But that determination was just the first in a string of bad, anti-economic development, and anti-jobs decisions made by the DOT with regard to these two developments.

The original Owners of these two parcels dealt with the DOT on the "taking" issues when their land was condemned for the new interchange.

- DOT negotiators assured both Owners that great value would be added to their land by the construction of the new interchange.
- Both owners were concerned about road access to their land and were assured by the DOT negotiator that roadway access would be provided at specific points.
- The Owners were shown maps of the interchange and the points at which access would be granted to their land.
- To emphasize how valuable their land would be, the DOT showed them plans of a median strip in front of their property (Highway 110 side) with a "cut" and turning lane in it at the point of the promised road accesses. The "cut," and turning lane were provided, they were told, to facilitate turning movements onto the owners' land and to add value to it.
- All of these promises were made in the name of the State of Wisconsin as an inducement for the Owners to sell their land for little more than the value of farmland. The agreement was reduced to writing, included in the deed and recorded with the Register of Deeds.
- And then, as if to solidify the promise, the DOT actually built the median strip, built the turning lanes, built the curbs for the roads leading onto the property at the promised points. The construction of these items were some of the first things built as part of the new interchange. And here is a picture of the promised median (explain picture).

But when you wonder why people no longer have faith in their government, why taxpayers view with great skepticism the promises made by the legislative and executive branches of this state, you must hear the rest of the story.

Competing, experienced, well-respected developers purchased the two parcels despite the Improvement Setbacks. These were no "babes in the woods." Each developer saw for himself the median and turning lanes. Each viewed the outline of the roadways onto the land that was placed there by the DOT. Each hired respected engineers, did their due diligence and reviewed the written agreements regarding the access. Both developers concluded that the promises of the State of Wisconsin were worth something. Both developers closed on their respective pieces and laid out a total of $1.4 million. Both embarked on an accelerated plan to put in place developments that were to add millions of dollars of tax base and scores of new jobs.

And that is when the problems began.

The DOT invoked Trans 233 and its other statutory authority, denying access to both parcels at the point of the median "cut." Not only has the DOT denied access to the property at the point of the median cut, but it now is planning to close up the median "cut" and is demanding that the access to the property be relocated to the far North end of the property far way from the interchange, destroying much of the property's commercial value and threatening much of the $20 million of development. To compound things even more, the DOT is in the process of building a new median crossover about 500' north of the current one.

The DOT said its denial of access to the properties – despite having constructed the median and turning lanes – was based on a new evaluation of improving traffic flow in the vicinity of the interchange. The agreed upon access points were "too close" to the interchange.

"How "too close" are they?" the DOT was asked. The DOT could not answer that question because they never had plans made for the median they had constructed. They just knew it was "too close."

One of the developers hired his own engineer to survey the location of the median in relationship to the interchange. The drawings were sent to the DOT and it was noted that the median cut fell within the DOT's own guidelines regarding turning lanes and interchanges.

Despite this expense assumed by the developer and despite the findings of compliance with DOT standards, the DOT said that traffic congestion would result.

Based on this new position by the DOT, the second developer –at a cost of $10,000 - hired his own traffic engineer to study the DOT's allegation of potential traffic congestion. The finding of the privately hired traffic engineer was that – based on the DOT's own estimates of traffic volumes – no congestion would result. This, of course, was the same conclusion that the DOT came to when it originally built the median and the "cut." But this study, too, was dismissed out of hand by the DOT.

The result is that today – as we speak – the DOT is in the process of constructing a new median and a new median cut to serve these properties. This Legislature should be offended at this waste of taxpayer money. The new median cut takes the commercial drives more than 1,000 feet from the intersection, destroying much of the commercial value of the two properties. Access to one of the properties will now come across wetlands. Commercial buildings scheduled to be built on the properties this summer have been put on hold. Jobs that were supposed to begin this fall have been cancelled.

Today as I speak to you – at this very moment – the Baltimore developer and his attorneys are in Wisconsin Rapids deposing senior DOT officials in the first step of bringing suit against the State of Wisconsin over the issue. The question that will be before the court is this: "Are the written promises of the DOT and the deed they recorded, worth the paper they are written on." The DOT says they aren't. The developer says they should be. The legislature has not yet made its position known.

The great discussion in Wisconsin today is how our government can foster and promote economic development and help in the creation of new jobs. This is not a partisan issue. There are many things that can be done and I come before you today with two proposals that are within my area of expertise.

1. Revoke Trans 233 immediately.

   The process under which this rule was adopted is an affront to this Legislature and the people you represent.

   The silent condemnation of 146,000 acres without compensation is an outrage against the thousands of landowners it affects.

   The devastation that this rule is having today and will continue to have in the future is beyond measurement. The number of potential new jobs that it sends to the scrap heap is huge.

2. Next, I urge the legislature to take a bold new step to insure that we get the greatest economic bang for each dollar spent on new state highways. There is no state agency that is presently charged with that important task. Think about this for a minute.

   Before any design for a new state highway is adopted, the plan must be reviewed by outside agencies to insure that archeological treasures are not disturbed.

   Before any highway is built, the plan is reviewed by the DNR and others to insure that wetlands are not disturbed, that wildlife is protected, that the quality of the groundwater is not compromised and that the air remains pure.

   Before a new highway is built the historical society reviews the plan to

insure that no historical buildings are destroyed.

But nowhere in Sate government is there a single employee that reviews highway plans to determine the economic benefits to be derived from alternative highway designs. Mayors may plead their case to the DOT but have no power to act. Town chairmen may propose alternatives, county boards may pass resolutions, and city councils may study. But in the end, the highway will be designed without review by someone with the expertise to access the economic development impact of the design.

Why is that?

Should not the State of Wisconsin give the same voice to our working families as it does to our frogs living in the wetlands? In a very real sense, both are struggling for survival.

Should not the State of Wisconsin offer communities the same opportunity to fight for their economic survival and growth as we give to old buildings that just happen to have eight sides to them?

Are not creating new jobs and new tax base as important as saving ancient treasures?

Isn't it strange that we will not allow an economist to design our highways yet we will allow highway engineers to determine the economic impact of the highways they propose?

I propose that the Legislature create a Division within the Department of Commerce that has the responsibility and authority to review the design of all State highways for the purpose of insuring that our investment in those highways generates the greatest economic benefits possible.

Before we build our highways we have experts count the frogs, evaluate the cat tails, search for arrow heads, test for buried tanks, render opinions on old buildings, sniff the air and turn the project over to the contractor who promises to hire the most diverse workforce. Prudence and good government dictate that we do all of those things.

But prudence and good government also dictate that we should design our roads in ways that will generate the most jobs, create the largest tax base, protect the property values of our citizens and help our communities prosper. Yet we do none of those things. Not one person on the entire state payroll is charged with that responsibility. It is time to change this. It is time that we change this during this session of the legislature.

10-28-03

Re: Trans 233

Kevin Romitti
W8962 County Rd. N
Niagara WI. 54151

Dear Represinative Serratti:

Thank you for notifying me on the trans 233 hearing. I regret not being able to attend. My letter will not take the place of me being they're explaining my horrible experience with trans 233.

As you are aware my nightmare has lasted over 2 years and approximately over $150,000.00 in legal and additional road building fees. My property had access to hwy us 2 in Florence WI. I had an approved built entrance with approval for 500 cars a day. When I decided to sell my property the department would not allow my entrance to stand not even with just 25 homes on over 200 acres. I also had over 1000 ft of my own high way frontage that I could not get a permit on with out spending hundred of thousands of dollars on a turning lane when the d.o.t. Knew when they built the highway a year before their was going to be a town road their. Well that led to the town & the county to get involved to condemn my niebors property pay and out outragous fee for the right away in the mean time I could not sell because I had no access. After almost two years the right away was purchased and the road has been started but it will not be passable or plow able till this time next year. Please do all that you can to not allow this to happen to any one else the stress and financial hardship this has put on my family the towns and counties should go on know more. Please stop trans 233 power it could wipe out families that where waiting to sell property for retirement along highways. It's not good business for Wi.

Very truely yours,
Kevin Romitti

CONSTITUENT CONTACT FORM

Date: OCT 27 2003

Name: Bill Freis (fiancee Judy Wolf

Address: Hwy 67
Town of Greenbush (Glenbeulah)

Phone: 920-207-1356 ; Judy: 920-526-3786

e-mail:

Summary of Concern:

Finance/Build new home on land. Adjacent to Hwy. 67
- State DOT:
  - wants shared driveway
  - Town doesn't

Dave Neilsen, DOT GB

Action by Office:
- DOT wants ~~this~~ them to shutdown one of the driveways
- can add drive on Forest Road but eliminate access to 67.
- State must sign off on this in order to get building permit.

Further action required by Office:

lender: eliminating an access to land could lower property value.

- KEVIN CHESNICK - Atty Thiel - Rand Romanski

Wisconsin Department of Transportation

Trans 233 Proposed Changes

(October 2003)

As a result of discussions with several outside organizations (WRA, WBA and MBA) and an internal review of Administrative Rule Trans 233 and the department's review process, the department is proposing changes in two areas:

- Technical changes to the Trans 233
  - A change in the date to reflect amended guidelines.
  - Traffic Impact Analysis (TIA) will be mentioned in the Rule.
  - The Rule language regarding conceptual reviews will be clarified to say that conceptual reviews are optional.

- Administrative changes to the Trans 233 review process
  - The department's Division of Transportation Districts, responsible for Trans 233 reviews, has added staff to the Trans 233 (and Traffic Impact Analysis (TIA)) review process to allow them to meet the statutory time frames.
  - The department will provide land dividers a checklist of items required when submitting a land division for review.
  - The TIA scope will depend on the magnitude of the development and fewer TIAs are expected to be required. If 100 or less peak hour trips are generated by a development, no TIA will be required. If between 100 and 500 peak hour trips are generated, an abbreviated TIA will be required. A developer may opt out of preparing an abbreviated TIA by agreeing to department recommended improvements.
  - DTD – District 2 (Waukesha) has piloted a program to reduce the time needed to review a TIA. They have named three consulting firms with experience in preparing TIAs. If a developer chooses to use one of the three firms, a review will be completed within two months.
  - To avoid duplicating efforts, WisDOT will continue to meet with WisDNR and Wis Department of Commerce to consider whether the drainage review already done by other agencies will meet WisDOT needs.
  - A drainage study will not be required for conceptual reviews.
  - If a highway is not anticipated to need to be improved/expanded in the next 20 years, the setback will be reduced (upon application by the land divider).
  - Improvements that do not impact the viability of a property will be allowed in the setback area (upon application by the land divider), provided the land divider agrees to sign a Waiver of Damages.
  - The department will provide more education on Trans 233 to land dividers.
  - The department will facilitate continuing discussions with all groups interested in Trans 233.

Set backs -

Atty

- or Connecting highways.

Concerns

(5) 2(b) shall endeavor - this is just part of the Conceptual Review Process - not required -

definition of connecting highway - ss. 80.31

No definition of service road - is defined in other Statutes but not in rule.

