. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway, in order to provide for the safety of entrance upon and departure from those highways, to preserve the public interest and investment in those highways, to help maintain speed limits, and to provide for the development and implementation of an intermodal transportation system to serve the mobility needs of people and freight and foster economic growth and development, while minimizing transportation-related fuel consumption, air pollution, and adverse effects on the environment and on land owners and users. Preserving the public investment in an integrated transportation system also assures that no person, on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any transportation program or activity. The authority to impose minimum standards for subdivisions is s. 236.13 (1) (e), Stats. The authority to impose minimum standards for land divisions under ss. 236.34, 236.45 and 703.11, Stats., is s. 86.07 (2), Stats. The authority to impose minimum standards for land divisions to consider and accommodate long-range transportation plans and needs is ss. 1.11 (1), 1.12 (2), 1.13 (3), 20.395 (9) (qx), 66.1001 (2) (c), 84.01 (2), (15), and (17), 84.015, 84.03 (1), 85.02, 85.025, 85.05, 85.16 (1), 86.31 (6), 88.87 (3), and 114.31 (1), Stats.

Note: The Department is authorized and required by ss. 84.01 (15), 84.015, 84.03 (1) and 20.395 (9) (qx), to plan, select, lay out, add to, decrease, revise, construct, reconstruct, improve and maintain highways and related projects, as required by federal law, Title 23, USC and all acts of Congress amendatory or supplementary thereto, and the federal regulations issued under the federal code; and to expend funds in accordance with the requirements of acts of Congress making such funds available. Among these federal laws that the Department is authorized and required to follow are 23 USC 109 establishing highway design standards; 23 USC 134, requiring development and compliance with long-range (minimum of 20 years) metropolitan area transportation plans; and 23 USC 135, requiring development and compliance with long-range (minimum of 20 years) statewide transportation plans. Similarly, the Department is authorized and required by the state statutes cited and other federal law to assure that it does not unintentionally exclude or deny persons equal benefits or participation in transportation programs or activities on the basis of race, color, national origin and other factors, and to give appropriate consideration to the effects of transportation facilities on the environment and communities. A "state trunk highway" is a highway that is part of the State Trunk Highway System. It includes State numbered routes, federal numbered highways, the Great River Road and the Interstate System. A listing of state trunk highways with geographic end points is available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31. The County Maps published by the Wisconsin Department of Transportation also show the breakdown

county by county. As of January 1, 1997, there were 11,813 miles of state trunk highways and 520 center-line miles of connecting highways. Of at least 116 municipalities in which there are connecting highways, 112 are cities and 4 or more are villages.

A "connecting highway" is not a state trunk highway. It is a marked route of the State Trunk Highway System over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. The Department reimburses municipalities for the maintenance of connecting highways in accordance with a lane mile formula. See ss. 84.02 (1), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways with geographic end points is also available in the Department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

A "business route" is an alternate highway route marked to guide motorists to the central or business portion of a city, village or town. The word "BUSINESS" appears at the top of the highway numbering marker. A business route branches off from the regular numbered route, passes through the business portion of a city and rejoins the regularly numbered route beyond that area. With very rare exceptions, business routes are not state trunk highways or connecting highways. The authorizing statute is s. 84.02(6), Stats. This rule does not apply to business routes.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. Register, January, 2001, No. 541, eff. 2-1-01; corrections made under s. 13.93 (2m) (b) 7., Stats.

Trans 233.012 Applicability. (1) In accordance with ss. 86.07 (2), 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., or other means not provided by statute, and that abuts a state trunk highway, connecting highway or service road.

(2) Structures and improvements lawfully placed in a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed in a setback area before a land division, are explicitly allowed to continue to exist. Plats that have received preliminary approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, if there is no substantial change between the preliminary and final plat, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Plats that have received final approval prior to February 1, 1999, are not subject to the standards under this chapter as first promulgated effective February 1, 1999, but are subject to ch. Trans 233 as it existed prior to February 1, 1999. Land divisions on which the department acted between February 1, 1999 and February 1, 2001 are subject to ch. Trans 233 as it existed February 1, 1999.

(3) Any structure or improvement lawfully placed within a setback area under ch. Trans 233 prior to February 1, 1999, or lawfully placed within a setback area before a land division, may be kept in a state of repair, efficiency or validity in order to preserve from failure or decline, and if unintentionally or tortiously destroyed, may be replaced substantially in kind.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. Trans. 233.012 to be (1), cr. (2) and (3), Register, January, 2001, No. 541, eff. 2-1-01; correction made under s. 13.93 (2m) (b) 7., Stats.

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Trans 233.015 Definitions. Words and phrases used in this chapter have the meanings given in s. 340.01, Stats., unless a different definition is specifically provided. In this chapter:

(1) "Certified survey map" or "CSM" means a map that complies with the requirements of s. 236.34, Stats.

(1m) "Desirable traffic access pattern" means traffic access that is consistent with the technical and professional guidance provided in the department's facilities development manual.

Note: Guidelines established in the Department's Facilities Development Manual are not considered "rules," as defined in s. 227.01(13), Stats., and so are not subject to the requirements under s. 227.10, Stats.

(1r) "District office" means an office of the division of transportation districts of the department.

(2) "Improvement" means any permanent addition to or betterment of real property that involves the expenditure of labor or money to make the property more useful or valuable. "Improvement" includes parking lots, driveways, loading docks, in-ground swimming pools, wells, septic systems, retaining walls, signs, buildings, building appendages such as porches, and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and open fences.

(2m) "In-ground swimming pool" includes a swimming pool that is designed or used as part of a business or open to use by the general public or members of a group or association. "In-ground swimming pool" does not include any above-ground swimming pools without decks.

(3) "Land divider" means the owner of land that is the subject of a land division or the land owner's agent for purposes of creating a land division.

(4) "Land division" means a division under s. 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.

(5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.

(5m) "Major intersection" means the area within one-half mile of the intersection or interchange of any state trunk highway or connecting highway with a designated expressway, or freeway, under s. 84.295, Stats., or a designated interstate highway under s. 84.29, Stats.

(6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies, and any company furnishing or producing heat, light, power, cable television service or water, or a rural electrical cooperative, as described in s. 32.02 (10), Stats.

(6m) "Reviewing municipality" means a city or village to which the department has delegated authority to review and object to land divisions under s. Trans 233.03 (7).

(6r) "Secretary" means the secretary of the department of transportation.

(7) "Structure" includes a temporary or non-permanent addition to or betterment of real property that is portable in nature, but that adversely affects the safety of entrance upon or departure from state trunk or connecting highways or the preservation of public interest and investment in those highways, as determined by the department. "Structure" does not include portable swing sets, movable lawn sheds without pads or footings, and above ground swimming pools without decks.

(7m) "Technical land division" means a land division involving a structure or improvement that has been situated on the real property for at least 5 years, does not result in any change to the use of existing structures and improvements and does not negatively affect traffic. "Technical land division" includes the conversion of an apartment building that has been in existence for at

least 5 years to condominium ownership, the conversion of leased commercial spaces in a shopping mall that has been in existence for at least 5 years to owned spaces, and the exchange of deeds by adjacent owners to resolve mutual encroachments.

(8) "Unplatted" means not legally described by a plat, land division map, certified survey map or condominium plat.

(8m) "User" means a person entitled to use a majority of the property to the exclusion of others.

(9) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication service, cable television service or broadcast service, as defined in s. 196.01 (1m), Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (1m), (1r), (2m), (5m), (6m), (6r), (7m) and (8m), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.017 Other abutments. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is any of the following:

(1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.

(2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.

(3) Separated from a state trunk highway or connecting highway by only a service road.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.02 Basic principles. To control the effects of land divisions on state trunk highways and connecting highways and to carry out the purposes of ch. 236, Stats., the department promulgates the following basic requirements:

(1) Local traffic from a land division or development abutting a state trunk highway or connecting highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.

(3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:

(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.

(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land division. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.

(4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in s. Trans 233.08.

(5) A land division map shall include provision for the handling of surface drainage in such a manner as specified in s. Trans 233.105 (3).

(6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds noise standards in s. Trans 405.04, Table 1.

(7) A land division shall provide vision corners at intersections and driveways per department standards.

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Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (c), Stats. Rules governing construction of driveways and other connections with highways are found in ch. Trans 231. Detailed specifications may be obtained at the department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.03 Procedures for review. The following procedures apply to review by the department, district office or reviewing municipality of proposed certified survey maps, condominium plats and other land divisions:

(1) CONCEPTUAL REVIEW. (a) Before the lots are surveyed and staked out, the land divider shall submit a sketch to the department's district office for review. The sketch shall indicate roughly the layout of lots and the approximate location of streets, and include other information required in this chapter.

(b) Unless the land divider submits a preliminary plat under s. 236.12 (2) (a), Stats., the land divider shall have the district office review the sketch described in par. (a).

(c) There is no penalty for failing to obtain conceptual review; the conceptual review procedure is encouraged to avoid waste that results from subsequent required changes.

(2) PRELIMINARY AND FINAL PLAT REVIEW. The department shall conduct preliminary and final subdivision plat review under s. 236.12, Stats., when the land divider or approving authority submits, through the department of administration's plat review office, a formal request for departmental review of the plat for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee.

(3) PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.45 AND S. 703.11, STATS. The department shall review preliminary and final land division maps under ss. 236.45 and 703.11, Stats., when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the district office. Review of preliminary and final land division maps occurring under ss. 236.45 and 703.11, Stats., by the department shall occur when the approving authority, or the land divider, when there is no approving authority, submits a formal request for departmental review for certification of non-objection as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register of deeds, any approving agency, the land division map preparer and the land divider. This information is to be submitted to the department.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

(4) PRELIMINARY AND FINAL REVIEW FOR LAND DIVISIONS OCCURRING UNDER S. 236.34 AND BY OTHER MEANS NOT PRESCRIBED BY STATUTES. The department shall conduct preliminary and final review of land division maps under s. 236.34, Stats., or under any other means not prescribed by statutes, when the land divider submits a formal request for departmental review for certification of non-objection to the land division as it relates to the requirements of this chapter. The request shall be accompanied with the land division map and the departmental review fee. No submittal may be considered complete unless it is accompanied by the fee. Additional information required is the name and address of the register

of deeds, any approving agency, the land division map preparer and the land divider. This information shall be submitted to the district office or to the department.

Note: The appropriate department address is Access Management Coordinator, Bureau of Highway Development, 4802 Sheboygan Avenue, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

(5) TIME LIMIT FOR REVIEW. (a) Except as provided in pars. (b) to (d), not more than 20 calendar days after receiving a completed request to review a land division map, the department, district office or reviewing municipality shall do one of the following:

1. Determine that the land division is a technical land division. Upon determining that a land division is a technical land division, the department, district office or reviewing municipality shall certify that it has no objection to the land division map and shall refund all fees paid for review of that land division map.

2. Provide written notice to the land divider either objecting to or certifying that it has no objection to the land division.

Note: The 20-day time limit for action on a review without any special exception or variance is also established by statute for subdivision plat reviews in sec. 236.12(3) and (6), Stats.

(b) The department and district offices are not required to complete conceptual reviews under sub. (1) within a specified time, but shall endeavor to complete a conceptual review under sub. (1) within 30 calendar days after receiving the completed request.

(c) If a special exception is requested under s. Trans 233.11, the department, district office or reviewing municipality shall complete its review of the land division map within the time limit provided in s. Trans 233.11 (6).

(d) A request is considered complete under this subsection unless, within 5 working days after receiving the request, the department, district office or reviewing municipality provides written notice to the land divider stating that the request is incomplete and specifying the information needed to complete the request. On the date that additional information is requested under this subdivision, the time period for review ceases to run, but resumes running upon receipt of the requested information.

(e) If the department, district office or reviewing municipality fails to act within the time limit provided in this section or s. Trans 233.11 (6), the department, district office or reviewing municipality shall be considered to have no objection to the land division map or special exception.

(6) DISTRICT AUTHORITY TO REVIEW LAND DIVISION MAPS. Beginning on February 1, 2001, each district office may review land division maps under this chapter. The department shall develop implementing procedures to assure consistency and uniformity of such reviews among district offices and shall provide uniform guidance in figure 3 of procedure 7-50-5 of the department's facilities development manual dated December 1, 2000.

Note: Guidelines established under this subsection are not considered "rules", as defined in s. 227.01(13), Stats., and so are not subject to the requirements under s. 227.10, Stats. However, this rule references uniform guidance by date so that future revisions to that uniform guidance will become effective only if ch. Trans 233 is amended.

(7) MUNICIPAL AUTHORITY TO REVIEW LAND DIVISION MAPS. The department may, upon request, delegate to a city or village authority to review and object to any proposed land division that abuts a state trunk highway or connecting highway lying within the city or village. The department shall develop a uniform written delegation agreement in cooperation with cities and villages. The delegation agreement may authorize a city or village to grant special exceptions under s. Trans 233.11. Any decision of a reviewing municipality relating to a land division map or special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality to ensure conformity with the delegation agreement and this chapter and may reverse or modify the municipality's decision as appropriate. No reviewing municipality may change its setback policy after executing a delegation agreement

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under this section, except by written amendment to the delegation agreement approved by the department.