The Road to More Taxes, Farm Family Loss, Traffic, Sprawl, and Pollution

How the Wisconsin Developers and DOT's Pave Wisconsin Plan Puts Your Family, Farm, and Wallet at Risk and What You Can Do About It.

by Caryl Terrell, Jeff Gonyo, Mark Kastel, Greg David, Brett Hulsey, Tom Clark

June 1, 2001

Summary

Wisconsin is facing a budget crisis with recent shortfall estimates from $650 to $761 million. Yet developers, roadbuilders and the State Department of Transportation want to raise your gas, vehicle, sales, and other taxes by at least $5.1 billion over the next 20 years, or $242 million a year, to increase highway building, some with less than 1000 cars per day of traffic. That is like a seven cent increase in gas taxes, the largest proposed tax increase in Wisconsin state history.

The problem is that new highways will not reduce traffic congestion, they increase it, according to recent Transportation Research Board studies. Bigger highways are the number one cause of out-of-control sprawl, according to American Farmland Trust. They also are the largest source of cancer-causing and asthma-inducing air pollution, according to EPA studies. One study by the Centers for Disease Control and Prevention showed that increasing public transportation choices like bus service reduced asthma attacks, air pollution, and traffic.

The solution: scaling back unneeded road projects, making immediate safety improvements such as better intersections, paved shoulders, and passing lanes, providing more safety enforcement, and increasing funding for more transportation choices, such as trains, clean buses, and bike paths. By this approach, we will have safer highways sooner without building more roads to nowhere but more taxes, traffic, sprawl and farm family destruction.

We picked out a sample of roads projects that could use immediate safety improvement to shave almost a billion dollars from the state budget.

Highway	**Cost**	**Potential Savings**
Highway 12	$65-100 million	$45-80 million
Highway 26 bypass	$46.5 million	$20-46.5 million
Highway 164, Ackerville Bridge	$67 + $5 million	$40-45million
Highway 131	$50 million	$11-30 million
Stillwater Bridge, Hwy 35/64	$235 million	$80-165 million
La Crosse Highway	$80 million	$80 million
Marquette Interchange	$1.4 billion	$500 million
Total Possible Savings	$1,948+	**$836-947million**

A Sad Story Too Often Told

Dear friends,

We need your help to save the farm that has been in my family for over 140 years. Our farm will be honored this year at the Wisconsin State Fair as a "century farm" but the state DOT wants to pave much of our farm and make it impossible for us to continue farming this land. How can we operate a farm where the only access is from a four-lane highway? We are concerned not only with the prospect of being forced to sell our farm home, but also with the loss of our livelihood.

Today it seems like people don't get involved unless they are personally affected. People don't understand that this is about more than just the loss of our farm. This is about the loss of a rural neighborhood. The rural atmosphere and picturesque view of Holy Hill in the background will be forever destroyed and replaced with the megastores and large parking areas that are characteristic of the irresponsible sprawl that will be sure to follow.

We are also concerned about the health and welfare of our neighborhood children who attend Friess Lake School. How will they get safely to a school that is located along a 4-lane highway? How will their health be affected as they breathe in the diesel fumes of passing truck traffic?

The DOT wants to pave over 25,000 acres of farmland and open space just like ours in the next 20 years. This will raise our taxes by at least $5 billion. And roads don't get rid of traffic any more than bigger pants get rid of a weight problem. Please ask Governor McCallum to stop DOT's plan to pave over of our family farms, open spaces, and wetlands.

Thank you,

Denise and Bob Kraetsch
Farmers, Town of Richfield

The Road to More Taxes and Farm Family Loss

If developers and the DOT have their way, the Kraetsch's will have lots of company over the next 20 years. The DOT's State Highway Plan, or "Pave Wisconsin Plan" (PWP) will build almost 3,000 new lane miles and increases highway spending between now and 2020 by more than $6.5 billion over 97-99 budget levels.

The Pave Wisconsin Plan sacrifices 25,000 acres, nearly 39 square miles of farmland over the next 20 years, making the Wisconsin DOT the single largest cause of farm family and wetland destruction in the state. This includes 1,000 acres of wetlands paved for new highway lane miles. The total loss is the size of Horicon Marsh National Wildlife Refuge buried under concrete.

The Pave Wisconsin Plan accounts for over half of DOT's overall budget, and under this plan, would leave even less left over for local roads, highway and bridge repair, elderly and disabled assistance, rail, transit, and bicycle and pedestrian safety. The program providing for highway expansions is the major highways.

The Major Highway Program, $57 million in 1998, will increase to nearly 11 times higher by 2020, to $614 million. Most of the spending is for highway expansions, often excessive four lane roads that will destroy more than 25,000 acres of farmland and wetlands, increase traffic, sprawl, and maintenance costs. 47% or $3.8 billion of the DOT's $7.2 billion Major Highway Program is for expansion. Of that, 26% has been enumerated, i.e. those projects named in statute, leaving us with $2.8 billion for other new expansions. We should not build ourselves into a corner by building roads we can't afford to maintain.

Highways don't solve a traffic problem any more than bigger pants solve a weight problem. They give temporary relief, but just make the problem worse, according to studies by the Transportation Research Board and six others. These studies show that most highway capacity, 50-100%, is used up in as little as three years after construction is completed.[1]

Even conservatives like Paul Weyrich, President of the Free Congress Foundation support public transportation as a way to save tax dollars. **"Provide people a choice so that those who wish to take public transit can do so, and those who wish to drive can do so, and both benefit by that...The only way to provide congestion relief is to provide alternatives to get some people, at lease, off the highways."**[2]

But over the last 10 years, DOT spending has grown three times faster than traffic, showing that throwing more money at it will not solve the problem.

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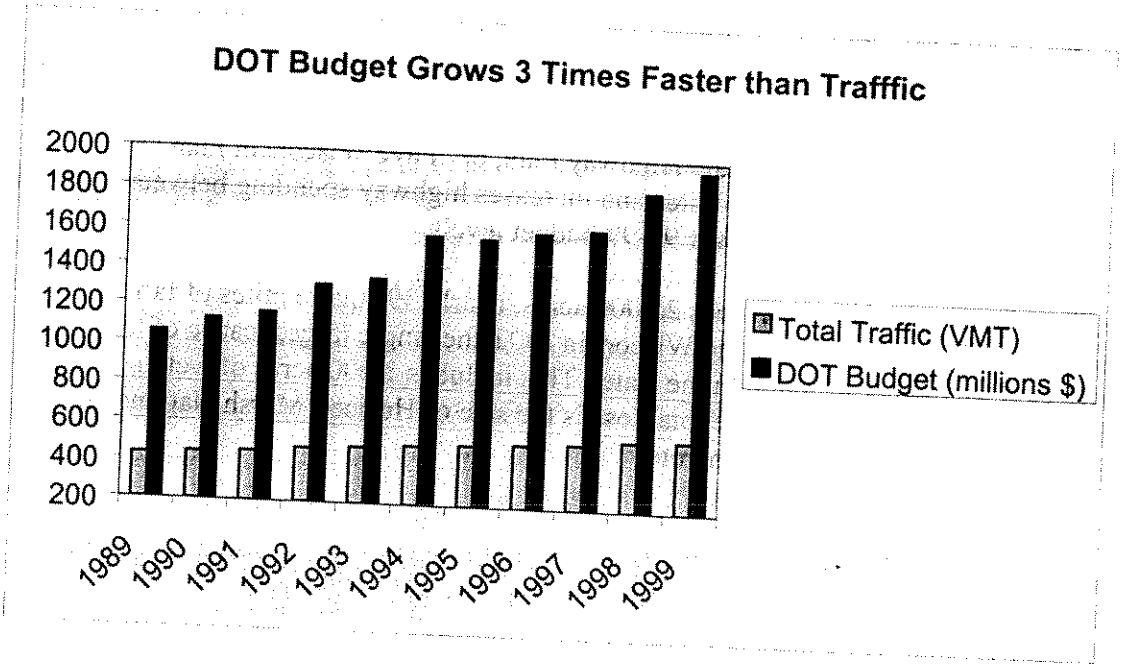
[1] www.sieraclub.org/sprawl/transportation/seven.asp

[2] "A Liberal and Conservative Discuss How to Respond to Anti-Transit Rhetoric," APTA, www.cfte.org.



The PWP presumes to use almost all of the state's TEA-21 federal transportation funds, $2.3 billion over the next 6 years, on state highways instead of on other pressing transportation needs. Much of this money is intended for increasing transportation choices, such as more trains, clean buses, sidewalks and bikepaths. Yet that money will not be there.

The Road to Higher Local Property Taxes

This plan means more polluting trucks and traffic on local roads, with no money left over to fill potholes and keep streets safe for bikers and walkers. Local roads are forced to take the extra traffic generated by these highways, but about 80% of local road costs will continue to come from local property taxes. The Governor and DOT need to give local governments a fair share before we move forward with this plan to pave Wisconsin.

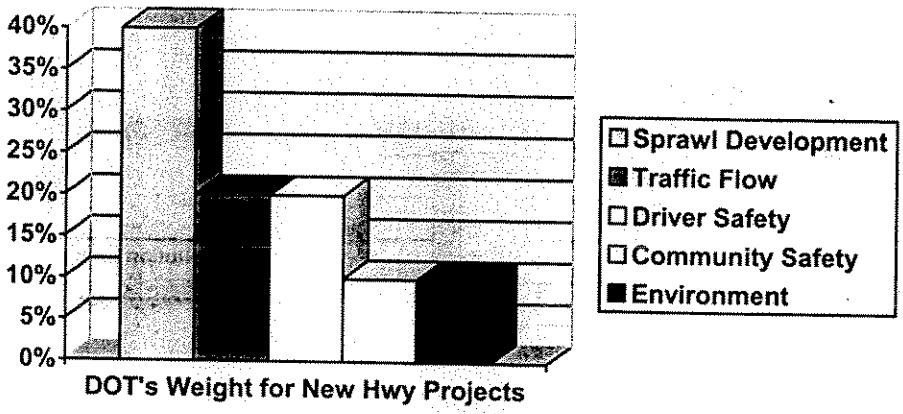
The plan also fails to account for increased traffic and maintenance costs to counties and local communities. The plan says that 61% of all injury crashes occur on local, urban, and county roads, yet includes no funding for safety improvements on these roads. In fact, it will suck up all money that could help local governments make their roads safer. Seven in eight crashes are cause by driver error, not highway engineering, yet the plan does not say how to pay for additional safety enforcement or driver education.

The Road to More Sprawl

The PWP fails to deal with the spawl-causing nature of highways or secondary land use impacts. DOT should develop a implement comprehensive sprawl impact analysis, require strong Smart Growth plans, and mitigation plan before finalizing any highway project.

A 1999 American Farmland Trust study by Georgia and Georgia State University researchers in Atlanta, one of the most sprawling cities, showed that "Highway construction on suburban land is a leading contributor to sprawling development." The report goes onto say that "...the policy decision to build highways has brought thousands of acres of previously remote rural land into competition with the city. Highway construction has also created a tremendous private windfall on the outskirts – more than $10,000 per acre" for developers.[3]

In fact, the scoring mechanism used by DOT and the State Highway Commission gives greatest weigh, 40% to sprawl development, but gives lowest weight to community safety and the environment, 10% each, according to the Trans 210 document.