(8) APPEALS. (a) *Department review.* Except as provided in this paragraph and par. (b), a land divider, governmental officer or entity, or member of the general public may appeal a final decision of a district office or reviewing municipality regarding a land division map, special exception, or consequence of a failure to act to the secretary or the secretary's designee. Appeals may be made not more than 20 calendar days after that final decision or failure to act. The secretary or the secretary's designee may reverse, modify or affirm the decision. Not more than 60 calendar days after receiving the appeal, the secretary or secretary's designee shall notify the appealing party and the land divider in writing of the decision on appeal. If the secretary or secretary's designee does not provide written notice of his or her decision within the 60-day limit, the department is considered to have no objection to the final decision of the district office or reviewing municipality. The department may not unilaterally initiate a review of a decision of a district office certifying non-objection to a land division map, with or without a special exception. The department may unilaterally review any decision of a reviewing municipality relating to a land division map to ensure conformity with the delegation agreement and this chapter, and may reverse or modify the municipality's decision as appropriate. No person may appeal a conceptual review under sub. (1).

(b) *Judicial review.* 1. 'Chapter 236 land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is subject to chapter 236, Stats., shall follow appeal procedures specified in that chapter.

Note: Land divisions subject to plat approval under sec. 236.10, Stats., shall follow the procedures specified in sec. 236.13(5), Stats.

2. 'All other land divisions.' Judicial review of any final decision of the department, district office or reviewing municipality relating to a land division that is not subject to chapter 236, Stats., shall follow the procedures specified in chapter 227, Stats., for judicial review of agency decisions.

Note: Final administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to judicial review as provided in ch. 227, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (intro.), (2), (3) and (4), r. and recr. (5), cr. (6) to (8), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.04 Required information. The land divider shall show on the face of the preliminary or final land division map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following, and shall show the information in subs. (1) to (8) about the following:

(1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.

(2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.

(3) The location, and identification of each highway and private road or driveway, leading to or from the land division.

(4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.

(5) The locations of all easements for accessing real property within the land division.

(6) The location of the highway nearest each side of the land division.

(7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway

that abuts the land division, if the connection is any of the following:

(a) Within 300 feet of the land division, if any portion of the land division lies within a city or village.

(b) Within 1,000 feet of the land division, if no part of the land division lies within a city or village.

(8) All information required to be shown on a land division map shall be shown in its proper location

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.05 Direct access to state trunk highway or connecting highway. **(1)** No land divider may divide land in such a manner that a private road or driveway connects with a state trunk highway or connecting highway or any service road lying partially within the right-of-way of a state trunk highway or connecting highway, unless the land divider has received a special exception for that purpose approved by the department, district office or reviewing municipality under s. Trans 233.11. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21 (2) (a), Stats., and shall be executed in the manner specified for a conveyance:

"All lots and blocks are hereby restricted so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.)

_____ or _____
Street; it is expressly intended that this restriction constitute a restriction for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns. Any access shall be allowed only by special exception. Any access allowed by special exception shall be confirmed and granted only through the driveway permitting process and all permits are revocable."

Note: The denial of a special exception for access or connection purposes is not the functional equivalent of the denial of a permit under s. 86.07(2), Stats. Appeal of disapproval of a plat (and thus disapproval of a special exception) is available only by certiorari under s. 236.13(5), Stats. There is no right to a contested case hearing under ss. 227.42 or 227.51(1) for the denial of a special exception.

(2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and unplatted lands that abut the proposed land division and that are owned by or under option, whether formal or informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.

(3) No person may connect a highway or a private road or driveway with a state trunk highway, connecting highway, or with a service road lying partially within the right-of-way of a state trunk highway or connecting highway, without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final land division map or, for a subdivision plat, prior to the department's certification of no objection.

Note: The authority maintaining the highway is the one that issues, denies or places conditions on any permit issued under s. 86.07(2), Stats. Cities and villages are responsible for the maintenance of connecting highways under s. 86.32(1), Stats. Cities and villages must condition any permit issued with respect to a connecting highway upon compliance with all requirements imposed pursuant to this chapter.

(4) Whenever the department finds that existing and planned highways provide the land division with reasonable and adequate access to a highway, the department shall prohibit the connection to a state trunk highway or connecting highway of any highway and private road or driveway from within the land division.

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Note: Rules governing construction of driveways and other connections with a state trunk highway are found in ch. Trans 231. Detailed specifications may be obtained at the Department's district offices.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; am. (1), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.06 Frequency of connections with a state trunk highway or connecting highway.

(1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways or connecting highways.

(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.07 Temporary connections. (1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:

(a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06 (2).

(b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06 (2).

(2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.

(2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06 (2).

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.08 Setback requirements and restrictions. (1) Except as provided in this section or in s. Trans 233.11 or, with respect to connecting highways, as provided in s. 86.16 (1), Stats., no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2) or (3).

(2) (a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.

(b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:

1. The distance allowed under the ordinance.

2. 42 feet from the nearer right-of-way line.

3. 100 feet from the centerline.

(c) At least once every 2 years, the department shall produce general reference maps that generally identify major intersections and the highways specified in subs. 1. to 5. The department may reduce or extend, by not more than 3 miles along the highway, the area subject to a setback established under par. (a) or (b) to establish logical continuity of a setback area or to terminate the setback area at a readily identifiable physical feature or legal boundary, including a highway or property boundary. Persons may seek special exceptions to the setback requirement applicable to these major intersections and highways, as provided in s. Trans 233.11 (3). The setback area established under par. (a) or (b) applies only to major intersections and to highways identified as:

1. State trunk highways and connecting highways that are part of the national highway system and approved by the federal government in accordance with 23 USC 103(b) and 23 CFR 470.107(b).

2. State trunk highways and connecting highways that are functionally classified as principal arterials in accordance with procedure 4-1-15 of the department's facilities development manual dated July 2, 1979.

3. State trunk highways and connecting highways within incorporated areas, within an unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or within an unincorporated area within 1½ miles of a fourth class city or a village.

4. State trunk highways and connecting highways with average daily traffic of 5,000 or more.

5. State trunk highways and connecting highways with current and forecasted congestion projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.

Note: The National Highway System (NHS) includes the Interstate System, Wisconsin's Corridors 2020 routes, and other important routes. Highways on the NHS base system were designated by the Secretary of USDOT and approved by Congress in the National Highway System Designation Act of 1995. NHS Intermodal Connector routes were added in 1998 with the enactment of the Transportation Equity Act for the 21st Century. Modifications to the NHS must be approved by the Secretary of USDOT. Guidance criteria and procedures for the functional classification of highways are provided in (1) the Federal Highway Administration (FHWA) publication "Highway Functional Classification—Concepts, Criteria and Procedures" revised in March 1989, and (2) former ch. Trans 76. The federal publication is available on request from the FHWA, Office of Environment and Planning, HEP-10, 400 Seventh Street, SW., Washington, DC 20590. Former ch. Trans 76 is available from the Wisconsin Department of Transportation, Division of Transportation Investment Management, Bureau of Planning. The results of the functional classification are mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved serve as the official record for Federal-aid highways and one basis for designation of the National Highway System. In general, the highway functional classifications are rural or urban: Principal Arterials, Minor Arterials, Major Collectors, Minor Collectors, and Local Roads. The definition of "level of service" used for this paragraph is the same as in ss. Trans 210.03(4) and 210.05(1) for purposes of the MAJOR HIGHWAY PROJECT NUMERICAL EVALUATION PROCESS. In general, the "level of service" refers to the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with level of service A representing the best operating conditions and level of service F the worst. Department engineers will use the procedures outlined in the general design consideration guidelines in Chapter 11, Section 5 of the Wisconsin Department of Transportation's Facilities Development Manual to determine the level of highway service. Under the rule as effective February 1, 1999, s. Trans 233.08(1) provides 4 ways to erect something in a setback area (1) for utilities, follow the procedures set forth in the rule, (2) obtain a variance (now "special exception"), (3) for utilities, get local approval for utilities on or adjacent to connecting highways, or for utilities within the right of way of state trunk highways, get department approval (a mere "technical" exception), and (4) erect something that doesn't fall within the definition of "structure" or within the definition of "improvement." The provision below now adds a fifth "exception," (5) be 15 feet or more outside the right of way line of a defined and mapped set of highways.

(d) In addition to producing general reference maps at least once every 2 years that identify highways and intersections under par. (c), at least every 2 years the department shall also produce more detailed reference maps suitable for use in the geographic area of each district office.

(3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:

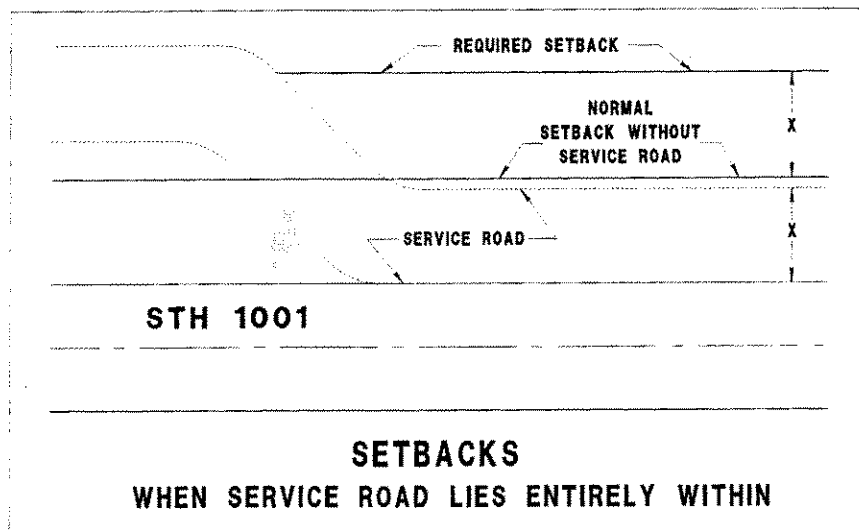
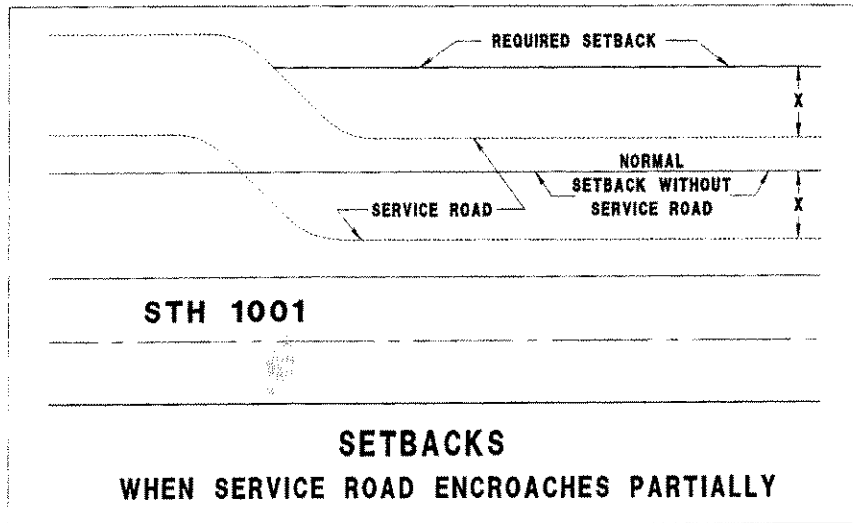
Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).

(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this para-

graph shall be measured from the nearer right-of-way line of the service road.

Note: For example, if a service road ROW extends 15 feet (measured perpendicularly to the setback) into the setback determined under sub. (2), and runs for a distance of 100 feet, the setback determined under sub. (2) shall be pushed 15 feet further from the centerline, running for a distance of 100 feet. See Graphic.



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(3m) (a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.

(b) If the department acquires land that is within a setback area for a state trunk highway, as provided by this chapter, and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:

1. Erected or installed before the land division map is recorded.

2. Erected or installed on a recorded utility easement that was acquired prior to February 1, 1999.

3. Erected or installed after the land division map is recorded but with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback.

Note: For purposes of this section, "major utility erection or installation work" includes, but is not limited to, work involving transmission towers, communication towers, water towers, pumping stations, lift stations, regulator pits, remote switching cabinets, pipelines, electrical substations, wells, gas substations, antennae, satellite dishes, treatment facilities, electrical transmission lines and facilities of similar magnitude. "Routine minor utility erection or installation work" refers to single residential distribution facilities and similar inexpensive work of less magnitude. The concept behind the flexible, "normal time of 30 days" standard for utility submission of notice and plans to the department is to encourage and require at least 60 days notice from utilities for larger, complex or expensive installations, but not for routine, minor utility work that has traditionally involved only a few days notice for coordination and issuance of utility permits by the department for which a minimum of 5 days notice is mandatory. However, the normal time for submission and review is 30 days. This notice and plan requirement does not apply to maintenance work on existing utilities.

4. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with prior notice in writing, with a plan showing the nature and distance of the work from the nearest right-of-way line of the highway, to the department's appropriate district office within a normal time of 30 days, but no less than 5 days, before any routine, minor utility erection or installation work commences, nor less than 60 days, before any major utility erection or installation work commences, if any utility work is within the setback, then the department shall pay compensation or other damages related to the utility facility as modified.

(c) If a local unit of government or the department acquires land that is within a setback area for a connecting highway as provided by this chapter and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is compensable under the applicable local setbacks and the utility facility is in any of the categories described in par. (b) 1. to 4.

Note: A "connecting highway" is not a state trunk highway. It is a marked route of the state trunk highway system over the streets and highways in municipalities which the Department has designated as connecting highways. Municipalities have jurisdiction over connecting highways and are responsible for their maintenance and traffic control. The Department is generally responsible for construction and reconstruction of the through lanes of connecting highways, but costs for parking lanes and related municipal facilities and other desired local improvements are local responsibilities. See ss. 84.02 (1), 84.03 (10), 86.32 (1) and (4), and 340.01 (60), Stats. A listing of connecting highways and geographic end points are available in the department's "Official State Trunk Highway System and the Connecting Highways" booklet that is published annually as of December 31.