The PWP gives cursory consideration to water runoff pollution and potential flood impacts, but ignores the added destruction of farmland and wildlife habitat, which typically follow highway expansion. These are often the worst water polluters.

The Road to More Pollution

Diesel trucks are a significant source of soot pollution, and DOT estimates their plan will double commercial truck traffic by 2020. Cancer-causing pollution actually increases at higher speeds as more fuel is burned. PWP projects a 14% decrease in total air pollution, based on technological improvements and less congestion. Unfortunately, this projection is unrealistic, misleading, and incomplete, neglecting to include greenhouse air pollution and particulate matter (PM) or soot pollution that have been linked to cancer.

A recent Denver study shows that children who live within 200" of a road or highway with 20,000 vehicles per day have an 8.2 times higher chance of getting leukemia and a 6

[3] American Farmland Trust, "Study Shows Policies Drive Development Out of Atlanta," Press Release, January 1999, www.farmland.org/news/011599.htm.

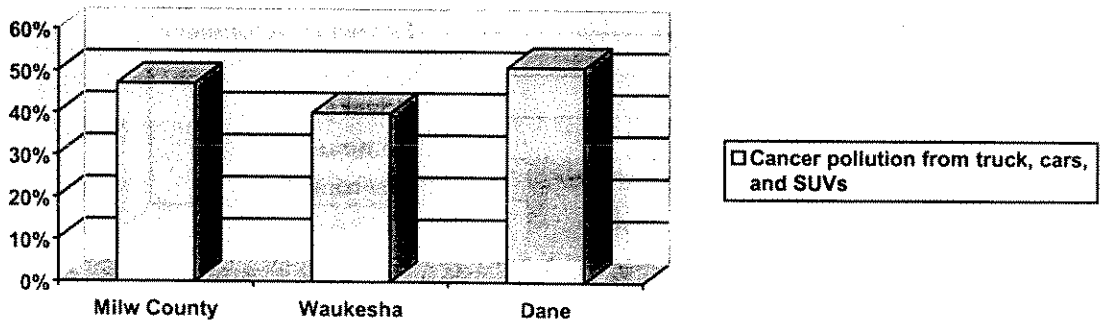
times higher chance of getting cancer, probably from the cancer chemicals benzene and others from truck and car exhaust.[4]

Many of these road expansions are designed to increase and promote truck traffic.

A 1990 EPA study shows that is a problem in Milwaukee County and all over Wisconsin.

In 1990, Milwaukee, Waukesha and Dane Counties ranked among the worst 20% of all counties in the US in terms of the number of people living in areas where cancer risk from hazardous air pollutants exceeds 1 in 10,000.[5]

959,275 people in Milwaukee, 301,510 Waukesha, and 330,717 in Dane County face a cancer risk more than 100 times the goal set by the Clean Air Act. The source of this pollution is largely trucks, SUVs and cars.



For Milwaukee County:

47% of the air cancer risk is from mobile sources-- trucks, cars and buses.
38% of the air cancer risk is from area sources -- dry cleaners and filling stations.
15% of the air cancer risk is from point sources -- big power plants and polluters.

Cancer Risks in Wisconsin from Hazardous Air Pollutants

Average individual's added cancer risk: 170 per 1,000,000, or 170 times safe levels.
Population in areas where cancer risk exceeds 1-in –10,000: 3,367,681, more than three-in-five citizens are more than 100 times safe levels.

Pollutants with the highest contribution to cancer risk: POLYCYCLIC ORGANIC MATTER (POM) from trucks and cars.

Sources Contributing to Wisconsin Health Risks from Hazardous Air Pollutants:

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[4] Pearson, et al, "Distance-Weighted Traffic Density to a Home Is a Risk Factor ofr Leukemia and Other Childhood Cancers," Journal of the Air and Waste Management Association, February 2000, 50:page 175.
[5] Sources:http://scorecard.org/community/index.tcl?zip_code=53203&set_community_zipcode_cookie_p=t

Mobile source	53%
Area source	31%
Point source	16%

The good news is that a study recent published in the Journal of the American Medical Association shows that increasing public transportation during the 1996 Olympics in Atlanta reduced traffic by 22%, smog-causing air pollution by 28% and asthma attacks by 42%. [6] Increasing transportation choice cuts pollution and traffic.

There are 1.735 million people breathing polluted air in southern and eastern Wisconsin. The best way to clean that air up is to give them clean travel options.

Solutions

To save tax money and cut air pollution, farm loss, sprawl, and traffic, we should:

1) **Freeze all highway expansion plans** and enumerations of additional highway projects until an independent panel reviews the projects and looks for more cost-effective alternatives.

2) **Provide balances funding** for local roads, transit, elderly and disabled transportation, and bicycle and pedestrian projects, and updating and implementing existing plans such as the Translinks 21 Multimodal Plan.

3) **Make sure Smart Growth plans are in place** and enforceable along all highways to ensure that **sprawl does not increase traffic** before finalizing any addition highway expansions.

4) **Prioritize maintenance of existing roads and streets over expansion** by spending 50% of the overall state transportation budget on road repair and safety improvements paying improvement of existing infrastructure, and focusing resources where there are the most people.

5) Provide a **full and adequate pollution analysis**, including the health impacts of cancer-causing, ozone, nitrogen oxides (NOx), asthma, greenhouse, and soot pollution within any road with more than 20,000 vehicles per day or heavy truck traffic.

6) **Fund high speed trains and rail infrastructure**, to reduce traffic, pollution, and long-haul commercial shipping by trucks,.

7) Include **maintenance cost estimates and payment** for local governments.

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[6] Friedman, et al, "Impact of Changes in Transportation and Commuting Behaviors During the 1996 Summer Olympic Games in Atlanta on Air Quality and Childhood Asthma," JAMA, February, 2001, Vol. 285, No. 7, page 897.

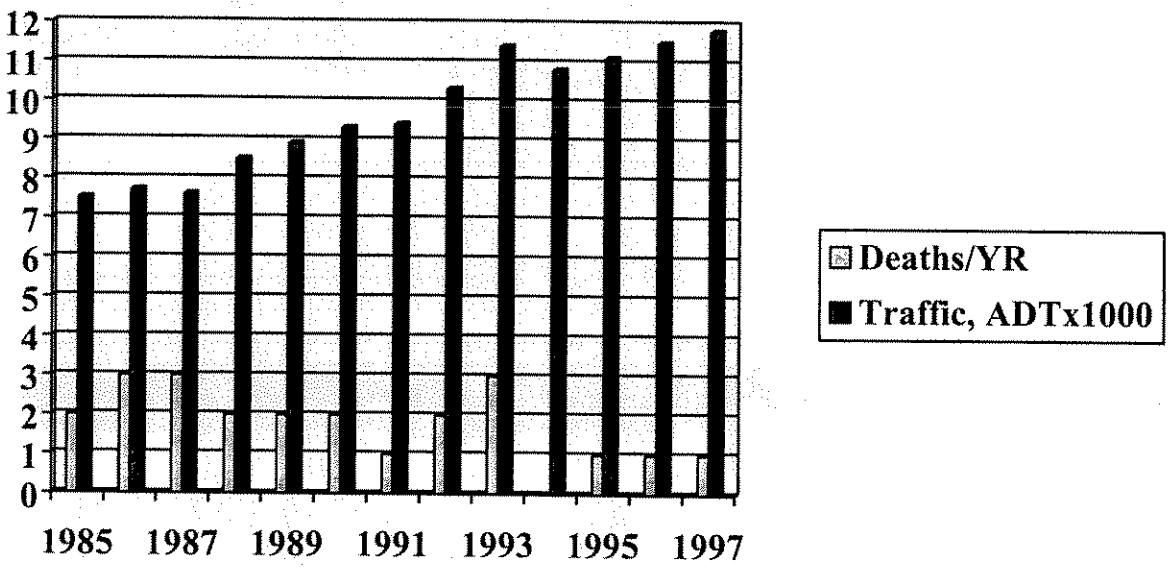
The Top Wisconsin Roads to Nowhere but higher taxes, traffic, and more sprawl.

There are many to chose from in the state budget, but these are the worst.

Highway 12, Middleton to Wisconsin Dells

In the late 1980s, the Citizen's Advisory Commission called for making immediate safety improvements to Highway. 12. DOT rejected this in an internal memo saying this would reduce the need for a four-lane highway.

Independent traffic experts and County Supervisors called for immediate safety improvements costing $20-30 million. DOT rejected those cost-effective measures. In fact, as this graph shows, safety programs are working to bring down deaths on Highway 12. More safety improvements can save more lives sooner than big highway expansion.



Total costs: $65-100 million.

Cost this year: $16 million is in the budget this year for acquisition.

Savings: $45-80 million.

For more information, call Brett Hulsey, 608-257-4994.

Marquette Interchange, Milwaukee

This is a busy stretch of road with 300,000 cars and trucks per day. But DOT says that to rebuild the Marquette Interchange in Milwaukee, they have to expand most roads leading into it, and this will cost $1.4 billion. Image the traffic nightmare of that project. The

interchange is old and does need some work, but by restoring the interchange, without creating more polluting road capacity, we can reduce costs by an estimated 40% by $500 million to the $900 million that DOT estimated before they added the other roads.

Road building in the Milwaukee Area does not ease the burden of congestion, but it adds to the problem. In the Milwaukee Urban Area the population has grown 2.8% since 1990, while the miles of lanes added to our roadways has increased 18.4%. Clearly this aggressive road building strategy has not solved the congestion problem. The average Milwaukee area resident spent twice as much time stranded in traffic in 1999 as they did in 1990. This congestion comes at a high cost. For example, excess annual fuel consumption in 1999 was 43 million gallons, about $86 million at current gas prices. Air pollution from idling vehicles will make our city an unattractive destination and add costs to our medical bills and asthma.

Southeast Wisconsin loses 10 square miles of farmland and substantial wooded upland acres each year to sprawling development. Wetlands are also being paved over that we need for flood control and for cleansing our drinking water supply.

Instead of expanding the highway, the money should be spent investing in cleaner, safer modes of transportation, like train and clean bus service. Let's improve our existing highways with methods that don't add additional lanes of traffic and promote sprawl. Our citizens deserve more viable transportation choices to escape the growing congestion they face every day.

Total Cost: $1.4 billion

Possible savings: $5-900 million

Highway 164, Pewaukee to Ackerville

Highway 164 from Pewaukee to Ackerville, used to be a county road, but DOT took it over and plans to make it a truck route from Highway 41 to I-94. This is the 22mile section from I-94 up to Highway 60 in Washington County.

This project will destroy the Kraetsch family farm and many others with highway widening wetlands and the Kettle Moraine Forest destruction from sprawl. We want DOT to make safety improvements to Highway 164, just like Washington County did on their portion of the road. These would include a paved shoulder, passing lanes, turn lanes, and safer intersections.

In addition, we need Smart Growth Plans, zoning and conservation easements in the area to protect family farmers and the Kettle Moraine Forest from irresponsible sprawl development.

Cost: $67 million.

Potential savings: $45 million.

Contact: Jeff Gonyo, 262-644-8334, Stop Unnecessary Road Expansion (SURE)

Ackerville Bridge

This is the bridge to nowhere. Town of Polk residents in Washington County are facing the Ackerville Bridge Project that has been illegally separated from the official Highway J/164 Reconstruction Project to avoid addressing the serious environmental problems in this area, such as polluted drinking water and air. The full span of this project is 1000' and will make it almost impossible for Ackerville residents to get on the highway.

Because the Highway 164 corridor extends from I-94 in Waukesha County to Highway 60 in Washington County, the WisDOT should include the Ackerville Bridge Project in its EIS to assess all the hazards.

If safety improvements are made to 164, this project is unnecessary.

Total cost: $5.5-11 million

Total cost savings: $5.5-11 million

Contact: Jeff Gonyo.

Highway 26, Watertown bypass

DOT wants to run a bypass right through Ed McFarland's prime dairy farm on the west side of Watertown. The farm has been in Ed's family 149 years. He, and his son Peter and his wife Cindy milk 300 cows and DOT wants to take much of their land. They won the outstanding farmer in the country award in 1995. The reason they are so successful is because the farms have not been cut up by roads.

Developers have bought the land right next to him. On the east side of Watertown, there is twice as much traffic, and the proposed Highway 26 bypass would destroy half as much farmland there.

DOT's Planning Process failed to reveal that while the people of Watertown were fairly evenly split on which bypass option they wanted, the overwhelming majority DID NOT WANT ANY BYPASS. This is because they realize that the bypass is going to cause their community great hardship from direct but especially secondary impacts from any bypass option.

This expansion is not in the best interest of the communities along the Hwy. 26 corridor. It will become a magnet for out-of-control sprawl and produce a dramatic change in the landscapes of Jefferson, Rock and Dodge Counties. The consequences of this highway

expansion will cause decrease in the quality of life, by converting our communities into suburbs of Milwaukee and Chicago. It will cause our taxes to rise as we pay for the secondary impacts and consequences of this action.

The people of "Preserve 26" feel it is in our community's best interest to ask that the Hwy. 26 expansion not be funded as part of the 2002 State of Wisconsin Budget.

Preserve 26 particularly feels that the bypass of Watertown to be an undue hardship upon the citizens of the Watertown area. The WisDOT's own traffic figures state that most traffic on Hwy. 26 is destination bound for Watertown and that the bypass will not have significant impact on the minor congestion in this area.

Costs: $46.5 million

Potential Savings: $20-46.5 million

Contact: Greg David, 902-2262-9996, Preserve 26 Coalition

Stillwater Bridge north of Hudson, WI

The megabridge proposed to span the St. Croix National Scenic Riverway, created by Gaylord Nelson in 1968, would lie just six miles north of the seven lane I-94 bridge at Hudson, WI. How may bridges to we need? As part of the project, DOT also plans to four-lane state Highway 35/64, from Holton to New Richmond. This is truly a highway to nowhere.

MNDOT had the good sense to put the project on hold last January, due to local opposition from Oak Park Heights, MN, the disposition of the historic Stillwater lift bridge, and lack of $15 million for land mitigation needs.

Solution: Support the June deadline, cancel the project, make immediate safety improvements, improve the links to I-94, make all communities do Smart Growth plans to reduce sprawl, and possibly make 35/64 a Super Two lane highway if needed. The governor should not interfere in this process. If the bridge must be built, send the engineers back to the drawing board for a smaller, cheaper version.

Total Cost: $135 million for the bridge and other improvements plus $85 million for Hwy. 35/64, and $15 million for land mitigation for a total project cost of $235 million, with MN paying $75 million.

Savings: $60 million for the bridge and $20-85 million for Highway 35.

For more information: Tom Clark, 715-294-3154.

State Highway 131 through the Kickapoo River Valley

This narrow valley and river, cutting through Wildcat Mountain State Park and in the Kickapoo Reserve, is loved not only by those who are fortunate enough to live there, but also by many people around the state and upper Midwest. People longing for a beautiful and peaceful place where they can be close to God's creation.

This Valley is in peril. The threat is immediate. The Wisconsin Department of Transportation has scheduled a massive highway construction project, cutting through the Kickapoo Valley between Rockton and Ontario. The Kickapoo Valley Stewardship Alliance has attempted to work, for a number of years, with state government in order to design a road that would serve local transportation needs without destroying the Valley. Even though a super majority of citizens who commented on this project objected to their grandiose design they have been unwilling to make any substantive changes. They have now filed suit in federal court attempting to modify the state's plants. A more moderate design could save the taxpayers over $11 million.

Visitors to the area constantly ask, "why". Why would WisDOT spend $20 million on a short 6 mile segment of road where there is presently almost no traffic! Not only is this project expensive in terms of dollars per mile, but it is probably the most expensive highway building project in the state in terms of proposed spending per car. The DOT claims that their motivation is safety. But there are only a handful of minor accidents each year, contributed to by their almost nonexistent maintenance of the highway.

Now, the motivation of the Department of Transportation seems clear. Without telling anyone in the valley, they have quietly budgeted an additional $2.17 million to rebuild the highway 131 interchange with Interstate 90. This peaceful valley is now poised to become a major north-south truck route, destroying the tranquility of the Kickapoo River Valley.

This will further necessitate rebuilding Highway 131 south of La Farge with a total project cost likely to reach nearly $30 million.

Total costs: $50 million.

Cost savings: $11-30 million.

For more information, contact Mark Kastel, KVSA, 608-625-2042.

La Crosse North/South Highway Alt. 5B-1

This proposed road links I-94/STH 157 in the north to La Crosse St. in the south. The Final EIS was signed, but a city referendum in 1998 blocked the highway by a vote of 11,951 to 7,076. The vote roadblock sunsets in 2002. The highway could come back to life at any time.

It would carve a big swath through otherwise undisturbed marsh, the largest urban marshland in Wisconsin. Numerous neighborhood impacts from the wider road and right of way in older parts of the city would include more water, air pollution and flooding.

The solution is more public transportation to cut the traffic and air pollution.

Cost: $80 million

Cost savings: $80 million.

Contact: Kevin Mack 608/784-6494, La Crosse

For more information on the state highway spending, see www.dot.state.wi.us/dtim/bshp/six-project.htm

Also check the www.sierraclub.org/sprawl website.

Surface Transportation Policy Project is at www.transact.org.

FRANCIS H. OGDEN
710 Valley View Drive
River Falls, Wisconsin 54022
715-425-6956

January 25, 2001

To: State Senator Sheila Harsdorf
P.O. Box 7882
Madison, Wisconsin 53707-7882

From: Francis H. Ogden

Re: Wisconsin Administrative Code Trans 233

At your request I have reviewed the problems this administrative code is causing owners of land abutting state highways and connecting streets. I have attempted to make this document an executive summary. I can provide detailed information and travel to Madison for meetings if necessary.

A summary of my thoughts is as follows:

1. Trans 233 is the current name of a code originally entitled HY33 which was created in 1956. Until Trans 233 was created the code only applied to platted subdivisions abutting state highways, which created 4 or more lots less than 1.5 acres in size during a five-year period. Now it applies to all land transactions involving land even remotely abutting state highways and connecting streets. This was a tremendous change without legislative concern. Significant property rights, which were previously purchased, are now simply taken. Previous DOT costs have been transferred to the landowner. The theory behind highway setbacks is to preserve land for future highway widening at minimal government cost. The code is also based upon the premise that controlling highway access reduces the number and seriousness of accidents.

2. I have surveyed hundreds of land divisions subject to this code during the past 32 years. It was generally accepted by landowners until it was revised and renamed Trans 233 effective February 1, 1999. There is now serious opposition to the code and the DOT is attempting to reduce the opposition with a code revision effective February 1, 2001.

3. ***The changes effective February 1, 2001 are good but will not significantly reduce landowner opposition. Three basic problems remain. The code should not apply to all land transactions, improvements should not be banned in the setback, and existing access rights should be purchased if they are needed.***

4. Prior to February 1, 1999 structures, as defined by local ordinance, were the only objects prohibited in the highway setback. The words "or improvements" were added and the DOT now vigorously prevents landowners from using the setback area. This strip of land, which can vary from 50' to 77' in width, can no longer be used by the landowner or utility companies. The landowner must maintain the land and pay taxes on it but he cannot use it. The state has taken the land by regulations instead of buying it. Formerly the setback was used for parking lots, signs, all overhead and underground utilities, storage tanks, numerous farm and business activities, private frontage roads, wells, private sewer systems, landscaping, walls, storm water detention basins and hundreds of other uses, which are now prohibited. Because the utilities need easements, which now must be outside of the setback, the amount of land needed to create a building site is further increased. This change has effectively increased the average depth of lots abutting state highways by 75'. Bonnie Tripoli, DOT Central Office (608-266-2372), is the chief enforcer of Trans 233. She claims the Legislature gave the DOT the authority to prohibit improvements in 1955 but the DOT chose not to enforce it until February 1, 1999.

5. Trans 233 is a serious problem for any farmer who has any frontage on a state highway or connecting street. If he wants to sell any land the DOT has classified as a contiguous parcel, he is subject to the rules. I have not been able to get their definition of "contiguous" in writing. It is far more restrictive than any I have previously dealt with.

Respectfully submitted,

Francis H. Ogden

Francis H. Ogden

Francis H. Ogden

710 Valley View Drive
River Falls, Wisconsin 54022
Phone: (715) 425-6956
Facsimile: (715) 426-7962
E-Mail: fogden@pressenter.com

THOUGHTS IN PREPARATION FOR MEETING IN SENATOR HARSDORF'S OFFICE AT 1:00 PM JANUARY 2, 2002 CONCERNING WI ADMINISTRATIVE CODE TRANS 233 WITH DOT EMPLOYEES ROBERT COOK AND ATTORNEY JAMES S. THIEL.

1. I HAVE A POSITIVE ATTITUDE CONCERNING THE WI DOT HAVING WORKED FOR THE DEPARTMENT AS AN EMPLOYEE AND DONE BUSINESS WITH IT AS A CONSULTANT FOR OVER 40 YEARS.

2. THE ORIGINAL TRANS 233 EFECTIVE FEBRUARY 1,1999 WAS VERY BAD AND CAUSED SO MUCH PUBLIC OUTCRY THAT THE DEPARTMENT CHANGED IT EFFECTIVE FEBRUARY 1, 2OO1.

3. CURRENT TRANS 233 IS IN NEED OF FURTHER REVISION EVEN THOUGH IT IS DRAMATICALLY BETTER THAN THE ORIGINAL VERSION.

4. THE INDIVIDUAL PROPERTY OWNERS WHO BEAR THE BRUNT OF THE REGULATIONS WERE NOT AWARE OF THE "BROAD BASED, PARTICIPATIVE PROCESS FOR CONSIDERATION OF IMPROVEMENT TO THE 1999 RULE". THEY WERE NOT NOTIFIED WHEN THE ORIGINAL OR REVISED VERSION OF TRANS 233 WERE BEING FORMULATED AND THEIR ELECTED REPRESENTATIVES SHOWED LITTLE CONCERN. SIGNIFICANT PROPERTY RIGHTS WERE TAKEN WITHOUT COMPENSATION. THE LANDOWNERS DIDN'T KNOW IT WAS HAPPENING AND THE PEOPLE WHO WERE ELECTED TO, AS ONE OF THEIR MANY DUTIES, PROTECT THEM FROM THE EXCESSES OF THE BUREAUCRACY DIDN'T DO THEIR JOB.