(d) The department shall review the notice and plan to determine whether a planned highway project within a 6-year improvement program under s. 84.01 (17), Stats., or a planned major highway project enumerated under s. 84.013 (3), Stats., will conflict with the planned utility facility work. If the department determines a conflict exists, it will notify the utility in writing within a normal time of 30 days, but no more than 5 days, after receiving the written notice and plan for any routine, minor utility

erection or installation work, nor more than 60 days, after receiving the written notice and plan for any major utility erection or installation work, and request the utility to consider alternative locations that will not conflict with the planned highway work. The department and utility may also enter into a cooperative agreement to jointly acquire, develop and maintain rights of way to be used jointly by WISDOT and the public utility in the future as authorized by s. 84.093, Stats. If the department and utility are not able to make arrangements to avoid or mitigate the conflict, the utility may proceed with the utility work, but notwithstanding pars. (b) and (c), the department may not pay compensation or other damages relating to the utility facility if it conflicts with the planned highway project. In order to avoid payment of compensation or other damages to the utility, the department is required to record a copy of its written notice to the utility of the conflict, that adequately describes the property and utility work involved, with the register of deeds in the county in which the utility work or any part of it is located.

Note: The Department will make the general and detailed maps readily available to the public on the internet and through other effective means of distribution.

(3n) Any person may erect, install or maintain any structure or improvement at 15 feet and beyond from the nearer right-of-way line of any state trunk highway or connecting highway not identified in s. Trans 233.08 (2) (c). Any person may request a special exception to the setback requirement established under this subsection, as provided in s. Trans 233.11 (3). This subsection does not apply to major intersections or within the desirable stopping sight distance, as determined under procedure 11-10-5 of the department's facilities development manual dated June 10, 1998, of the intersection of any state trunk highway or connecting highway with another state trunk highway or connecting highway. This subsection does not supersede more restrictive requirements imposed by valid applicable local ordinances.

Note: Technical figures 2, 3, 3m, 4, 4m, 5, 6 and 6m within Procedure 11-10-5 have various dates other than June 10, 1998 or are undated.

(4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the setback area.

(5) The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line:

"No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."

If on a CSM there is limited space for the above restriction on the same sheet that shows the setback line, then the following abbreviated restriction may be used with the standard restriction placed on a subsequent page: "Caution - Highway Setback Restrictions Prohibit Improvements. See sheet _____."

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; cr. (2) (c), (d) and (3n), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.105 Noise, vision corners and drainage.

(1) NOISE. When noise barriers are warranted under the criteria specified in ch. Trans 405, the department is not responsible for

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any noise barriers for noise abatement from existing state trunk highways or connecting highways. Noise resulting from geographic expansion of the through-lane capacity of a highway is not the responsibility of the owner, user or land divider. In addition, the following notation shall be placed on the land division map:

"The lots of this land division may experience noise at levels exceeding the levels in s. Trans 405.04, Table I. These levels are based on federal standards. The department of transportation is not responsible for abating noise from existing state trunk highways or connecting highways, in the absence of any increase by the department to the highway's through-lane capacity."

Note: Some land divisions will result in facilities located in proximity to highways where the existing noise levels will exceed recommended federal standards. Noise barriers are designed to provide noise protection only to the ground floor of abutting buildings and not other parts of the building. Noise levels may increase over time. Therefore, it is important to have the caution placed on the land division map to warn owners that the department is not responsible for further noise abatement for traffic and traffic increases on the existing highway, in the absence of any increase by the department to the highway's through-lane capacity.

(2) **VISION CORNERS.** The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. The owner shall have the choice of providing the vision corner by permanent easement or by dedication. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map:

"No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height."

Note: Guide dimensions for vision corners are formally adopted in the Department's Facilities Development Manual, Chapter 11, pursuant to s. 227.01 (13) (e), Stats.

(3) **DRAINAGE.** The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis and drainage plan that assures to a reasonable degree, appropriate to the circumstances, that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the traveling public, downstream properties or transportation facilities. Various methods of hydrologic and hydraulic analysis consistent with sound engineering judgment and experience and suitably tailored to the extent of the possible drainage problem are acceptable. Land dividers are not required by this subsection to accept legal responsibility for unforeseen acts of nature or forces beyond their control. Nothing in this subsection relieves owners or users of land from their obligations under s. 88.87 (3) (b), Stats.

Note: In sec. 88.87 (1), Stats., the Legislature has recognized that development of private land adjacent to highways frequently changes the direction and volume of flow of surface waters. The Legislature found that it is necessary to control and regulate the construction and drainage of all highways in order to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters caused by a highway and to impose correlative duties upon owners and users of land for the purpose of protecting highways from flooding or water damage. Wisconsin law, sec. 88.87(3), Stats., imposes duties on every owner or user of land to provide and maintain a sufficient drainage system to protect downstream and upstream highways. Wisconsin law, sec. 88.87 (3) (b), Stats., provides that whoever fails or neglects to comply with this duty is liable for all damages to the highway caused by such failure or neglect. The authority in charge of maintenance of the highway may bring an action to recover such damages, but must commence the action within 90 days after the alleged damage occurred. Section 893.59, Stats. Additional guidance regarding drainage may be found in Chapter 13 and Procedure 13-1-1 of the Department's Facilities Development Manual.

History: Cr Register, January, 1999, No. 517, eff. 2-1-99; am. (1), (2) (intro.) and (3), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.11 Special exceptions. (1) DEPARTMENT CONSENT. No municipality or county may issue a variance or spe-

cial exception from this chapter without the prior written consent of the department.

(3) (a) *Special exceptions for setbacks allowed.* The department, district office or, if authorized by a delegation agreement under sub. (7), reviewing municipality may authorize special exceptions from this chapter only in appropriate cases when warranted by specific analysis of the setback needs, as determined by the department, district office or reviewing municipality. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department, district office or reviewing municipality may grant a special exception that adjusts the setback area or authorizes the erection or installation of any structure or improvement within a setback area only as provided in this subsection. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: The phrase "practical difficulty or unnecessary hardship" has been eliminated from the rule that was effective February 1, 1999, to avoid the adverse legal consequences that could result from the existing use of the word "variance." The Wisconsin Supreme Court has interpreted "variance" and this phrase to make it extremely difficult to grant "variances" and in so doing has eased the way for third party legal challenges to many "variances" reasonably granted. See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998). The Supreme Court defined "unnecessary hardship" in this context as an owner having "no reasonable use of the property without a variance." *Id.* at 413. The "special exception" provision in this rule is not intended to be so restrictive and has not been administered in so restrictive a fashion. In the first year following revisions of ch. Trans 233, effective February 1, 1999, the Department granted the vast majority of "variances" requested, using a site and neighborhood-sensitive context based on specific analysis.

(b) *Specific analysis for special exceptions for setbacks.* Upon request for a special exception from a setback requirement of this chapter, the department, district office or reviewing municipality shall specifically analyze the setback needs. The analysis may consider all of the following:

1. The structure or improvement proposed and its location.
 2. The vicinity of the proposed land division and its existing development pattern.
 3. Land use and transportation plans and the effect on orderly overall development plans of local units of government.
 4. Whether the current and forecasted congestion of the abutting highway is projected to be worse than level of service "C," as determined under s. Trans 210.05 (1), within the following 20 years.
 5. The objectives of the community, developer and owner.
 6. The effect of the proposed structure or improvement on other property or improvements in the area.
 7. The impact of potential highway or other transportation improvements on the continued existence of the proposed structure or improvement.
 8. The impact of removal of all or part of the structure or improvement on the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement.
 9. Transportation safety.
 10. Preservation of the public interest and investment in the highway.
 11. Other criteria to promote public purposes consistent with local ordinances or plans for provision for light and air, providing fire protection, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and, in particular cases, to promote aesthetic and psychological values as well as ecological and environmental interests.
- (c) *Adjust setback.* If the department, district office or reviewing municipality grants a special exception by adjusting the setback area, the department shall pay just compensation for any subsequent department-required removal of any structure or improvement that the department has allowed outside of the approved, reduced setback area on land that the department acquires for a transportation improvement. The department may

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not decrease the 15 foot setback distance established under s. Trans 233.08 (3n), except in conformity with a comprehensive local setback ordinance, generally applicable to the vicinity of the land division, that expressly establishes a closer setback line.

(d) *Allow in setback - removal does not affect viability.* The department, district office or reviewing municipality may authorize the erection of a structure or improvement within a setback area only if the department, district office or reviewing municipality determines that any required removal of the structure or improvement, in whole or in part, will not affect the continuing viability or conforming use of the business, activity, or use associated with the proposed structure or improvement, and will not adversely affect the community in which it is located. Any owner or user who erects a structure or improvement under a special exception granted under this paragraph assumes the risk of future department-required removal of the structure or improvement and waives any right to compensation, relocation assistance or damages associated with the department's acquisition of that land for a transportation improvement, including any damage to property outside the setback caused by removal of the structure or improvement in the setback that was allowed by special exception. The department, district office or reviewing municipality may not grant a special exception within an existing setback area, unless the owner executes an agreement or other appropriate document required by the department, binding on successors and assigns of the property, providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the special exception. The department, district office or reviewing municipality may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter. The department, district office or reviewing municipality shall require the executed agreement or other appropriate document to be recorded with the register of deeds under sub. (7) as part of the special exception.

(e) *Blanket or area special exceptions for setbacks.* Based on its experience granting special exceptions on similar land divisions, similar structures or improvements, or the same area and development pattern, the department may grant blanket or area special exceptions from setback requirements of this chapter that are generally applicable. The department shall record blanket or area special exceptions with the register of deeds in the areas affected or shall provide public notice of the blanket or area special exceptions by other means that the department determines to be appropriate to inform the public.

(f) *Horizon of setback analysis.* For purposes of its specific analysis, the department, district office or reviewing municipality shall consider the period 20 years after the date of analysis.

Note: Federal law requires a minimum 20-year forecast period for transportation planning for all areas of the State. 23 USC 134 (g) (2)(A) and 135 (e) (1).

(4) **SPECIAL EXCEPTIONS FOR PROVISIONS OF THIS CHAPTER OTHER THAN SETBACKS.** Except as provided in sub. (3), the department may not authorize special exceptions from this chapter, except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A special exception may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The depart-

ment may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

Note: This subsection uses the phrase "practical difficulty or unnecessary hardship" to indicate a higher standard for special exceptions from provisions of this chapter other than setbacks. However, the phrase "special exception" has been used rather than the word "variance." The Supreme Court defined "unnecessary hardship" in a variance context as an owner having "no reasonable use of the property without a variance." See *State v. Kenosha County Bd. of Adjust.*, 218 Wis. 2d 396, 413, 577 N.W.2d 813 (1998). The department intends the "special exception" provision in this rule to be administered in a somewhat less restrictive fashion than "no reasonable use of the property" without a "variance."

(5) **MUNICIPAL SPECIAL EXCEPTIONS.** A delegation agreement under s. Trans 233.03 (8) may authorize a reviewing municipality to grant special exceptions. No municipality may grant special exceptions to any requirement of this chapter, except in conformity with a delegation agreement under this subsection. Any decision of a reviewing municipality relating to a special exception is subject to the appeal procedure applicable to such decisions made by the department or a district office, except that the department may unilaterally review any such decision of a reviewing municipality only for the purposes of ensuring conformity with the delegation agreement and this chapter.

(6) **TIME LIMIT FOR REVIEW.** Not more than 60 calendar days after receiving a completed request for a special exception under s. Trans 233.11, the department, district office or reviewing municipality shall provide to the land divider written notice of its decision granting or denying a special exception. The 60-day time limit may be extended only by written consent of the land divider.

Note: The Department intends that decisions concerning special exceptions be made in the shortest practicable period of time. The Department intends the 60-day time limit applicable to special exceptions to allow sufficient time for a land divider and the Department, district office or municipality to explore alternative locations or plans to avoid and minimize conflicts and to facilitate mutually acceptable resolutions to conflicts.

(7) **RECORDING REQUIRED.** A special exception granted under this section is effective only when the special exception is recorded in the office of the register of deeds. Any structure or improvement erected under authority of a special exception granted under this section is presumed to have been first erected on the date the special exception is recorded.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99; renum. (2) to be (3) (a) and am., cr. (3) (b) to (f) and (4) to (7), Register, January, 2001, No. 541, eff. 2-1-01.

Trans 233.12 Performance bond. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Trans 233.13 Fees. The department shall charge a fee of \$110 for reviewing a land division map that is submitted under s. 236.10, 236.12, 236.34, 236.45 or 703.11, Stats., or other means not provided by statute, on or after the first day of the first month beginning after February 1, 1999. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI-U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

History: Cr. Register, January, 1999, No. 517, eff. 2-1-99.

Chapter Trans 233

LAND SUBDIVISION PLATS ABUTTING STATE TRUNK HIGHWAYS AND CONNECTING STREETS

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Trans 233.02 Basic principles
Trans 233.03 Definitions
Trans 233.04 Required information
Trans 233.05 Direct access to state trunk highway
Trans 233.06 Frequency of street or road connections

Trans 233.07 Temporary street connections
Trans 233.08 Setback requirements
Trans 233.09 Physical requirements of access
Trans 233.10 Recommended procedure
Trans 233.11 Variances
Trans 233.12 Performance bond

Note: Chapter Hy 33 was renumbered chapter Trans 233. under s. 13.93 (2m) (b) L., Stats., Register, August, 1996, No. 488.

Trans 233.01 Purpose. (1) PURPOSE OF CH. 236, STATS. The purpose of ch. 236, Stats., is "to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes."

(2) PURPOSE OF RULES. Accordingly, the purpose of these rules is to specify minimum standards necessary to meet the requirements of state highway commission review of land subdivision plats abutting the state trunk highway system as provided under s. 236.13 (1) (e), Stats., as follows:

"(e) The rules of the state highway commission relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting streets and for the preservation of the public interest and investment in such highways or streets."