5. HY 33.08 SETBACK REQUIREMENTS,REGISTER, SEPTEMBER, 1956, AND THEREAFTER STATED: THERE SHALL BE NO IMPROVEMENTS OR STRUCTURES PLACED BETWEEN THE HIGHWAY AND THE SETBACK LINE. THE WORD IMPROVEMENTS WAS TOTALLY IGNORED FOR 43 YEARS. LOCAL UNITS OF GOVERNMENT ENFORCED THEIR SETBACK REGULATIONS,WITH DOT OVERSIGHT, AND IMPROVEMENTS OF EVERY KIND WERE ALLOWED. THE LANDOWNERS RELIED ON THIS BEHAVIOR BY THE DOT AND IN REALITY IT BECAME THE LAW. THE DOT DOES NOT HAVE THE AUTHORITY TO CHANGE THE LAW. ONLY THE LEGISLATURE CAN DO THAT AFTER CONSIDERING THE WILL OF THE PEOPLE. THE DOT

SHOULD STOP PROHIBITING IMPROVEMENTS WITHIN THE SETBACK UNTIL THE LEGISLATURE AFFIRMS THEIR AUTHORITY TO DO SO.

6. DOT PERSONNEL SAY IMPROVEMENTS MUST NOW BE PROHIBITED FROM THE SETBACK BECAUSE IT COSTS THE DOT TOO MUCH TO MOVE THEM IF PART OR ALL OF THE SETBACK AREA IS LATER ACQUIRED FOR RIGHT-OF-WAY. THEY ALSO SITE PROBLEMS WITH ENTIRE PROPERTIES BECOMING UNUSEABLE, REQUIRING DOT PURCHASE OF THE ENTIRE PROPERTY, BECAUSE IMPROVEMENTS IN THE SETBACK CANNOT BE REPLACED. IT IS OCCASIONALY A PROBLEM BUT MAKING THE SETBACK UNUSEABLE FORCES THE LANDOWNER TO OWN, MAINTAIN AND PAY TAXES ON LAND THAT IS OF NO VALUE . IT IS UNREASONABLE BECAUSE THERE IS LITTLE LIKELYHOOD THAT THE LAND WILL EVER BE NEEDED FOR HIGHWAY PURPOSES. THE LANDOWNER SHOULD BE COMPENSATED IF IT IS BEING TAKEN, BY REGULATION, FOR PUBLIC BENEFIT.

7. IMPROVEMENTS SHOULD BE ALLOWED IN SETBACKS AS ALLOWED PRIOR TO FEBRUARY 1,1999. IN AREAS OF REDUCED SETBACK IMPROVEMENTS SHOULD ALSO BE ALLOWED NO MATTER WHAT THE SETBACK MAY BE.

8. NO FEE SHOULD BE REQUIRED. THE PUBLIC BENEFIT FROM THIS TAKING OF PROPERTY RIGHTS MAKES A FEE UNJUSTIFIED.

9. CHANGING THE CODE TO ALLOW SPECIAL EXCEPTIONS RATHER THAN VARIANCES IS A VERY SIGNIFICANT IMPROVEMENT.

10. APPARENTLY 90% OF APPLICATIONS INCLUDE REQUESTS FOR SPECIAL EXCEPTIONS AND 90% OF THOSE REQUESTS ARE BEING GRANTED. THIS INDICATES THAT USES ROUTINELY BEING GRANTED SPECIAL EXCEPTIONS SHOULD BE PERMITTED SO ALL LANDOWNERS ARE TREATED EQUALLY. REQUIRING A SPECIAL EXCEPTION CREATES UNCERTAINTY AND AFFECTS THE VALUE OF THE LAND. THIS IS ALSO A WASTE OF STAFF TIME. LANDOWNERS ARE SPENDING THEIR TIME AND HIRING PROFESSIONALS TO HELP THEM APPLY FOR SPECIAL EXCEPTIONS THAT ARE OF NEGLIGIBLE BENEFIT TO THE PUBLIC.

11. THE TREATMENT OF CONTIGUOUS LAND IS VERY UNREASONABLE AND SHOULD BE CHANGED BACK TO HY 33 INTERPRETATION. HOW COULD SUCH A RADICAL CHANGE OCCUR WITHOUT NEW LEGISLATION? LAND TRANSACTIONS FAR REMOVED FROM THE HIGHWAY SHOULD NOT TRIGGER COMPLIANCE WITH ALL OF TRANS 233. THIS ESPECIALLY TRUE ALONG CONNECTING HIGHWAYS.

12. THE TREATMENT OF EXISTING PRIVATE ENTRANCES IS A GROSS TAKING OF PROPERTY RIGHTS. LANDOWNERS NO LONGER HAVE THE UNDISPUTED RIGHT TO CONTINUED USE OF THEIR OWN DRIVEWAY. THOUSANDS OF THESE DRIVEWAYS DATE BACK TO THE TIME THE CURRENT HIGHWAY WAS A TOWN ROAD. THOUSANDS MORE WERE BUILT BY THE DOT WHEN HIGHWAYS WERE CONSTRUCTED OR RECONSTRUCTED. THEY WERE PART OF THE AGREEMENT WHEN RIGHT-OF-WAY WAS ACQUIRED. THEY ARE DOCUMENTED ON THE HIGHWAY PLANS AND RIGHT-OF-WAY PLATS THAT WERE REFERENCED IN THE PURCHASE AGREEMENTS. TELLING THESE LANDOWNERS THEY DON'T HAVE A PERMIT AND THEIR DRIVEWAY IS TEMPORARY , AT THE DISCRETION OF DOT PERSONNEL, IS PREPOSTEROUS.

13. REQUIRING LANDOWNERS TO CONSTRUCT ACCESS TO A NEIGHBOR'S PROPERTY SO THAT AN EXISTING UNSAFE DRIVEWAY SERVING THAT PROPERTY CAN BE REMOVED IS UNREASONABLE. THE DOT SHOULD PAY PART OR ALL OF THE COST OF IMPROVEMENTS THAT ARE REQUIRED IN CERTAIN SITUATIONS.

14. SETBACK AND ACCESS REQUIREMENTS ALONG CONNECTING HIGHWAYS IN LONG ESTABLISHED AREAS OF CITIES AND VILLAGES SIMPLY DON'T WORK. BASIC RULES SHOULD BE CREATED FOR THESE AREAS SO CERTAIN USES ARE PERMITTED WITHOUT THE UNCERTAINITY OF REQUESTING A SPECIAL EXCEPTION.

15. SOME SPECIAL EXCEPTIONS ARE SO ROUTINELY GRANTED THAT THE CODE SHOULD BE REVISED TO PERMIT THESE USES.

16. TRANS 233 MUST BE REVISED AGAIN. THE CONCERNS OF SPECIAL INTEREST GROUPS WERE GENERALLY SATISFIED BY THE CURRENT VERSION. NOW THE CONCERNS OF THE INDIVIDUAL PROPERTY OWNERS MUST BE SATISFIED. THE CURRENT REVIEW BY CENTRAL OFFICE OF DISTRICT IMPLEMENTATION OF THE CODE MUST HAVE IDENTIFIED SOME OF THESE CONCERNS.

FRANCIS H. OGDEN

Francis H. Ogden

DECEMBER 27, 2001

10-28-03

PIERCE
REGISTER
CONNIE O.

PAGES: 4
CSM
RECORDING FEE: 17.00

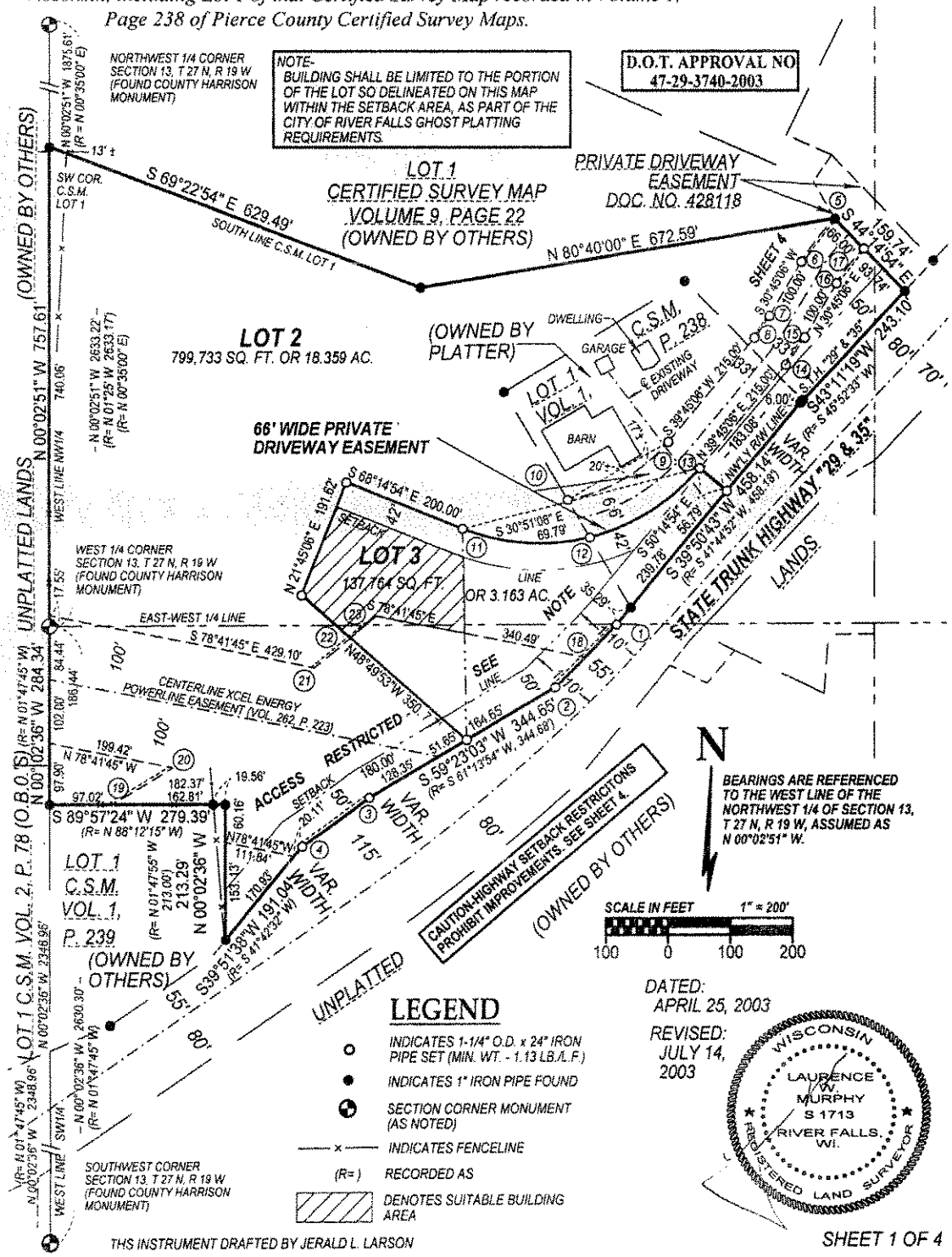
07/29/2003 08:00AM

Vol. 9, pg. 129

CERTIFIED SURVEY MAP

Robert J. and Dana J. Colburn

Located in part of the Southwest ¼ of the Northwest ¼, part of the Southeast ¼ of the Northwest ¼ and part of the Northwest ¼ of the Southwest ¼ of Section 13, Township 27 North, Range 19 West, Town of River Falls, Pierce County, Wisconsin, including Lot 1 of that Certified Survey Map recorded in Volume 1, Page 238 of Pierce County Certified Survey Maps.



THIS INSTRUMENT DRAFTED BY JERALD L. LARSON

SHEET 1 OF 4

CERTIFIED SURVEY MAP

Robert J. and Dana J. Colburn

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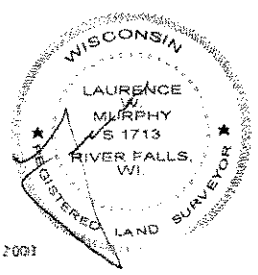
Curve Table

Curve No.	Radius Length	Arc Length	Central Angle	Chord Bearing	Chord Length	Back Tangent	Front Tangent
1-2	2809.79'	139.76'	02° 51' 00"	S 44° 27' 09" W	139.75'	S 43° 01' 39" W	S 45° 52' 39" W
1-18	2809.79'	72.91'	01° 29' 12"	S 43° 46' 15" W	72.90'	S 43° 01' 39" W	S 44° 30' 51" W
18-2	2809.79'	66.86'	01° 21' 48"	S 45° 11' 45" W	66.86'	S 44° 30' 51" W	S 45° 52' 39" W
3-4	2749.79'	131.97'	02° 44' 59"	S 54° 15' 08.5" W	131.95'	S 52° 52' 39" W	S 55° 37' 38" W
5-6	333.00'	87.18'	15° 00' 00"	S 38° 15' 06" W	86.93'	S 45° 45' 06" W	S 30° 45' 06" W
7-8	267.00'	41.94'	09° 00' 00"	S 35° 15' 06" W	41.90'	S 30° 45' 06" W	S 39° 45' 06" W
9-10	267.00'	189.50'	40° 39' 53"	S 60° 05' 02.5" W	185.55'	S 39° 45' 06" W	S 80° 24' 59" W
11-12	333.00'	207.46'	35° 41' 43"	S 86° 05' 45.5" E	204.12'	S 68° 14' 54" E	N 76° 03' 23" E
12-13	333.00'	211.00'	36° 18' 17"	N 57° 54' 14.5" E	207.49'	N 76° 03' 23" E	N 39° 45' 06" E
11-13	333.00'	418.46'	72° 00'00"	N 75° 45' 06" E	391.46'	S 68° 14' 54" E	N 39° 45' 06" E
14-15	333.00'	52.31'	09° 00' 00"	N 35° 15' 06" E	52.25'	N 39° 45' 06" E	N 30° 45' 06" E
16-17	267.00'	69.90'	15° 00' 00"	N 38° 15' 06" E	69.70'	N 30° 45' 06" E	N 45° 45' 06" E
19-20	2531.79'	114.66'	02° 35' 41"	N 59° 10' 56.5" E	114.65'	N 60° 28' 47" E	N 57° 53' 06" E
21-22	2531.79'	74.41'	01° 41' 02"	N 50° 48' 15" E	74.40'	N 51° 38' 46" E	N 49° 57' 44" E
22-23	2531.79'	54.08'	01° 13' 26"	N 49° 21' 01" E	54.08'	N 49° 57' 44" E	N 48° 44' 18" E
21-23	2531.79'	128.49'	02° 54' 28"	N 50° 11' 32" E	128.48'	N 51° 38' 46" E	N 48° 44' 18" E



DATED:
APRIL 25, 2003

THIS INSTRUMENT DRAFTED BY JERALD L. LARSON

9-129

CERTIFIED SURVEY MAP

Robert J. and Dana J. Colburn

Located in part of the Southwest ¼ of the Northwest ¼, part of the Southeast ¼ of the Northwest ¼ and part of the Northwest ¼ of the Southwest ¼ of Section 13, Township 27 North, Range 19 West, Town of River Falls, Pierce County, Wisconsin, including Lot 1 of that Certified Survey Map recorded in Volume 1, Page 238 of Pierce County Certified Survey Maps.

Description

That certain parcel of land located in part of the Southwest ¼ of the Northwest ¼, part of the Southeast ¼ of the Northwest ¼ and part of the Northwest ¼ of the Southwest ¼ of Section 13, Township 27 North, Range 19 West, Town of River Falls, Pierce County, Wisconsin, including Lot 1 of that Certified Survey Map recorded in Volume 1, Page 238 of Pierce County Certified Survey Maps., more fully described as follows:

Beginning at the West ¼ corner of said Section 13; thence N 00°02'51" W, (assumed bearing on the West line of the Northwest ¼ of said Section, recorded as N 01°25' W and N 00°35'00" E), a distance of 757.61' to the Southwest corner of Lot 1 of that Certified Survey Map recorded in Volume 9, Page 22 of Pierce County Certified Survey Maps; thence along the South line of said Lot 1, S 69°22'54" E, 629.49'; thence continuing along said South line, N 80°40'00" E, 672.59'; thence continuing along said South line, S 44°14'54" E, 159.74' to a point on the Northwesterly right of way line of State Trunk Highway "29" and "35"; thence along said Northwesterly right of way line, S 43°11'19" W, 243.10' (recorded as S 45°52'33" W); thence continuing along said Northwesterly right of way line, S 39°50'43" W, 458.14' (recorded as S 41°44'52" W, 458.18'); thence continuing along said Northwesterly right of way line, a curved line concave to the Northwest, having a radius of 2809.79' and a long chord bearing S 44°27'09" W, 139.75' (recorded as S 46°18'03" W); thence continuing along said Northwesterly right of way line, S 59°23'03" W, 344.65' (recorded as S 61°13'54" W, 344.68'); thence continuing along said Northwesterly right of way line, a curved line concave to the Northwest, having a radius of 2749.79' and a long chord bearing S 54°15'08.5" W, 131.95' (recorded as S 56°06'02" W); thence continuing along said Northwesterly right of way line, S 39°51'38" W, 191.04' (recorded as S 41°42'32" W) to the Southeast corner of Lot 1 of that Certified Survey Map recorded in Volume 1, Page 239 of Pierce County Certified Survey Maps; thence along the East line of said Lot 1, N 00°02'36" W, 213.29' (recorded as N 01°47'55" W, 213.00'); thence along the North line of said Lot 1, S 89°57'24" W, 279.39' (recorded as N 88°12'15" W) to a point on the West line of the Southwest ¼ of said Section 13; thence along said West line, N 00°02'36" W, 284.34' (recorded as N 01°47'45" W) to the Point of Beginning, containing 937,497 square feet or 21.522 acres, being subject to easements and restrictions of record.

State of Wisconsin)
County of Pierce)

I, Laurence W. Murphy, Registered Land Surveyor, do hereby certify that by direction of the Owners, Robert J. and Dana J. Colburn, I have surveyed and divided the lands shown hereon in accordance with official records, Chapter 236.34 of Wisconsin Statutes and the Ordinances of Pierce County and that this map and description are a true and correct representation thereof.

APPROVED BY:

City of River Falls

July 28, 2003

Approved by: _____

Dated: 7/23/03

WISCONSIN
LAURENCE W. MURPHY
S-1713
RIVER FALLS, WI
REGISTERED LAND SURVEYOR

DATED: APRIL 25, 2003

THIS INSTRUMENT DRAFTED BY JERALD L. LARSON

9-129

CERTIFIED SURVEY MAP

Robert J. and Dana J. Colburn

Located in part of the Southwest ¼ of the Northwest ¼, part of the Southeast ¼ of the Northwest ¼ and part of the Northwest ¼ of the Southwest ¼ of Section 13, Township 27 North, Range 19 West, Town of River Falls, Pierce County, Wisconsin, including Lot 1 of that Certified Survey Map recorded in Volume 1, Page 238 of Pierce County Certified Survey Maps.

ACCESS RESTRICTION CLAUSE

"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 State Trunk Highways "29" and "35"; 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."

"The Department of Transportation has granted a special exception to Trans 233 for one (1) existing residential driveway to serve as a shared access for Lot 2 and Lot 3, with the following condition: If either of these lots have a change in land use or further divide, the existing driveway is to be removed and all lots will be served by the shared access and easements at the Northeast line of Lot 2 (Document No. 428118), at no cost to the department. Future highway projects may require removal of this driveway and access to all lots to be provided from the Northeast access."

Witness the hand and seal of said owner this 29 day of July, 2003.

Robert J. Colburn — Dana J. Colburn

State of Wisconsin)
County of Pierce)

Personally came before me this 29th day of July, 2003, the above named Robert J. and Dana J. Colburn, to me known to be the persons who executed the foregoing instrument, and acknowledged the same.

Notary Public

My commission expires 10/16/05

CONNIE L. OLSON NOTARY PUBLIC STATE OF WISCONSIN

HIGHWAY SETBACK RESTRICTIONS (Applies to areas adjacent to S.T.H. "29" & "35")

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

NOTE REGARDING NOISE LEVELS

"The lots of this land division may experience noise at levels exceeding the levels in S. Trans. 405.04, Table 1. 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."

WISCONSIN LAURENCE W MURPHY S-1713 RIVER FALLS, WI REGISTERED LAND SURVEYOR

DATED: APRIL 25, 2003

THIS INSTRUMENT DRAFTED BY JERALD L. LARSON

9-129

Information on Land Division Review Policies in States Around Wisconsin

Neighboring states do not carry administrative code provisions of comparable detail to the Wisconsin Administrative Code, Chapter Trans 233, Division of Land Abutting a State Trunk Highway or Connecting Highway. Of the states we reviewed, Michigan carries authority closest to Wisconsin, applying similar review processes to properties even smaller than those reviewed by WisDOT, but not as far-ranging with respect to connecting highway abutments and proximity to system intersections. Furthermore, MDOT's authority ends at plots larger than 20 acres. Ohio relegates more authority to county and city municipalities than do its peers, and neither Indiana nor Iowa enjoy anything like the authority exerted by WisDOT.

MICHIGAN

Michigan DOT falls short of WisDOT's broad authority for regulating subdivision design as it pertains to state trunk highways. Regulating authority is constrained to land divisions abutting trunk highways or containing roads or streets connecting to or running within right of way of trunk highways. It does not extend to connecting highways, service roads, and nearby intersections, as in Wisconsin. Michigan statutes can be viewed in Chapter R560, Subdivisions of Land, Part 2: Department of Transportation, Michigan Administrative Code, as well as in Act 288 Land Division (1967; rev. 1997). MDOT does not have review authority over simple land divisions greater than 20 acres (e.g., if Mr. X decides to divide 148 acres of farm land into plats of 20 acres or more, the permit process does not entail MDOT review). MDOT requires plan submission for subdivisions (no matter how small) and condominium plats in the following cases:

- subdivision is abutting or creating connections to state trunk highways;
- subdivision occurs in area designated in transportation plan on file for expansion of state trunk highway;
- subdivision will alter existing drainage on state trunk.