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.02 Basic principles. Land subdivision tends to affect highways by generating traffic, increasing vehicular parking requirements, reducing sight distance, increasing driveways and other access points and, in general, impairing safety and impeding traffic movements. To control these tendencies and to carry out the purposes of ch. 236, Stats., the commission promulgates the following basic requirements in this section and the specific rules of subsequent sections of these rules and regulations:

(1) Local traffic generated in subdivisions abutting on a state trunk highway shall be served by an internal street system of adequate capacity, intersecting and connecting with state trunk highways at a minimum number of points and in a manner which is safe, convenient, and economical to maintain and regulate.

(2) Subdivisions shall be so laid out that the individual lots or parcels do not require direct vehicular access to the highway.

(3) To accomplish reasonable functional integration and coordination of roadways and private driveways:

(a) The commission, particularly in the absence of a local comprehensive general or master plan or official map, will consider not only the immediate plat before it, but also its relationship to the access requirements of adjacent and contiguous subdivisions and unplatted lands;

(b) These rules and regulations shall be applicable not only to the lands proposed to be subdivided but also to all lands owned by, or under option (formal or informal), contract or lease to the subdivider and which are contiguous to and adjoin the land being subdivided.

(4) Setbacks from the highway shall be provided as hereinafter specified.

(5) The subdivision layout shall include provision for surface drainage in such a manner that the existing highway drainage system is not adversely affected.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.03 Definitions. (1) "State trunk highway" includes connecting streets as defined in s. 84.02 (11), Stats.

(2) "Subdivision" is as defined in s. 236.02 (7), Stats.; provided, however; that where the local unit of government, under s. 236.45 (2), Stats., has adopted an ordinance governing the subdivision or other division of land which is more restrictive than the provisions of ch. 236, Stats., and has provided for commission review, these rules and regulations shall also apply to those subdivisions or other divisions of land as specified in the ordinance.

(3) "Subdivision abutting a state trunk highway" means:

(a) A subdivision some part of which adjoins or abuts a state trunk highway; or

(b) A subdivision which includes streets one or more of which is to be laid out or dedicated as part of the subdivision, and which is to connect with a state trunk highway; or

(c) A subdivision which is separated from a state trunk highway by unplatted lands which abut the highway and the subdivision and are owned by, or under option (formal or informal), contract or lease to the subdivider.

(4) "Frontage street" or "frontage road" means a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(5) "Street" or "road" includes alleys.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.04 Required information. The subdivider shall show on the face of the preliminary plat or on a separate sketch at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships for the following:

(1) The geographic relationship to the proposed subdivision of any unplatted lands which abut any state trunk highway and are contiguous to the proposed subdivision, and the ownership rights in and the subdivider's interest, if any, in these lands.

(2) All existing, proposed, authorized or approved points of access to any state trunk highway from said unplatted lands which abut any state trunk highway and are contiguous to the proposed subdivision.

(3) The classification of each point of access as a public road, private road or other entrance, and whether existing, proposed, authorized or approved.

(4) The principal use of each point of access (other than a public road) as agricultural, commercial, industrial or residential, and as existing under commission permit or otherwise.

(5) The location of the nearest public highway or street on every side of the proposed subdivision.

(6) The location of public highway or street intersections with the state trunk highway on that side of the state trunk highway opposite the subdivision and within 300 feet on each side of the subdivision.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.05 Direct access to state trunk highway.

(1) There shall be no direct vehicular access between the state trunk highway and the individual lots or parcels in the subdivision without the express consent of the commission. The following restriction shall be appropriately placed on the face of the plat and shall be executed as a conveyance is executed. (It may be made a part of the owner's certificate required by s. 236.21 (2) (a), Stats.);

As owner I hereby restrict all lots and blocks (except Lot Block _____), in that no owner, possessor, user, nor licensee, nor other person shall have any right of direct vehicular ingress or egress with (U.S.H.) (S.T.H.) _____ or _____ Street, as shown on the plat; it being expressly intended that this restriction shall constitute a restriction for the benefit of the public according to s. 236.293, Stats., and shall be enforceable by the state highway commission.

(2) In accordance with the objectives and purposes of these rules and regulations, the commission may require a desirable pattern of access between a state trunk highway and abutting lands which are contiguous to and adjoin the proposed subdivision and which are owned by or under option (formal or informal), contract or lease to the subdivider. A recordable covenant running with the land may be required with respect thereto.

(3) When deemed feasible, frontage roads or a satisfactory alternative will be required.

(4) Before street connections to state trunk highways, as indicated on an approved plat can be constructed, a permit must be obtained as required under s. 86.07, Stats. These permits for street connections will be issued only to the local unit of government and will not be issued prior to favorable commission review of the preliminary or final plat.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.06 Frequency of street or road connections. (1) The subdivision shall be laid out with a minimum number of street connections with abutting state trunk highways.

(2) Dependent upon the character of the state trunk highway abutting the subdivision, the commission will determine a minimum allowable distance between connections with the state trunk highway, 2 subdivision streets or between a subdivision street and an existing or planned street or road. In general, a distance of at least 1,000 feet will be required.

(3) In appropriate cases where existing streets provide access to the state trunk highway deemed reasonable and adequate by the commission, the streets in the subdivision shall not be opened directly into the state trunk highway.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.07 Temporary street connections. (1) The commission may issue temporary street permits for street connections in the case of:

(a) A subdivision which at the time of review cannot provide direct access complying with the provisions of s. Trans 233.06 (2).

(b) A subdivision layout which might necessitate a point or pattern of access for a future adjacent subdivision, not in accordance with s. Trans 233.06 (2).

(2) The commission may require that such temporary street connections be altered or closed by the appropriate parties or authorities at a later date in order to achieve a desirable access pattern. The street connection shall be prominently labeled "Temporary Street Connection" on the plat, and the following restriction shall be lettered on the plat:

"The street connection(s) shown on this plat shall be used under a temporary street permit which may be canceled at such time as a feasible alternate means of access to (S.T.H.) (U.S.H.) _____ is provided."

(3) When such a temporary street connection is granted, the subdivider shall dedicate a frontage road or a satisfactory alternative, to provide for a present or future pattern of access in accordance with the requirements of s. Trans 233.06 (2).

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56; corrections in (1) and (3) made under s. 13.93 (2m) (b) 4., Stats., Register, June, 1989, No. 402; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1996, No. 488.

Trans 233.08 Setback requirements. (1) There shall be a minimum building setback 110 feet from the centerline of the state trunk highway or 50 feet outside the nearer right-of-way line, whichever is more restrictive. However, if the local unit of government has a uniform setback ordinance which requires a minimum building setback for state trunk highways equal to or greater than 100 feet from the centerline or 42 feet from the nearer right-of-way line, whichever is more restrictive, the local ordinance shall govern for the sake of consistency; provided that the local unit of government shall allow no variances or exceptions for platted areas abutting state trunk highways without prior approval of the commission. There shall be no improvements or structures placed between the highway and the set back line.

(2) The setback requirement shall be shown on the plat and shall be a restriction for the benefit of the public under s. 236.293, Stats.

(3) The commission may require that a frontage road be set back from the present highway to allow for future highway improvement. When this is the case, the area between the highway and the frontage road shall be marked "Dedicated for highway purposes," and shall be deemed so dedicated.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.09 Physical requirements of access. Rules governing construction requirements of driveways and street openings will be found in ch. Trans 231. Detailed specifications may be obtained at the district offices of the commission.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1996, No. 488.

Trans 233.10 Recommended procedure. In accordance with s. 236.12 (2) (a), Stats., the commission recommends the following procedure:

(1) Before the lots are surveyed and staked out, the subdivider or his agent should submit a sketch to the district office of the district in which the land lies. The sketch should indicate roughly the layout of lots and the approximate location of streets, and should include other information required in these rules and regulations.

(2) The subdivider should confer with district office representatives throughout development of the plat.

(3) Prior to the formal submittal of a preliminary or final plat pursuant to s. 236.12 (2) (a), Stats., the subdivider should have the district office review the plat.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.11 Variances. The commission may, in appropriate cases and subject to appropriate conditions and safeguards, authorize variances to the terms of these rules and regulations in special cases where the literal application of these rules and regulations will result in practical difficulty or unnecessary hardship, or will defeat an orderly over-all development plan of a local unit of government; provided that such variance shall not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and these rules and regulations.

History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

Trans 233.12 Performance bond. The commission may, in appropriate cases, require that a performance bond be posted to

in case

are the construction of any improvements in connection with
subdivision which may affect a state trunk highway.
History: Cr. Register, September, 1956, No. 9, eff. 10-1-56.

the



Joe Leibham

STATE SENATOR

To: Senate Republican Caucus

From: Senator Joe Leibham

Re: Talking Points: Trans 233 – January 2004

Background

Trans 233, in Administrative Code became effective February 1, 1999, to replace the original Chapter Hwy 33. Key point: The DOT called changes to Trans 233 a “clarification,” in the fall of 1998. The Senate and Assembly Transportation Committees had jurisdiction over the rule changes in Sept-Oct of 1998, and the rule was cleared of legislative authority in October 1998. One criticism of DOT for this change was to attempt to slip the rule past the legislature in the fall of a campaign year, when legislators were focused on the election cycle.

Summary of Trans 233

Trans 233 is a comprehensive administrative rule that gives the DOT the authority to regulate development lands that abut state trunk highways or connecting highways in Wisconsin. The legislative intent of Trans 233 sets guidelines for the review of subdivision plats as prescribed in Chapter 236 of the statutes. Currently, DOT has expanded reviews to regulate the use of all lands along state highways, including subdivisions, which do not abut state highways. It also is intended to promote safety for travelers along state trunk highways and connecting highways by reviewing activities that increase traffic, reduce sight distances for drivers and prevent any hazards that may impede safety of drivers entering and exiting these roadways.

The need for reforming Trans 233

Simply put, Trans 233 has become a barrier to economic development and job growth in Wisconsin. Members of JCRAR, citizens and affected interests are cognizant of the need to keep our state’s roadway system safe and reliable to motorists, however, Trans 233 as currently administered, has caused great concern that DOT has gone beyond their authority. What was originally intended to be a vehicle for the state to review and object to projects that would adversely affect safety, has now become a review and approval process for growth. DOT has shown time after time that they are going beyond their scope, and it is time for the legislature to return the rule to govern under its true intention.

Beside the clear reasons why Trans 233 needs to be changed, JCRAR has given DOT numerous opportunities to rationally discuss and work with the committee on reasonable changes. Each time, DOT has failed to make any substantive changes to the rule.

Prior to 1999, Trans 233 functioned properly as an administrative rule for many years and in the manner that the legislature intended. JCRAR seeks the return the scope of Trans 233 to the way it existed prior to 1999.

Areas within Trans 233 of major concern:

- **Failure to act within 20-day requirement on permit applications:** Trans 233.03(5) states that DOT must act on proposed land divisions within 20 days after receiving land division proposals. Often, DOT fails to act on these applications within the requirement, often much longer than 20 days. These delays costs developers and builders money and slows growth.
- **Extending the Breadth of Authority over land divisions:** DOT has expanded their authority over land divisions to include land sales, and applying their authority over lands that do not abut state trunk highways. The legislative intent of Trans 233, as prescribed in Chapter 236 of State Statutes, reviews subdivision plats (5 or more lots of 1 ½ acre or less within a 5-year period) adjacent to state highways, NOT anything beyond that.
- **Unreasonable requirements:** DOT has been requiring land dividers to traffic and environmental studies on non-state trunk highways – some cases a considerable distance away. DOT is also requiring the construction of improvements like traffic lights, turning lanes and drainage elements on roadways not covered under Trans 233.
- **Setback Issues:** while understood by relevant parties that buildings are not to be constructed within the setback area, the DOT is prohibiting any legal use of private lands within the setback. Through testimony and DOT reaction, it has become clear that the DOT restricts most improvements within a setback for the main purpose of keeping these lands at a lower value when the state needs to buy it during future expansion of state highways.
- The issues above are of great concern. Even more concerning, is that most of these issues are regulated and governed either by other state statutes and administrative rules, or by local units of government.

What JCRAR will do with Trans 233

It is the intention of JCRAR to suspend portions of Trans 233 administrative rule. On January 21, 2004, the committee moved to have Legislative Counsel draft a motion that will effectively return the rule to the way it existed prior to 1999. Pending the wording of this motion, JCRAR will vote to suspend the areas of the rule so that the remaining language will give DOT the authority to enforce the rule the way it was in 1999. The committee will also discuss the setback issues and work to determine what structures, activities, and other improvements should be allowed within the setback area. Many are concerned with completely allowing property owners the right to build anything within the setback – so JCRAR will have to determine what direction is needed in this area.

Following a suspension vote, beginning on February 1, 2004 – DOT will no longer have the authority to enforce Trans 233 in its current form. Only the remaining, non-suspended language will be applied.

JCRAR will have 30 days to introduce legislation, which reflects the committees intentions to suspend the portions of Trans 233, as indicated in their motion. The legislation will follow a similar track as a normal piece of legislation. All the while – the suspended portions of the rule will be in effect until the bill is passed by the legislature and signed by the Governor, or passed and vetoed by the Governor.