MDOT reviews plans for right of way boundary accuracy, for highway safety implications, and for drainage impact.

INDIANA

Indiana DOT enjoys land division plan review authority on lands abutting state trunks, but only in limited cases with regard to connecting highways, service roads, etc., typically requiring involvement of federal funding to the division in question. Land divisions subject to review do not face minimum or maximum acreage limits. However, if the division plan entails no impact on drainage on the trunk, it is not subject to INDOT review. Furthermore, if the plan does not entail a direct access to a state trunk, INDOT does not have review authority.

IOWA

Iowa DOT has little authority over development plans for lands abutting state highways. However, it manages matters of access and right of way through designation of highways and highway sections as access controlled. For lands abutting access-controlled highways, new access is simply not granted. Say Farmer Z wants to divide his 100 acres into 10 lots, then sell those, the lots will not be granted any individual access. Access designs must fit into the current grid, and landowners making changes simply accommodate this. Matters of drainage and highway safety, furthermore, become Iowa DOT concerns only when they are engaged. If a new mall goes into a recently sold plat, for instance, Iowa DOT doesn't review plans for drainage facilities; rather, it merely responds to drainage problems if they arise. No provisions exist in the Iowa Administrative Code providing direction for such right of way and access issues; individual Iowa DOT administrative offices simply follow internal policies.

OHIO

Ohio provisions for land division plan review as it pertains to state highways in part rely on the state's administrative decentralization. Counties and cities review plans, referring matters of access, drainage and right of way to highways to the municipality's engineer. Generally, approvals go through county commissions and planning commissions, though approval of a plat by county board does not entail acceptance of street or highway dedications in the plat – see Ohio Revised Code, §711.04.1. For approval by city engineer, see §711.08. Such municipalities defer on matters of access to §§5501.31 and 5515.01 of the Ohio Revised Code. These sections do not, however, contain detailed explanation of ODOT policies regarding matters of access, drainage, etc.

Minnesota

MnDOT does not have any statutory like that of WisDOT. The standard in Minnesota is that there be reasonably safe and convenient suitable access. MnDOT works cooperatively with the LPAs in reviewing and commenting on plat proposals, and advising them about whether or where to provide access. MnDOT also has permitting authority. But when push comes to shove, when an LPA wants to grant additional access and MnDOT does not, there may be unique situations where MnDOT may have to pay for control of access.

Illinois

The Illinois statutes provide that except where right of access has been limited by or pursuant to law, every owner or occupant of abutting property to any State highway shall have reasonable access to the State highway consistent with the use being made of the property and not inconsistent with public safety or with the proper construction and maintenance of the State highway. The sticky point is often what constitutes reasonable access. Any permit issued by IDOT to construct an entrance and/or exit shall also designate the location and the design of such construction. The applicable statues are: 605 ILCS 5/4-210, Sec 4-210 and 605 ILCS 5/4-211, Sec 4-211.

STATEMENT OF SCOPE

DESCRIPTION OF THE OBJECTIVE OF THE RULE:

Chapter Trans 233, relating to division of land abutting a state trunk highway or connecting highway, was revised effective February 1, 2001. WisDOT has been working cooperatively with many affected interests and legislators to refine the implementation of ch. Trans 233 through a four-step process, in brief:

Education, Training, Meetings
Specific Responses to Questions
Uniform Implementation
Refine Rule As Necessary

This proposed rule revision is intended to implement conceptual agreements by WisDOT for clarification or modification of the rule as part of this continuing cooperative process "for the safety of entrance and departure from the abutting [highways] and for the preservation of the public interest and investment in the [highways]."

DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:

Chapter Trans 233 was established in 1956 and required amendments in 1999 for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. In 2001, Trans 233 was amended again in response to WisDOT's cooperative efforts with many affected interests and legislators to refine the implementation of Trans 233. The objective of this revision is to promulgate agreements reached with many affected interests and legislators. This rule amendment will incorporate portions of WisDOT's Facilities Development Manual that implement Trans 233, will require transportation impact analyses in certain circumstances, and will clarify that a land divider is not required to submit plans for a conceptual review prior to dividing land.

STATUTORY AUTHORITY FOR THE RULE:

Sections 236.12(2)(a), 236.13(1)(e), and 236.12(3), Stats.
Sections 84.25, 84.29, 84.295, and 86.07, Stats.
Sections 1.11, 80.01(3), 84.01(29), and 84.106, Stats.

ESTIMATES OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

Approximately 3 days for each member of an 6-member development team to continue meeting with the public and consider the proposed rule after it is drafted, and 4 days for initial and 2 days for final policy articulation and drafting by two persons. There will be coordination required with interest groups in order to obtain review and comment and establish appropriate public hearing(s) at convenient locations. Other reviews and approvals will be handled in the normal course of WisDOT business.

Signed at Madison, Wisconsin, this 27th day of **October**, 2003.

Frank J. Busalacchi
Secretary
Wisconsin Department of Transportation

CHAPTER 236

PLATTING LANDS AND RECORDING AND VACATING PLATS

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SUBCHAPTER I

PRELIMINARY PROVISIONS

236.01 Purpose of chapter. The purpose of this chapter 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.

Chapter 236 authorizes a municipality to reject a preliminary plat under its extraterritorial jurisdictional authority based upon a subdivision ordinance that considers the plat's proposed use. Wood v. City of Madison, 2003 WI 24, 260 Wis. 2d 71, 659 N.W.2d 31.

236.015 Applicability of chapter. This chapter does not apply to transportation project plats that conform to s. 84.095.

History: 1997 a. 282.

236.02 Definitions. In this chapter, unless the context or subject matter clearly requires otherwise:

(1) "Alley" means a public or private right–of–way shown on a plat, which provides secondary access to a lot, block or parcel of land.

(2) "Copy" means a true and accurate copy of all sheets of the original subdivision plat. Such copy shall be on durable white matte finished paper with legible dark lines and lettering.

(2m) "Correction instrument" means an instrument drafted by a licensed land surveyor that complies with the requirements of s. 236.295 and that, upon recording, corrects a subdivision plat or a certified survey map.

(3) "County planning agency" means a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03 (2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use.

(4) "Department" means the department of administration.

(5) "Extraterritorial plat approval jurisdiction" means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.

(6) "Municipality" means an incorporated city or village.

(7) An "outlot" is a parcel of land, other than a lot or block, so designated on the plat.

(8) "Plat" is a map of a subdivision.

(9) "Preliminary plat" is a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

(9c) "Record" means, with respect to a final plat or a certified survey map, to record and file the document with the register of deeds.

(9m) "Recorded private claim" means a claim of title to land based on a conveyance from a foreign government made before the land was acquired by the United States.

(11) "Replat" is the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat without changing exterior boundaries of said block, lot or outlot is not a replat.

(12) "Subdivision" is a division of a lot, parcel or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development, where:

(a) The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area; or

(b) Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

(13) "Town planning agency" means a town zoning committee appointed under s. 60.61 (4) (a) or any agency created by the town board and authorized by statute to plan land use.

History: 1979 c. 221; 1979 c. 233 s. 8; 1979 c. 248 ss. 2, 25 (4); 1979 c. 361; 1983 a. 189, 473, 532, 538; 1985 a. 29; 1987 a. 399; 1993 a. 490; 1995 a. 27 ss. 6307m, 6308, 9116 (5); 1995 a. 201; 1997 a. 27; 1999 a. 96; 2001 a. 16.

In determining lot sizes under sub. (8), [now sub. (12)], the lots may not extend across navigable waters or public easements of passage, nor include any land whose servitude is inconsistent with its integrated functional use and unified ownership. 66 Atty. Gen. 2.

Chapter 236 does not require a replat when the division of a lot or redivision of more than one lot does not meet the definition of a "subdivision" under this section. 67 Atty. Gen. 121.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under sub. (8), [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.03 Survey and plat; when required. (1) Any division of land which results in a subdivision as defined in s. 236.02 (12) (a) shall be, and any other division may be, surveyed and a plat thereof approved and recorded as required by this chapter. No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by this chapter.

(2) This chapter does not apply to cemetery plats made under s. 157.07 and assessors' plats made under s. 70.27, but such assessors' plats shall, except in counties having a population of 500,000 or more, comply with ss. 236.15 (1) (a) to (g) and 236.20 (1) and (2) (a) to (e), unless waived under s. 236.20 (2) (L).

(3) Subsection (1) shall not apply to the sale or exchange of parcels of public utility or railroad right–of–way to adjoining property owners if the governing body of the municipality or town in which the property is located and the county planning agency, where such agency exists, approves such sale or exchange on the basis of applicable local ordinances or the provisions of this chapter.

History: 1983 a. 189 s. 329 (23); 1983 a. 473; 1993 a. 490.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors plats under s. 70.27. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessor's plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998).

A replat of a recorded subdivision must comply with the formal platting requirements of ch. 236 relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

SUBCHAPTER II

APPROVAL OF PLAT

236.10 Approvals necessary. (1) To entitle a final plat of a subdivision to be recorded, it shall have the approval of the following in accordance with the provisions of s. 236.12:

(a) If within a municipality, the governing body, but if the plat is within an area, the annexation of which is being legally contested, the governing bodies of both the annexing municipality and the town from which the area has been annexed shall approve.

(b) If within the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and

2. The governing body of the municipality if, by July 1, 1958, or thereafter it adopts a subdivision ordinance or an official map under s. 62.23; and

3. The county planning agency if such agency employs on a full–time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation.

(c) If outside the extraterritorial plat approval jurisdiction of a municipality, the town board and the county planning agency, if there is one.

(2) If a subdivision lies within the extraterritorial plat approval jurisdiction of more than one municipality, the provisions of s. 66.0105 shall apply.

(3) The authority to approve or object to preliminary or final plats under this chapter may be delegated to a planning committee or commission of the approving governing body. Final plats dedicating streets, highways or other lands shall be approved by the governing body of the town or municipality in which such are located.

(4) Any municipality, town or county may under s. 66.0301 agree with any other municipality, town or county for the cooperative exercise of the authority to approve or review plats. A municipality, town or county may, under s. 66.0301, agree to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval. A municipality, town or county may agree with a regional planning commission for the cooperative exercise of the authority to approve or review plats only as provided under s. 66.0309 (11).

(5) Any municipality may waive its right to approve plats within any portion of its extraterritorial plat approval jurisdiction by a resolution of the governing body recorded with the register of deeds incorporating a map or metes and bounds description of the area outside its corporate boundaries within which it shall approve plats. The municipality may rescind this waiver at any time by resolution of the governing body recorded with the register of deeds.

History: 1979 c. 248; 1993 a. 301; 1999 a. 150 s. 672.