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
MOTION
January 28, 2004

We, the members of the Wisconsin Legislature's Joint Committee for Review of Administrative Rules, find that Wis. Admin. Code ch. Trans. 233, as currently drafted, does all of the following:

- a. Exceeds the scope of statutory authority that the legislature provided to the Wisconsin Department of Transportation (WisDOT) under Wis. Stat. §§ 236.02(12)(a) and 236.13(1)(e) by regulating:
 1. activities unrelated to provision for the safety of entrance upon and departure from abutting state trunk highways or connecting highways, nor which relate to the preservation of the public interest and investment in such highways;
 2. the division of lands by certified survey map, under Wis. Stat. § 236.34;
 3. the creation of condominium plats, under Wis. Stat. § 703.11;
 4. the division of lands abutting service roads;
 5. the continuing use of lands which have been previously divided, and which are not now the subject of a proposed land division; and
 6. the division of lands which do not abut or adjoin either a state trunk highway or connecting highway.
- b. Fails to comply with legislative intent by:
 1. Absolving WisDOT of its duty to compensate property owners when taking property for a public purpose, pursuant to its powers of eminent domain under Chapter 32 of the Wisconsin Statutes;
 2. Violating and causing injury to the legal rights of property owners throughout the State of Wisconsin;
 3. Unreasonably restricting the ability of local units of government to regulate land use and development;
 4. Promoting inefficient uses of land which is harmful to the environment, encourages greater conversion of agricultural land, and leads to sprawl;
 5. Presenting a significant impediment to economic development and job growth in the state by increasing the costs and amount of land necessary to provide housing and commercial development within the proximity of state trunk highways; and
- c. Imposes an undue hardship upon land dividers by creating excessive delays in the review of land division maps, in direct conflict with the requirements under Trans. 233.02(5).

The Joint Committee for Review of Administrative Rules, pursuant to Wis. Stat. §§ 227.19 (4)(d)6 and 227.26 (2) (d), suspends Wis. Admin. Code Chapter Trans. 233.01 beginning with the word "dividing" and ending with the word "processes", starting with the phrase "in order to provide, and ending with the word "activity", starting with the word "the" and ending at the end of 233.01), 233.012, 233.015(1), 233.15(1m), 233.15 (1r), 233.015(2) (beginning with the word "any" and ending with the word "signs", beginning with the phrase "building appendages" and ending with the word "fences"),

233.015(2m), 233.015(4) (beginning with the notation "236.34" and ending with the word "statute"), 233.015(5m), 233.015(6), 233.015(6m), 233.015(6r), 233.015(7), 233.015(7m), 233.015(8), 233.015(8m), 233.015(9), 233.017(3), 233.02(1) (deleting the words "or development"), 233.02(2) (deleting the words "state trunk" and the deleting the words "or connecting highway"), 233.02(3) (beginning with the word "with" and ending with the word "highway"), 233.02(3)(b) (beginning with the word "Contiguous" and ending with the word "way"), 233.02(5) (beginning with the word "in" and ending with the notation "233.105(3)"), 233.02(6), 233.02(7), 233.03 (beginning with the word "district" and ending with the word "divisions"), 233.03(2), 233.03(3), 233.03(4), 233.03(5), 233.03(6), 233.03(7), 233.03(8), 233.04 (beginning with the word "and" and ending with the word "following"), 233.04(1) (deleting the word "unplatted") 233.04(5), 233.04(7) (beginning with the word "any" and ending with the word "following"), 233.04(7)(a), 233.04(7)(b), 233.04(8), 233.05(1) (beginning with the word "or" and ending with the words "connecting highway", and beginning with the word "district" and ending with "Trans 233.11"; and beginning with the word "and" and ending with the words "way of"; and beginning with the word "or" and ending with the word "revocable"), 233.05(2) (deleting the word "unplatted")0, 233.05(3) (beginning with the word "or" and ending with the word "highway"; and beginning with the words "or for a" and ending with the word "objection"), 233.05(4), 233.07 (1) (beginning with the word "The" and ending with the word "highway"), 233.07(2) (beginning with the words "The permit" and ending with the word "connection"), 233.08(1) (beginning with the word "except" and ending with the word "Stats"), 233.08(2)(b)(1) (beginning with the word "The" and ending with the word "ordinance"), 233.08(2)(c), 233.08(2)(d), 233.08(3), 233.08(3m), 233.08(3n), 233.08(4) (beginning with the word "and" and ending with the word "area"), 233.08(5) (beginning with the word "No" and ending with the word "Improvements"), 233.105, 233.11(3) (a) (beginning with (a) and the word "Special" and ending with the word "municipality"; and beginning with the word "The" and ending with the word "chapter"), 233.11(3)(b), 233.11(3)(c), 233.11(3)(d), 233.11(e), 233.11(3)(f), 233.11(4), 233.11(5), 233.11(6), 233.11(7) and 233.13.

As a result of this action, JCRAR takes no position as to the legality or constitutionality of the remaining language contained in Trans 233.

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
MOTION TO AMEND PREVIOUS MOTION
January 28, 2004

We, the members of the Wisconsin Legislature's Joint Committee for Review of Administrative Rules, find that Wis. Admin. Code ch. Trans. 233, as currently drafted, does all of the following:

Exceeds the scope of statutory authority that the legislature provided to the Wisconsin Department of Transportation (WisDOT) under Wis. Stat. §§ 236.02(12)(a) and 236.13(1)(e) by regulating:

1. the division of lands by certified survey map, under Wis. Stat. § 236.34;
2. the creation of condominium plats, under Wis. Stat. § 703.11;
3. the division of lands abutting service roads;
4. the continuing use of lands which have been previously divided, and which are not now the subject of a proposed land division; and
the division of lands which do not abut or adjoin either a state trunk highway or connecting highway.

Fails to comply with legislative intent by:

5. Absolving WisDOT of its duty to compensate property owners when taking property for a public purpose, pursuant to its powers of eminent domain under Chapter 32 of the Wisconsin Statutes;
6. Violating and causing injury to the legal rights of property owners throughout the State of Wisconsin;
7. Unreasonably restricting the ability of local units of government to regulate land use and development;
8. Promoting inefficient uses of land which is harmful to the environment, encourages greater conversion of agricultural land, and leads to sprawl;
Presenting a significant impediment to economic development and job growth in the state by increasing the costs and amount of land necessary to provide housing and commercial development within the proximity of state trunk highways.

The Joint Committee for Review of Administrative Rules, pursuant to Wis. Stat. §§ 227.19 (4)(d)6 and 227.26 (2) (d), suspends Wis. Admin. Code Chapter Trans. 233.017 (2), 233.02(1) (delete words "connecting highway" and "connecting highways"), 233.02(2), 233.02 (3)(b) and 233.08(1) (deleting the word "erect", and the phrase "or maintain any structure or").

As a result of this action, JCRAR takes no position as to the legality or constitutionality of the remaining language contained in Trans 233.

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
MOTION

Option B (Less Restrictive)

Trans. 233 Relating to Trans. 233, Wis. Admin. Code.

We, the members of the Wisconsin Legislature's Joint Committee for Review of Administrative Rules, find that Wis. Admin. Code ch. Trans. 233, as currently drafted, does all of the following:

- a. Exceeds the scope of statutory authority that the legislature provided to the Wisconsin Department of Transportation (WisDOT) under Wis. Stat. §§ 236.02(12)(a) and 236.13(1)(e) by regulating:
 1. activities unrelated to provision for the safety of entrance upon and departure from abutting state trunk highways or connecting highways, nor which relate to the preservation of the public interest and investment in such highways;
 2. the division of lands by certified survey map, under Wis. Stat. § 236.34;
 3. the creation of condominium plats, under Wis. Stat. § 703.11;
 4. the division of lands abutting service roads;
 5. the continuing use of lands which have been previously divided, and which are not now the subject of a proposed land division; and
 6. the division of lands which do not abut or adjoin either a state trunk highway or connecting highway.
- b. Fails to comply with legislative intent by:
 1. Absolving WisDOT of its duty to compensate property owners when taking property for a public purpose, pursuant to its powers of eminent domain under Chapter 32 of the Wisconsin Statutes;
 2. Violating and causing injury to the legal rights of property owners throughout the State of Wisconsin;
 3. Unreasonably restricting the ability of local units of government to regulate land use and development;
 4. Promoting inefficient uses of land which is harmful to the environment, encourages greater conversion of agricultural land, and leads to sprawl;
 5. Presenting a significant impediment to economic development and job growth in the state by increasing the costs and amount of land necessary to provide housing and commercial development within the proximity of state trunk highways; and
- c. Imposes an undue hardship upon land dividers by creating excessive delays in the review of land division maps, in direct conflict with the requirements under Trans. 233.02(5).

The Joint Committee for Review of Administrative Rules, pursuant to Wis. Stat. §§ 227.19 (4)(d)6 and 227.26 (2) (d), suspends Wis. Admin. Code Chapter Trans. 233.012, 233.015(1), 233.015(2), 233.015(2m), 233.015(6), 233.015(7), 233.015(7m), 233.015(9),

233.017(2), 233.017(3), 233.02(3), 233.02(4), 233.02(5), 233.03(3), 233.03(4), 233.03(5)(c), 233.03(8), 233.05(2), 233.05(4), 233.06(1), 233.105(3), 233.11 and portions of 233.01, 233.015(4), 233.015(8), 233.017(1), 233.03(5)(e), 233.03(7), 233.03(8), 233.05(1), 233.05(3), 233.105(2) at 12:01 a.m. on January 7, 2004 until such time when the Wisconsin Department of Transportation amends the rule in the following manner:

- a. Limits the purpose and scope of DOT's plat review authority under Trans. 233 to that which the legislature intended under Wis. Stat. §§ 236.02(12) and 236.13(1)(e).
- b. Limits the scope of Trans. 233 to "subdivisions," as defined in Wis. Stat. § 236.02(12).
- c. Allows reasonable and economically beneficial use of property within setback areas by prohibiting only those improvements that create a legitimate threat to the health and safety of motorists traveling along state highways.
- d. Eliminates any requirement for landowners to waive the right to compensation, relocation assistance or damages associated with the department's acquisition of that land, as described in Trans. 233.11(3)(d).
- e. Establishes necessary protections to insure that all reviews of subdivision plats will be complete within 20 calendar days after they are submitted or the DOT shall be considered to have no objection, as required in Trans. 233.03(5).
- f. Eliminates the DOT's review under Trans. 233 of the sale, lease, or merger of one or more pre-existing, pre-platted parcels that are located adjacent to state trunk highways unless the sale, lease, or merger constitutes a "subdivision," as defined in Wis. Stat. § 236.02(12).
- g. Provides clear and specific standards for completing traffic impact analyses, environmental studies, or any other study or analysis required under Trans. 233 as well as strict adherence to the 20-day review deadline, outlined in Trans. 233.03(5).



Wisconsin Department of Transportation

www.dot.wisconsin.gov

JAN 13 2004

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of the Secretary
4802 Sheboygan Ave., Rm. 120B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-1113
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January 9, 2004

Representative Glenn Grothman, Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
P. O. Box 8952
Madison, WI 53707-8952

Senator Joseph Leibham, Co-Chair
Joint Committee for Review of Administrative Rules
Room 409 South, State Capitol
P. O. Box 7882
Madison, WI 53707-7882

Dear Representative Grothman and Senator Leibham:

Thank you for your roles in facilitating the discussions over the past several months on Administrative Rule Trans 233. Since our first meeting last May, my department has spent a great deal of time considering potential changes to the Rule itself and possible changes to our process of reviewing land divisions under the Rule. This included several meetings with you or your staff; meetings with representatives of the Wisconsin Builders Association, the Metropolitan Builders Association and the Wisconsin Realtors Association; and presenting testimony at the two formal JCRAR Hearings (on October 29, 2003 and December 16, 2003) on the Rule.

During the discussion at the December 16 JCRAR Hearing, you asked me to look again for ways the Rule could be modified. You continue to have concerns about the department's enforcement of the access and setback provisions of the Rule.

I view the access review provisions of Trans 233 as an extremely important tool in meeting WisDOT's commitment to providing safe and efficient highway transportation. I am not proposing any changes to the Rule provisions regarding access. Managing access to state highways provides a way to safely balance traffic flow and the efficiency of the system with roadway access. Managed access also enhances safety – highways with limited or managed access are significantly safer. It promotes sustainable development – future highway impacts are resolved prior to the development, allowing businesses to remain even when highway changes are needed due to increased traffic generated by developments.

In the area of setback provisions, there may be one possible further opportunity for a change. The department uses the setback provisions in the Rule to preserve the investment the public has made in the highway and to promote sustainable development. Structures and improvements that impact the viability of a business can be kept out of the setback and the businesses can continue to function even when a highway is widened.

We previously noted that the department estimates it would spend an added \$275 million over 20 years to acquire structures and improvements that could have been kept out of the setback under the Rule. If you wish to reimburse landowners for this property at the front end while enforcing the setback provisions of the Rule, the state could purchase the setback area.

The interests of all parties could possibly be served by the department purchasing setback areas in corridors slated for an improvement within our planning horizon of 20 years. This responds to your concerns about respecting property interests and leaves intact the department's ability to preserve needed right of way and avoid paying much higher real estate costs because of improvements in the set back area and inflationary increases. Since many of the details of a future highway project are not completely known, there is a potential that not all of the land purchased for setbacks is necessary and some land may be declared as excess in the future. Purchasing the setback areas might cost \$13 to \$15 million dollars per year, on average, and would require some additional staff resources. If the legislature chooses to pursue this option, this process must be funded--either with new dollars or from the existing highway improvement program. Also, due to limits in the department's authority to purchase real property interests, a program to purchase development rights would require statutory authorization.

As a result of the earlier discussions, the department had previously agreed to the changes below. Some of the changes are already in place and some will be implemented in the future. WisDOT expects the following benefits:

- Less cost and time for the developer.
- Less time for WisDOT for review.
- More certainty early in the process for all involved parties.
- Collaborative setting for WisDOT, developer, consultant and local agencies.

Our District Two Office in Southeast Wisconsin has initiated a pilot TIA program, where three preferred firms would perform TIA's within the District. If the developer retains one of the three firms, WisDOT commits to completing their review of the applicants submittal within two months. Additional staff resources have been committed to address the existing backlog of TIA reviews.

To further improve our process, we have agreed to implement the following measures:

- We will provide more education on the Rule, including continuing meetings with groups interested in and impacted by the Rule.
- A checklist of all the needed items for a land division submittal will be developed for land dividers.
- The requirement for a TIA scope will be changed to depend on the magnitude of the development.
- Drainage reviews will not be required for Conceptual Reviews, plus the scope of the drainage review will be discussed with WisDNR to avoid overlapping reviews.
- If the land divider desires, the department will review our proposed plan for any needed highway projects. If no highway project is expected within the normal planning horizon of 20 years, the setback will be reduced.
- Even if a highway project is expected, if the land divider wishes to place an improvement in the setback and if the improvement will not impact the viability of the property, the improvement will be allowed (provided a Waiver of Damages is signed by the property owner).
- Language will be added to clarify that Conceptual Reviews are optional.
- Specific language will be added to discuss the concept of a TIA.

Thank you again for facilitating the Rule discussions.

Sincerely,



Frank J. Busalacchi
Secretary



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 29, 2004

Frank Busalacchi, Secretary
Department of Transportation
4802 Sheboygan Avenue
Madison, WI 53705

Dear Secretary Busalacchi:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 28, 2004 and adopted the following motion:

Moved by Senator Leibham and seconded by Representative Grothman that, pursuant to Wis. Stat. §§ 227.19 (4) (d) 1, 3, 6 and 227.26 (2) (d), the Joint Committee for Review of Administrative Rules suspends portions of Trans 233 so that only the attached remains.

Motion Carried 7 Ayes, 3 Noes

As a result of this action, JCRAR takes no position as to the legality or constitutionality of the remaining language contained in Trans 233.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Joseph Leibham
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JKL:GSG:mjd

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



Wisconsin Builders Association

Dedicated to Preserving and Promoting the American Dream

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Hayward

President-Elect
Mike Lotto
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Secretary
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**Deputy Executive
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Jerry Deschane

March 19, 2003

Senator Joe Leibham
Representative Glenn Grothman
Co-Chairs, JCRAR
State Capitol
Madison, WI

① check out 236.13(1)(c)

RE: Rule Trans 233

Dear Senator Leibham and Representative Grothman:

The Wisconsin Builders Association (WBA) requests that a hearing be scheduled on Trans 233. We further ask the Joint Committee for Review of Administrative Rules to consider suspending significant portions of this rule governing highway setbacks and highway access. Our organization hears weekly complaints about this rule from members and non-members alike. We have attempted, over the course of two years, to negotiate a solution to this rule with the department. That has been fruitless.

Concerns over Trans 233 include the following:

- The legislature did not give DOT the authority to regulate non-subdivision land development, yet the department reviews all land development adjacent to state trunk highways, *whether the development accesses the state trunk highway or not.*
- DOT uses Trans 233 to make any demands it wishes of a property owner, including rearranging developments, demanding land dedications, duplicating DNR stormwater plans, forcing property owners to pay for someone else's infrastructure improvements, etc. This is far beyond the authority to regulate safe access to highways.

To resolve these concerns, WBA requests that JCRAR consider suspending significant portions of this rule, including:

- Any provisions that extend DOT's authority beyond that specifically given by ss. 236.13(1)(c).
- Any provisions allowing DOT to delegate its review authority to another governmental body.
- Any provisions prohibiting a property owner from utilizing his land for a legal purpose (setback requirements and use prohibitions).

We propose maintaining the legitimate, legislatively-granted authority which the department must have to:

- Regulate access onto state trunk highways
- Regulate vision corners

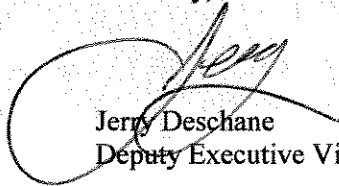


- Inform property owners about potential noise issues adjacent to state trunk highways
- Provide for special exceptions (variances)
- Collect fees and require performance bonds for reviewing subdivision plats
- Permit temporary connections to state trunk highways.

We have engaged the services of a land use attorney and professional engineer to provide specific proposed changes. We are more than happy to share those changes with you.

In conclusion, the Wisconsin Department of Transportation was granted the authority to review subdivisions by the Wisconsin legislature 40 years ago, and to object to those subdivisions if it would have an adverse impact on highway safety. Three years ago, DOT took that limited authority and created for itself a growth-review-and-approval process. This process has added significant delays and costs to needed municipal and private development efforts, and we ask your committee's support in addressing those delays and costs.

Sincerely,



Jerry Deschane
Deputy Executive Vice-President



Wisconsin Builders Association

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Racine

Dave Kautza
Antigo

Jim Selting
Eau Claire

Deputy Executive
Vice President
Jerrv Deschane



May 16, 2003

Secretary Frank Busalacchi
Wisconsin Department of Transportation
P.O. Box 7910
Madison, WI 535707-7910

RE: TRANS 233

Dear Secretary Busalacchi:

Thank you for taking the time to meet with Bill Carity and I, along with Representative Grothman, representatives of the Wisconsin Realtors Association, and representatives of other offices regarding TRANS 233 this Thursday. I thought it was an honest and fruitful discussion. We look forward to working with you toward a lasting solution of this problem.

In the spirit of trying to find that solution, please allow me to reiterate what I said this morning. Our organization shares your goal of assuring safe access onto state trunk highways. We also share the common goal of expanding and improving Wisconsin's economy.

We believe there is a lot that can and should be done to streamline DOT's review of highway access without imperiling safety or the economy. Specifically, we need to see the following issues addressed:

- Breadth of authority. Trans 233 was originally drafted to fulfill the legislative mandate contained in ss. 236.13 relating to the division of land into five parcels or more. *(The department also has other avenues to assure safe access without reviewing all development projects in Wisconsin.) what are other avenues?*

While this is a difficult issue, it lies at the root of many Trans 233 issues and cannot be ignored. We note from Mr. Larson's letter that the department is already going beyond even Trans 233's broad authority, by extending the Trans 233.015(4) definition of land division to include a land sale. Trans 233 has also been applied to projects that do not abut state trunk highways. The Wisconsin Builders Association is concerned that the department will repeat this debate with businesses until the issue is resolved. Since we share the same goals, we ought to be able to find a reasonable solution.

- how will permit deadline bill affect this concern?*
- 20-day review. This statutorily-mandated deadline has been ignored by the department. It may be that the department's overreach on the subject of authority has created a situation where there are more projects to review than the department can possibly handle.

The business community's largest complaint regarding government regulation is timeliness. Somehow we must find a way for the department to complete its review within 20 days. If that involves changes in the way applicants provide information to the department, we are willing to work with the department and our members to address that problem.

- The definition and treatment of improvements within the setback area. For decades, property owners were comfortable with restrictions within the setback area. For example, it was widely understood and accepted that buildings were not to be constructed within the setback. Unfortunately, that reasonable understanding has been lost. Today, although the department will not condemn and buy the property, it maintains total control by barring use of the land. This is a situation that we cannot support, but we believe there is room for a realistic compromise.

In closing, Mr. Secretary, we thank you for your honest comments and your commitment to work on this issue. We likewise offer an honest effort to quickly find a reasonable solution. Continuing the status quo is not acceptable for either of us.

We look forward to working with you to find a solution. Please feel free to contact me at (608) 242-5155, ext.15; fax (608) 242-5150; or email jdeschane@wisbuild.org.

Sincerely,

copy
Jerry Deschane
Deputy Executive Vice-President

Cc: Rep. Glenn Grothman
Sen. Joe Leibham
Mr. Tom Larson, WRA
Internal distribution

CONSTITUENT CONTACT FORM

Date: JUL 22 2003

Name: John Dux

Address: Fond du Lac, WI (West of Fond du Lac)

Phone: 920-921-1492 979-1492 cell

e-mail:

Summary of Concern:

TRANS 233-
- 40 acre parcel on Hwy 23
Townline Rd
- Wants surveys approved for ~~and~~ Duplex
1000 ft from Townline

Action by Office:

23; has 2 driveways
- To a storage area for gravel
- To a shop; truck repair
Hwy 23 (access won't go to 23; it would go
must shut down driveways in order to get approved
Roger Cripps DOT

Further action required by Office:

DOT won't approve development unless he makes access to Townline from shop + take away the 2 driveways from Hwy. (23)

- Does not affect traffic flow
If 23 will be for lanes - why make change now?



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2056

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

October 24, 2003

The Honorable Frank Busalacchi
Secretary
Wisconsin Department of Transportation
P.O. Box 7910
Madison, WI 53707-7910

Dear Secretary Busalacchi:

We are writing to respectfully inform you that the Joint Committee for Review of Administrative Rules (JCRAR) will hold a public hearing regarding Trans 233 on October 29, 2003. While we sincerely appreciate your willingness to discuss the issues related to this important administrative rule during the past several months, it is now time to take additional action and appropriately modernize the rule.

We have heard numerous concerns from private citizens and businesses throughout the state regarding several issues related to Trans 233. These individuals and organizations have said the Wisconsin Department of Transportation's (DOT) implementation of Trans 233 has gone well beyond ensuring the safety of access to our state highway system and has had serious negative consequences on the economic climate of our state. They indicate that Trans 233 was originally intended to be a vehicle for the state to review and object to projects that would adversely affect safety of Wisconsin motorists, but has now become a review and approval process for economic development and job growth. Some of their specific concerns include:

- **Failure to Act Within 20-day Requirement on Permit Applications:** Trans 233.03(5) states that DOT must act on proposed land divisions within 20 days after receiving land division proposals. Often, DOT fails to act on these applications within the requirement, often much longer than 20 days. These delays costs developers and builders money and slows growth.
- **Extending the Breadth of Authority Over Land Divisions:** DOT has expanded their authority over land divisions to include land sales and lands that do not abut state trunk highways.
- **Unreasonable Requirements:** DOT has been requiring land dividers to conduct traffic and environmental studies on non-state trunk highways - some cases a considerable distance away. DOT is also requiring the construction of improvements like traffic lights, turning lanes and drainage elements on roadways not covered under Trans 233.
- **Setback Issues:** While understood by relevant parties that buildings are not to be constructed within the setback area, the DOT is prohibiting any legal use of private lands within the setback.

The Honorable Frank Busalacchi
October 23, 2003
Page 2

Any improvements made to modernize Trans 233 should 1) ensure highway safety, 2) protect the rights of private landowners, and 3) create economic development and job growth in Wisconsin. We look forward to listening to public testimony regarding Trans 233 and considering the pros and cons of improvements to the rule at the hearing on October 29th.

Please let us know if you have any questions regarding the public hearing or would like to further discuss the issues relating to Trans 233.

Sincerely,

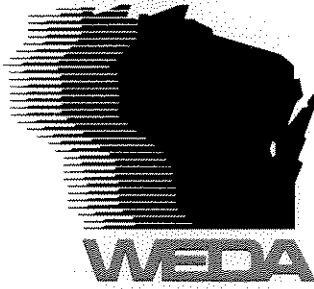


Joe Leibham
Senate Co-Chair



Glenn Grothman
Assembly Co-Chair

cc State Senator Mary Panzer
Assembly Speaker John Gard
Governor Jim Doyle



Wisconsin Economic Development Association Inc.

TO: Members, Joint Committee for the Review of Administrative Rules

FROM: Amy L. Boyer, on behalf of
Wisconsin Economic Development Association

DATE: October 28, 2003

RE: Comments on Trans 233

The Wisconsin Economic Development Association (WEDA), a statewide association of approximately 500 economic development professionals, respectfully urges you to consider suspending parts of Trans 233, of Wisconsin's Administrative Code.

Since the implementation of Trans 233, there have been situations where large, valuable parcels of property have been rendered unusable or subjected to prolonged delays in the development or construction of a project. WEDA members have found that certain aspects of the Rule, or how the Department of Transportation is using it, can stand to be streamlined or improved.

Specific concerns include the DOT's interpretation of the rule resulting in an expansion of the scope of Trans 233 to allow review of all land divisions and permitting DOT to act as an "approval authority", not an "objecting authority."

While WEDA recognizes the importance of the relationship of an efficient transportation system and the economy, WEDA supports improving Trans 233 with the goal of making it more favorable to economic development efforts without compromising critical infrastructure development.

Again, WEDA and urges JCRAR to suspend all or part of Trans 233 or to take whatever steps are necessary to achieve the above stated goal.

Thank you.



The
Hamilton Consulting Group
Legislative, Regulatory & Information Services

Amy L. Boyer

10 E. Doty St., Suite 500
Madison, WI 53703

Phone: (608) 258-9506
Fax: (608) 283-2589

boyer@hamilton-consulting.com

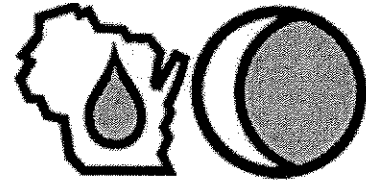
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MEMORANDUM

October 29, 2003

TO: Senator Joe Leibham, Co-Chair—JCRAR
Representative Glenn Grothman, Co-Chair—JCRAR
Members of JCRAR Committee

FROM: Wisconsin Grocers Association (WGA)
Petroleum Marketers Association of Wisconsin/Wisconsin Association of
Convenience Stores (PMAW/WACS)

RE: Trans 233

The Wisconsin Grocers Association represents more than 1,000 independent grocers, retail grocery chain stores, warehouses and distributors, convenience stores, food brokers and suppliers who employ over 66,000 people and generate more than \$6 billion in annual sales in Wisconsin.

PMAW/WACS represents over 500 independent businesses engaged in petroleum marketing, convenience stores, truck stops and related businesses. Members employ over 12,000 people, operate 2,500 stations and stores, account for more than one-half of the motor fuel & nearly all the home heating oil sold in Wisconsin.

On behalf of both of these associations, we would like to register our opposition to Department of Transportation Chapter Trans 233 as it is currently written and enforced. Since the enactment of Trans 233 many of our members have come to our associations to express their concerns with certain requirements of this regulation. To illustrate the problems our members have with this rule, we are attaching comments submitted by a joint member, Rick Lambrecht, President of Mega Management Corporation in Eau Claire, Wisconsin.

Thank you, in advance, for your willingness to hear the concerns with this regulation. If you have any questions, please contact Bob Bartlett at PMAW/WACS, 608.256.7555 or Michelle Kussow at WGA, 608.244.7150.

Testimony of Rick Lambrecht, President Mega Management Corporation, regarding Trans 233.

Thank you for allowing me to comment on the Department of Transportation Chapter Trans 233.

Our company operates six large supermarkets in Central Wisconsin and the Chippewa Valley in western Wisconsin. In addition we own and operate 12 convenience stores that offer petroleum for sale and have employment of 1,300+.

As you can imagine because of the nature of our business location is important and therefore the majority of our sites are located along major highways. Not only is access important to our sites but so is visibility and the ability to communicate with the consumer what our offerings are such as whether fast food is available, ATM's, etc. as well as the availability of diesel fuel and the required posting of prices for gasoline. In other words signage is important to us and the traveling consumer. Therein lies our concern with Trans 233 which greatly and in our opinion needlessly restricts the use of our property for development within the required setbacks from state highways for development.

We understand and support the need for safe access, vision triangles and public safety in general, but feel unfairly treated when it comes to the setbacks applying to all land owned along a state highway that in no way has a safety factor attached to it. As a company and like all other property owners with rights, we feel that a good share of those rights were terminated on our lands with the land setback requirements. In short we pay taxes on supposedly valuable land that we were able to use for development in the past. Some of these properties were purchased years ago and now are smaller for development than first thought because of the setbacks. Are we now supposed to buy more land than we really need for development because of the setback requirement? Is that fair to business? Our question is simply are the setbacks truly for safety or to discourage development so that in the future the Department of Transportation doesn't have to purchase developed property, just vacant land. If that is the case the Department should purchase that property now. Unfortunately that would mean a property tax loss to the community and entities served by those property taxes.

I thank you for your time in considering our concerns with this issue and in closing ask you to support the repeal of this property setback in this Chapter.

To: **JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES**

From: Arden T. Sandsnes, of Royal Oak Engineering,

and representing the **Wisconsin Society of Land Surveyors**

SUBJECT: TRANS 233

Our organization wishes to express our thanks for this opportunity to address the Trans 233 issue once again.. We felt we were shorted after the previous Joint Administrative Rules Committee hearing on this issue because we understood that the DOT was instructed to come back to your committee with a proposal which never happened.

My personal experience with the Trans 233 process here in District One has been excellent. In Dane County we have had our requests processed in a timely manner. However others in my profession in other parts of the state still express frustration with the demands and the processing of their applications.

Many of the members of the Wisconsin Society of Land Surveyors are still of the opinion that much of the Trans 233 process represents a TAKING OF LAND by the WisDOT without the actual transfer of title or compensation for the taking .

The problem seems to exist because of a policy that handles ALL situations with a "ONE SIZE FITS ALL" policy or format.

Let me explain where the difference seems to become a major difficulty.

In areas adjacent to state and federal highways, where substantial widening and PLANNING have taken place, the department continues to limit what may be, or may not be, done on an owners private property. Certain lands of the owner that ARE NOT adjacent to the highway may be impacted and a strip of land at least fifty (50) feet in width IS NOT permitted to be used for such things as parking lots, driveways, septic fields and non permanent advertising media.

In the areas WHERE MINIMAL RIGHT OF WAY EXISTS the same policy is employed. We understand that in the un-widened areas further planning should take place and that additional right of way reservation, or for that matter an actual right of way taking, may be justified and warranted.

It does not seem reasonable that sufficient planning cannot be done and made public. Planning and the identification of need could be established and published such that owners are able to PLAN THEIR OWN LAND USE REQUIREMENTS. Proper planning to identify the areas of need should be a natural function of WisDOT. The identification of areas of need would lend itself to the reduction unreasonable restrictions and un-necessary land taking

At a previous hearing the Joint Committee for Review of Administrative Rules imposed a mandate upon WisDOT to identify the areas of need, map the areas and bring the proposal back before the committee. As yet that does not seem to have been done.

The last point to discuss is the requirement of property owners to initiate a review when simply selling or trading land WITHOUT a formal land division such as a subdivision plat or Certified Survey Map.

During that other hearings we made the point that a requirement under, the then proposed and now existing, Trans 233 a property owner was required to obtain a review from the local WisDOT district when transferring land in any manner. We made the point that there was NO way for that owner to know that they were required to make the application and thus could conclude a land deal and be in violation without knowing it. Our point being that unless the land sale or exchange was required to be a subdivision or Certified Survey Map there was no "trigger" to alert the land owner of his or her obligation to WisDOT. The problem would only surface after the fact.

This final point needs work. Some form of awareness process needs to be devised if the requirement is to remain or the requirement must be eliminated. We simply should NOT be placing our citizens in a position where they are violating a requirement with knowing they have done so.

Sincerely,

Arden T. Sandsnes, Vice President
Royal Oak Engineering
Wisconsin Society of Land Surveyors

WISCONSIN SOCIETY OF LAND SURVEYORS

William P. O'Connor
Legislative Counsel
25 W. Main Street
608.255.7277

STATEMENT ON TRANS 233

JOINT COMMITTEE ON REVIEW OF ADMINISTRATIVE RULES
October 29, 2003

The Wisconsin Society of Land Surveyors appreciates the Committee's continuing interest in TRANS 233. Many of our members have serious objections to a number of the substantive policies underlying the revised rule, particularly the broad sweep of the setback and development regulations imposed on private landowners. I know the Committee is aware of the concerns of surveyors and others on that subject.

The Society's comments today focus not on the underlying policy concerns, but with the real world problems confronted by land owners and practicing surveyors as a result of TRANS 233. A major concern of ours is with the applicability of the DOT review provisions to land divisions. Trans 233.012(1) requires agency review for any division of land "that abuts a state trunk highway, a connecting road or service road." These include subdivision plats and certified survey maps as well as metes and bounds descriptions, lot line adjustments by adjoining farm or landowners and sales of quarter-quarters (or "40's") by owners of contiguous quarter-quarter sections of land. (TRANS 233 does not define "connecting road" or "service road" so its applicability depends on the landowner to dig deeper into DOT regulatory provisions to determine which roads are covered by the requirement.)

Some of these are formal land divisions prepared by professional land surveyors and reviewed by local governments. Others, like condominium plats are specifically made subject to TRANS 233, but are only rarely reviewed locally because they are generally not considered "land divisions" under s. 703.38. How can ordinary landowners be expected to be aware of these requirements? Many are not. As a result, many conveyances that constitute land divisions escape attention under TRANS 233. Where a purchaser subsequently proposes a land division, he begins that process with an inherited violation. Surveyors in various parts of the state have encountered delay and additional expense as a result.

WSLS urges the Committee to work with WisDOT to refine this regulation so that it accomplishes what is needed for highway safety, without unnecessary interference with property rights or unnecessary review of minor private land transfers or divisions that do not merit a state review requirement. We also ask the Committee to take action necessary to ensure that the setback and development regulations are focused on specific highways and portions of highways where there is a problem, so that the State is not imposing unwarranted limitations on private property.



8401 Excelsior Drive
P.O. Box 33
Madison, WI 53701-0033
608/828-2487
800/236-1300. Ext. 2487

Oct. 28, 2003

TO: Co-chair Sen. Joseph Leibham, Co-chair Rep. Glenn Grothman and Members
of the Joint Committee for Review of Administrative Rules
FROM: Ernie Stetenfeld, Vice President, Corporate Relations, AAA Wisconsin
RE: AAA Wisconsin testimony regarding benefits of Trans 233

Good morning, Co-chairman Leibham, Co-chairman Grothman and members of the committee. My name is Ernie Stetenfeld, and I am here to testify on behalf of AAA Wisconsin regarding Chapter Trans 233 of the Wisconsin Administrative Code. AAA Wisconsin is the membership organization representing the motoring and travel interests of nearly 600,000 member-motorists across our state.

Members of the committee no doubt have heard from businesses and individuals concerned about how they are affected by Trans 233, how this regulation is applied, or both. Although I by no means want to minimize any such concerns, I do feel that it's important for legislators to balance such objections with consideration of the broader benefits Trans 233 confers upon the motoring public. On behalf of AAA Wisconsin in its role as a motorist-advocacy organization, I want to convey that the authority Trans 233 gives the Wisconsin Department of Transportation to manage access to our state highways does provide benefits in the areas of mobility, traffic flow and traffic safety – including helping to hold down highway crashes, injuries and even deaths.

Our state highways are the primary vessels of the Wisconsin economy's circulatory system. Although the State Truck Highway System – state highways and connecting highways – represents just a little more than 11 percent of Wisconsin's approximately 110,000 miles of roadway, those state highways carry about 60 percent of all Wisconsin vehicle miles of travel, or VMT. And annual VMT in Wisconsin has risen by more than 70 percent over the last few decades, during which time State Highway System mileage has grown by only a few percent. In the last two decades, the number of licensed drivers in this state has risen by about 26 percent. Thus we have more drivers driving more and more miles on essentially the same system. That's a prognosis for congestion – at least in our most-heavily traveled corridors – as well as for more crashes and the associated human and property- damage costs.

Among the means of addressing these conditions, judicious additions of capacity are certainly warranted. But the state needs other items in its toolbox – or better, medical kit – for dealing with a circulatory system that can otherwise become too readily clogged or sluggish. Among the prescriptions WisDOT needs to be able to dispense to maintain the flow of our major highway arteries are better traffic signage and pavement marking, intelligent transportation systems, and – yes – the access-management capabilities afforded by Trans 233. This access-management planning authority can serve as a sort of anti-cholesterol drug to help keep our major transportation arteries relatively clear and free-flowing.

As a motorist and representative of motorists, I want WisDOT to preserve the investment we have made in the functionality of our state highways. One key means of preserving that investment is providing WisDOT with the ability to manage access to land along state highways through means such as: planning and limiting points of access to balance land/business access with promotion of state-highway traffic safety and traffic flow; and maintaining clear, unobstructed lines of sight – especially at highway corners. AAA Wisconsin regards Trans 233 as appropriate authority for the department to achieve such ends for the benefit of the motoring public.

Co-chairman Leibham, Co-chairman Grothman and members of the committee, I thank you for your consideration of AAA Wisconsin's testimony recognizing the general contribution of Trans 233 to access management, appropriate traffic flow and traffic safety.



Wisconsin Builders Association

Dedicated to Preserving and Promoting the American Dream

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Bill Wendle

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Vice-President**
Jerry Deschane

October 29, 2003

Senator Joe Leibham
Representative Glenn Grothman and members
Of the Joint Committee for Review of Administrative Rules
State Capitol
Madison, WI

RE: Rule Trans 233

Dear Ladies and Gentlemen:

The Wisconsin Builders Association (WBA) is grateful that you are holding this hearing to learn of problems with Trans 233. We believe the committee should consider suspending significant portions of this rule governing highway setbacks and highway access. Our organization hears weekly complaints about this rule from members and non-members alike. We have attempted, over the course of two years, to negotiate a solution to this rule with the department. That has been fruitless.

Our concerns with this rule fall into four general areas:

- Scope of review
- Restrictions upon legitimate use of private land (within the "setback" area)
- Review of properties that do not abut state trunk highways
- Excessive delays in reviewing projects.

Scope of Review

The legislature did not give DOT the authority to regulate non-subdivision land development, yet the department reviews all land development adjacent to state trunk highways, *whether the development accesses the state trunk highway or not*. In some instances, a land sale, without any land division at all, has triggered DOT review. Furthermore, DOT uses Trans 233 to make any demands it wishes of a property owner, including rearranging developments, demanding land dedications, duplicating DNR stormwater plans, forcing property owners to pay for someone else's infrastructure improvements, etc. This is far beyond the authority to regulate safe access to highways.

Setback use restrictions

Since the original grant of statutory authority for Trans 233 40 years ago up until 1999, DOT allowed property owners to make reasonable economic use of the 50-foot strip of private land adjacent to state trunk highways. This land could be used for parking, utilities, signage, and other "non-building" purposes. In 1999, without any policy change from the legislature, DOT stripped property owners of the ability to use that land for any productive purpose.



Review of "non-abutting" projects

Although Wisconsin law clearly limits DOT review to proposed subdivisions that abut state trunk highways, property owners have reported the department routinely reviews land development proposals hundreds of feet away from highways.

Time

For forty years, DOT reviews were conducted and completed within the 20-day statutory review period. Since 1999, DOT reviews take months, costs thousands of dollars in engineering studies, and have become a significant barricade to job development.

In conclusion, 40 years ago, your predecessors granted DOT limited authority to review any subdivision of five lots or more that entered onto a state trunk highway. You have never granted the agency additional power. Nonetheless, three years ago, DOT created for itself a massive growth review-and-approval process. This process has added significant delays and costs to needed municipal and private development efforts, and we ask your committee's support in addressing those delays and costs.

Sincerely,



Jerry Deschane
Deputy Executive Vice-President

The correlation between highways and economic prosperity has been recognized throughout history. The ancient Greeks, Romans, Persians, Egyptians, Persians, and others all prospered or fell based on the quality of their highway systems that they developed and maintained. These cultures had either created similar highways, highways.

The concept of promoting economic prosperity through a network of roads and highways has been recognized for more than a century. The rise of I-90, I-490, I-94, and I-90 is a Millstone Around the Neck of

the 1980's and 1990's Wisconsin leaders of both parties worked with the Wisconsin Legislature to build freeways and four lane roads throughout the state. The Wisconsin Highways through economic development and Wisconsin communities grow up along them.

In 1997, the Wisconsin administration with support from the Wisconsin Legislature, both parties embarked on a strategic program to build a new Wisconsin Highways through economic development and Wisconsin communities grow up along them.

**A Presentation to the Wisconsin Legislature
Joint Committee for Review of Administrative Rules
October 29, 2003**

The Wisconsin Highways through economic development and Wisconsin communities grow up along them.

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2. Business and industry prefer to locate along or in close proximity to good roads. Drive down any major highway that allows access and you will find businesses springing up.
3. No business or industry will locate along a highway that it cannot access.

The century-old Wisconsin strategy of designing its highway system in such a way that it becomes a major tool in the economic development of the state ended on February 1, 1999. This is the date on which the Wisconsin Department of Transportation adopted the administrative rule Trans 233. No longer are the economic benefits to a local community a consideration in the design of Wisconsin highways.

What is so troubling about this change of strategy – this change in philosophy – is that it was invoked by a state agency and without consultation with this legislature. Never was the wisdom of this critical change in highway strategy debated, discussed or pondered by the members of the Assembly or Senate. Prior to this day, none of your constituents were afforded the opportunity to stand before you to plead the case against Trans 233. Instead, the rule was crafted by an anonymous group of bureaucrats who, understandably, are reluctant to attach their names to it. But today you have created this forum to correct that injustice and whether they know it or not, every land owner in this state owes each of you a “thank you.”

Let's look at the specifics of Trans 233 and its devastating effects on economic development in this state.

1. The silent condemnation.

The day before the adoption of Trans 233, a landowner owned all of his land up to the right-of-way of every state highway. On February 1, 1999, the day that Trans 233 was adopted, the DOT effectively condemned a 50' swath on each side of all state highways.

There are approximately 12,000 miles of State Trunk Highways in the state. A 50' swath on either side amounts to nearly 146,000 acres. For all intents and purposes, the DOT has condemned this land and eliminated it from the pool of land available for development or, - at the very least - severely compromised its development potential. To put this in perspective, 146,000 acres is roughly the size of the land area of Kenosha County.

Not only was this the largest condemnation in the State's history, but it is a condemnation of which most landowners are unaware of even to this day and it is a condemnation for which not one property owner has ever received one cent.

So how was this condemnation accomplished by the DOT without you knowing about it, without the landowners knowing about it or even the press learning about it?

On February 1, 1999 without review by the legislature, the DOT adopted Trans 233, which established new land use regulations along State Highways. A critical component of Trans 233 was the establishment of a 50' (and in some instances greater) - 50' IMPROVEMENT SETBACK along all state highways and along all roads leading to State Highways. This replaced the previous practice that that applied to most State Highways which was a 50' BUILDING SETBACK.

To understand the devastation that Trans 233 is wreaking on economic development in Wisconsin one must understand the distinction between an IMPROVEMENT SETBACK and a BUILDING SETBACK.

A BUILDING SETBACK is something that is familiar to all of us. Various state or local codes do not permit one to construct a building within X feet of the right-of-way line of a street or highway. A variation of that rule applies to the house you live in and almost every business that you patronize. Previous to the adoption of TRANS 233, the building setback along most State Highways was 50' or 55' feet.

But in the case of a BUILDING SETBACK, the land between the building and the right-of-way is still useable by the owner. You can plant trees and shrubs on it and landscape it. You can build your parking lot in the BUILDING SETBACK area. You can run utilities on it, place your sign on it, erect building or parking lot lights, fence it in and in every other way use it as if it were your own. The only thing you can't do is erect a building within the BUILDING SETBACK area.

But Trans 233 created a 50' wide IMPROVEMENT SETBACK. Not a BUILDING SETBACK.

The DOT's definition of an Improvement is anything that is man made. You cannot landscape the IMPROVEMENT SETBACK. You cannot build your parking lot on it. You cannot run utilities on the IMPROVEMENT SETBACK, you cannot put your business sign on it, and you cannot put lights or utility poles on it. You cannot even put a picnic bench on it. You cannot use the land for water detention. About the only thing you the owner can do in an IMPROVEMENT SETBACK is to cut the weeds and you must pay taxes on it.

What is the net effect of changing from a BUILDING SETBACK to an IMPROVEMENT SETBACK?

We are needlessly eliminating a land area nearly the size of Kenosha County from being developed. In some instances, we are even eliminating the 50' swath of land from being effectively farmed. We are driving up the cost of development by taking out of play some of our most valuable development land. In some instances, we are totally taking away the development potential of some parcels. In other instances we are chewing up more land for development than is necessary. Think of it this way. A business may require an acre on which to construct an office. An acre is roughly 208' X 208'. If this acre is located along a state highway, 25% of the land area (about 10,000 SF) will be unusable. The prospective buyer will be required to buy even more land if it is available. If

adjacent land is not available he/she will need to go elsewhere. More and more often, "elsewhere" is beginning to mean states with a more hospitable regulatory climate.

But let's not talk about the hypothetical or theoretical. Let's talk about the real world and the devastating effect this rule is having on economic development in this state. A few days ago, we drove down the road for a few miles and snapped a few pictures of tens of millions of dollars of development that the DOT has declared to be undesirable – projects that no longer can be built in Wisconsin – or at the very least, cannot be built without adding substantial new cost to the project.

- The Plexus research and engineering center is tucked along a highway and amongst wetlands. This world-class facility funnels tens of millions of dollars of work to the firm's 5,000 Wisconsin employees. Under the new Trans 233, this building could not be built as you see it. In effect, the DOT has declared that this engineering facility is better suited to be on the campus of the firm's Lexington, KY location rather than in Neenah.
- The Fox River Mall in Grand Chute outside of Appleton was built at the junction of three state highways. This mall has given rise to one of the most vibrant retail districts not only in Wisconsin but in the entire Country. It could not be built today under Trans 233 rules without serious modification and major added expense. The traffic problems in the area of this mall have nothing to do with Trans 233 compliance but have everything to do with DOT arrogance and lack of foresight when it was built – but that is another story for another day..
- This is the Mercury Marine plant along Highway 41 in Fond du Lac. Mercury Marine is a major employer that provides high-paying jobs for Wisconsin workers. The quality of its product is known throughout the world. It is fortunate that its job-generating facility in Fond du Lac was built before the adoption of Trans 233. You no longer can build this facility in

Wisconsin. When business and labor tells you that Wisconsin has an inhospitable regulatory climate, this is the type of thing they are talking about.

- This Dodge dealer – and many car dealers in your communities – would need to take their jobs and go elsewhere under the current Trans 233 rule. Car dealers locate along state highways because that is where the customers are.
- This award winning Holiday Inn barely fits on the land it presently has. There is absolutely no way it could ever be built – even with modification – under Trans 233. Tourism is a major business in Wisconsin. Hotels must locate along major highways. Trans 233 would have them locate elsewhere.
- And as ridiculous as it may seem, if a farmer inadvertently triggers Trans 233 by selling a few acres to his son or daughter, even these cows will be in violation of the rule.

It would take weeks of around-the-clock sessions to show you pictures of all of the buildings that can no longer be built in Wisconsin under Trans 233. But think of it in these terms. Just eliminate everything you see in Kenosha County and you have a pretty good picture of the magnitude of the problem.

2. The Alternative to the Silent Condemnation.

So what is the DOT's justification for adopting this job-killing rule? How does limiting development on the prime land that fronts our state highways benefit Wisconsin taxpayers?

The DOT makes no bones about it. The Improvement Setback rule will not save lives. It will not make our highways safer. It will not improve traffic flow. It will not conserve land, nor aid communities nor help create jobs. The DOT says that it has adopted the Improvement Setback in the event that at sometime in

the future – 5 years, 20 years, 50 years or maybe even longer – it may want to widen the highway. In that event, it will save money by not having to buy improvements that were placed on the land. “Condemn the land today,” says the DOT. “Don’t pay the farmer anything for it. Let him find out about the condemnation when he tries to sell a piece of it. Make the farmer carry the land, pay taxes on it and look after it. Don’t concern us with lost jobs, lost development opportunities or stagnant economic growth. Take the area of Kenosha County out of the game and we may save a few bucks down the road.”

Of course, what the DOT doesn’t tell you is that this Legislature has already given the DOT the tools it needs to protect areas it needs for future highway upgrades. The tool the legislature has given is the Official Map which is used by virtually every governing body in the state. An Official Map allows officials to reserve specific land for future roadway construction. It is easy to implement and it allows governments to reserve specific land for as long as the reservation is needed. I know of roads that have been officially mapped for over 20 years but are still not built. The DOT already has the tool it needs to reserve right-of-way. It doesn’t need the job-killing clout of Trans 233 to get the job done. What it needs instead, is an emphasis on long-range planning.

3. The myth of the “Special Exception.”

Now the DOT is going to come before you and tell you that much of what Meerdink has told you is bunk. They are going to tell you that the Improvement Setback rule is triggered only when land is subdivided. And they are going to tell you that while the restrictions in the Improvement Setback that I have recited are accurate, the DOT – being the fair and thoughtful agency that it is – will, in all reasonable cases, waive those restrictions. It will grant a “Special Exemption.” For the sake of the economic health of this State, I hope you don’t believe that poppycock.

First, let’s understand the DOT’s definition of “Special Exception.” You and I and most landowners would think of it as a “variance.” But the DOT is quick to

point out to all that use the "variance" term, that it is not a variance and that the term "variance" never appears in the rule.

Why is the DOT procedure a "Special Exception" and not a variance?

Under Wisconsin law, a landowner seeking a variance is entitled to very specific rights including the right to make a case before a fair and impartial decision making body and the right of judicial review. There is nothing fair or impartial about the DOT's Special Exception process. One goes hat in hand before a bureaucrat who makes a decision based on the DOT's whims. There is no opportunity to offer testimony. No opportunity to be heard by impartial third parties. No opportunity to offer expert testimony. The process doesn't even rise to the level of a "Kangaroo Court," a term that implies at least the pretext of impartiality and fairness. There is nothing fair or impartial about the process. Decisions are rendered by the employee-of-the-day assigned to handle such matters. Career-minded employees always come to the "right" decision.

And the DOT will tell you that the rule doesn't apply to most of the 146,000 acres that abutt state highways. The DOT argues that it only applies in those cases where the property is "subdivided." That is a bit like claiming that everyone is exempt from income taxes except in those cases where someone has income! The fact is that almost all development begins by subdividing under the definition of "subdividing" that has been written into Trans 233. The DOT's definition of subdividing is substantially different than the Statutory definition of subdividing.

According to the DOT's definition, the rule is invoked in the following instances.

- a. A parcel of land is broken into two or more pieces. If a farmer sells five acres of his farm to his son or daughter on which to build a house, he has subdivided. Before the farmer can sell the five acres to his child, he must first seek subdividing approval from the DOT. And after he has subdivided, the farmer is forever barred from even

building a fence to contain his cattle along the 50' Improvement Setback on his remaining farm without first seeking a Special Exception from the DOT. If the farmer wants to sell the five acres for purposes of constructing a factory or office or retail building, he must also first seek approval of the DOT and he will most certainly have imposed on him very specific limitations on how that job-generating enterprise can use the land.

- b. But the DOT's definition of subdividing goes the other way too. If this farmer acquires the farm next door - even if the next door farm doesn't abut a state highway - the farmer has subdivided. Trans 233 is triggered ON BOTH PARCELS. To sell any portion of the enlarged farm, the farmer must first seek DOT approval. To build a new fence along his field fronting a state highway, he must first get the blessing of the DOT.
- c. The DOT says that if a farmer owns a series of adjoining fields along a state highway that are separate and distinct parcels recorded with the local register of deeds, this is one parcel for the purposes of Trans 233. The sale of a portion OR AN ENTIRE PARCEL triggers Trans 233 on all adjoining parcels.
- d. It is becoming more and more common for companies to construct buildings on land they lease rather than on land they own. A land lease, according to the DOT's interpretation of the rule, is a subdivision.
- e. My point is this. It is disingenuous for the DOT to claim that the rule is invoked ONLY when land is subdivided. It is almost impossible to escape the DOT's definition of subdividing.

4. A specific example of the devastation this rule is having on Wisconsin Economic Development.

I could spend many hours analyzing this rule. But let me give you just one sad example of how it is being implemented. This is a story not only of Trans 233 but also an example of the current DOT disregard for Economic Development Opportunities along new highways.

The DOT is constructing a new four-lane leg of Highway 10 that will link Waupaca with Appleton and the Fox Cities. The final section linking Fremont and US Highway 41 is due to open in a few weeks. A key element of this road is a major new intersection at the junction of the new Highway 10 and Highway 110.

This new interchange created some of the most valuable land in Waupaca County. As one might expect, this major new interchange has created a great deal of interest among developers - one from as far away as Baltimore. I think that we all agree that it is good news whenever anyone wants to invest their money in developing property in Wisconsin that will create new jobs.

The northeast and northwest corners of this exciting new interchange were quickly optioned. The Baltimore developer who brought several east-coast investors into the transaction optioned one of the corners. The original plans of the two developers were to create more than \$20 million in new development and an untold number of new jobs.

But that was before the developers talked with the DOT.

The first thing that the two developers learned was that they would lose over six acres of some of the most valuable ground in the county under the Trans 233 Improvement Setback rule. So both developers went back to the drawing board and scaled back their developments.