A city improperly included lots not within its extraterritorial plat approval jurisdiction in the city's calculation of fees assessed to a developer. Brookhill Development, Ltd. v. City of Waukesha, 103 Wis. 2d 27, 307 N.W.2d 242 (1981).

Section 236.12 (2) (a) does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation, sub. (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. KW Holdings, LLC v. Town of Windsor, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752.

Artificial lakes and land subdivisions. Kusler, 1971 WLR 369.

236.11 Submission of plats for approval. (1) (a) Before submitting a final plat for approval, the subdivider may submit, or the approving authority may require that the subdivider submit, a preliminary plat. It shall be clearly marked "preliminary plat" and shall be in sufficient detail to determine whether the final plat will meet layout requirements. Within 90 days the approving authority, or its agent authorized to approve preliminary plats, shall take action to approve, approve conditionally, or reject the preliminary plat and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or extension thereof, constitutes an approval of the preliminary plat.

(b) If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 24 months after the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat which the subdivider proposes to record at that time.

(2) The body or bodies having authority to approve plats shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated in the minutes of the

meeting and a copy thereof or a written statement of the reasons supplied the subdivider. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority which has failed to act.

History: 1979 c. 248; 1997 a. 332.

Under s. 236.11 (1) (a), a village must act within the stated time limit as to a preliminary plat, even though the plat allegedly violates the official city map. Tabling consideration of the plat within the stated time is not sufficient. State ex rel. Lozoff v. Board of Trustees of Hartland, 55 Wis. 2d 64, 197 N.W.2d 798 (1972).

236.12 Procedure for approval of plats. (1) This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 500,000 or more.

(2) Within 2 days after a preliminary or final plat is submitted for approval, legible copies, together with a list of the authorities to which the plat must be submitted for approval under s. 236.10 or objection under this subsection, furnished by the subdivider at the subdivider's expense, shall be sent, by the clerk or secretary of the approving authority to which the plat is submitted, to the following agencies which have authority to object to the plat:

(a) Two copies for each of the state agencies required to review the plat to the department which shall examine the plat for compliance with ss. 236.15, 236.16, 236.20 and 236.21 (1) and (2). If the subdivision abuts or adjoins a state trunk highway or connecting highway, the department shall transmit 2 copies to the department of transportation so that agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. If the subdivision is not served by a public sewer and provision for that service has not been made, the department shall transmit 2 copies to the department of commerce so that that agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. In lieu of this procedure the agencies may designate local officials to act as their agents in examining the plats for compliance with the statutes or their rules by filing a written delegation of authority with the approving body.

(b) Four copies to the county planning agency, if the agency employs on a full–time basis a professional engineer, a planner, or other person charged with the duty of administering planning legislation and adopts a policy requiring submission so that body may determine if it has any objection to the plat on the basis of conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments. If no county planning agency exists, then 2 copies to the county park commission except that in a county with a county executive or county administrator, 2 copies to the county park manager, if the subdivision abuts a county park or parkway so that body may determine if it has any objection to the plat on the basis of conflict with the park or parkway development.

(3) Within 20 days of the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider and all approving or objecting authorities of any objection based upon failure of the plat to comply with the statutes or rules which its examination under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the approving authority from which it was received. The plat shall not be approved or deemed approved until any objections have been satisfied. If the objecting agency fails to act within the 20–day limit it shall be deemed to have no objection to the plat. No approving authority may inscribe its approval on a plat prior to the affixing of the certificates under either sub. (4) or (6).

(4) The clerk or secretary of the approving authority forwarding copies of the plat under sub. (2) shall certify on the face of the plat that the copies were forwarded as required and the date thereof and that no objections to the plat have been filed within the 20–day limit set by sub. (3) or, if filed, have been met.

(5) Where more than one approval is required, copies of the plat shall be sent as required by sub. (2) by the approving authority to which the plat is first submitted.

(6) In lieu of the procedure under subs. (2) to (5), the subdivider or the subdivider's agent may submit the original plat to the department which shall forward 2 copies to each of the agencies authorized by sub. (2) to object. The department shall have the required number of copies made at the subdivider's expense. Within 20 days of the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider, and all agencies having the authority to object, of any objection based upon failure of the plat to comply with the statutes or rules which its examination under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the department. After each agency and the department have certified that they have no objection or that their objections have been satisfied, the department shall so certify on the face of the plat. If an agency fails to act within 20 days from the date of the receipt of copies of the plat, and the department fails to act within 30 days of receipt of the original plat it shall be deemed that there are no objections to the plat and, upon demand, it shall be so certified on the face of the plat by the department.

(7) The department and the state agencies referred to in s. 236.13 (1) may charge reasonable service fees for all or part of the costs of activities and services provided by the department under this section and s. 70.27. A schedule of such fees shall be established by rule by each such agency.

(8) In order to facilitate approval of the final plat where more than one approval is required, the subdivider may file a true copy of the plat with the approving authority or authorities with which the original of the final plat has not been filed. The approval of such authorities may be based on such copy but shall be inscribed on the original of the final plat. Before inscribing its approval, the approving authority shall require the surveyor or the owner to certify the respects in which the original of the final plat differs from the copy. All modifications in the final plat shall be approved before final approval is given.

History: 1973 c. 90; 1977 c. 29 s. 1654 (3), (8) (c); 1979 c. 221; 1979 c. 248 ss. 5, 25 (6); 1979 c. 355; 1985 a. 29; 1995 a. 27; 1997 a. 27.

Cross Reference: See also chs. Tax 53 and Trans 233, Wis. adm. code.

A "planned public development" under sub. (2) (b) is one that a county board has adopted by ordinance. Reynolds v. Waukesha County Park & Planning Commission, 109 Wis. 2d 56, 324 N.W.2d 897 (Ct. App. 1982).

Because sub. (2) (a) grants only to a "town or municipality" within which a plat lies the authority to require public improvements as a condition of plat approval, and a county is not a municipality for purposes of ch. 236, a county may not regulate the size of cul–de–sacs, the length of street blocks, and the location of town roads when the plat is located within a town. Rogers Development v. Rock County Planning and Development Committee, 2003 WI App 113, ___ Wis. 2d ___, ___ N.W. 2d ___.

236.13 Basis for approval. (1) Approval of the preliminary or final plat shall be conditioned upon compliance with:

(a) The provisions of this chapter;

(b) Any municipal, town or county ordinance;

(c) A comprehensive plan under s. 66.1001 or, if the municipality, town, or county does not have a comprehensive plan, either of the following:

1. With respect to a municipality or town, a master plan under s. 62.23.

2. With respect to a county, a development plan under s. 59.69.

(d) The rules of the department of commerce relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made;

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

(2) (a) As a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider execute a surety bond or provide other security to ensure that he or she will make those improvements within a reasonable time.

(b) Any city or village may require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that designated facilities shall have been previously provided without cost to the municipality, but which are constructed according to municipal specifications and under municipal inspection, such as, without limitation because of enumeration, sewerage, water mains and laterals, grading and improvement of streets, alleys, sidewalks and other public ways, street lighting or other facilities designated by the governing body, or that a specified portion of such costs shall be paid in advance as provided in s. 66.0709.

(c) Any county, town, city or village may require as a condition of approval that the subdivider be responsible for the cost of any necessary alterations of any existing utilities which, by virtue of the platting or certified survey map, fall within the public right–of–way.

(d) As a further condition of approval, any county, town, city or village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar or wind energy across adjacent lots in the subdivision.

(2m) As a further condition of approval when lands included in the plat lie within 500 feet of the ordinary high–water mark of any navigable stream, lake or other body of navigable water or if land in the proposed plat involves lake or stream shorelands referred to in s. 236.16, the department of natural resources, to prevent pollution of navigable waters, or the department of commerce, to protect the public health and safety, may require assurance of adequate drainage areas for private sewage disposal systems and building setback restrictions, or provisions by the owner for public sewage disposal facilities for waters of the state, as defined in s. 281.01 (18), industrial wastes, as defined in s. 281.01 (5), and other wastes, as defined in s. 281.01 (7). The public sewage disposal facilities may consist of one or more systems as the department of natural resources or the department of commerce determines on the basis of need for prevention of pollution of the waters of the state or protection of public health and safety.

(3) No approving authority or agency having the power to approve or object to plats shall condition approval upon compliance with, or base an objection upon, any requirement other than those specified in this section.

(4) Where more than one governing body or other agency has authority to approve or to object to a plat and the requirements of such bodies or agencies are conflicting, the plat shall comply with the most restrictive requirements.

(5) Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23 (7) (e) 10., 14. and 15., within 30 days of notification of the rejection of the plat. For the purpose of such appeal the term "board of appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable or discriminatory.

(6) An outlot may not be used as a building site unless it is in compliance with restrictions imposed by or under this section with respect to building sites. An outlot may be conveyed regardless of whether it may be used as a building site.

History: 1977 c. 29 ss. 1384, 1654 (8) (c); 1977 c. 162; 1979 c. 221, 248; 1981 c. 289 s. 19; 1981 c. 354; 1993 a. 414; 1995 a. 27 ss. 6310, 6311, 9116 (5); 1995 a. 227; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 30.

Local units of government may not reject a proposed plat under this section unless the plat conflicts with an existing statutory requirement or an existing written ordinance, master plan, official map, or rule under sub. (1). State ex rel. Columbia Corporation v. Town of Pacific, 92 Wis. 2d 767, 286 N.W.2d 130 (Ct. App. 1979).

Under sub. (2) (a), authority to condition plat approval on public improvements is granted solely to the governing body of the municipality in which the subdivision is located. Rice v. City of Oshkosh, 148 Wis. 2d 78, 435 N.W.2d 252 (1989).

Municipalities have no authority to impose conditions upon a subdivision that extend beyond the municipality's borders. Pedersen v. Town of Windsor, 191 Wis. 2d 664, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (2) (a) does not grant a municipality the power to establish public improvement requirements without an ordinance. Pedersen v. Town of Windsor, 191 Wis. 2d 664, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (1) (d) does not prevent municipalities from enacting more restrictive sewer regulations than the rules cited in that paragraph. Manthe v. Town of Windsor, 204 Wis. 2d 546, 555 N.W.2d 156 (Ct. App. 1996).

So long as any issues addressed in both a master plan and an official map are not contradictory, for purposes of sub. (1) (c), the master plan is consistent with the official map. A master plan is not inconsistent with an official map if the plan contains elements the map does not. Lake City Corp. v. City of Mequon, 207 Wis. 2d 155, 558 N.W.2d 100 (1997).

In the area of minimum lot size regulation, the power of a plan commission authorized to review plats is not limited or detracted by zoning regulations. Lake City Corp. v. City of Mequon, 207 Wis. 2d 156, 558 N.W.2d 100 (1997).

As sub. (5) does not expressly designate the "appealing authority" to whom appeal papers should be directed, the appellant's service of an appeal on the county planning and development department rather than on the planning and development committee, which had made the disputed decision, was not grounds for dismissal when there had been pervasive use of department personnel and stationery in the process. Weber v. Dodge County Planning and Development Dept. 231 Wis. 2d 222, 604 N.W.2d 297 (Ct. App. 1999).

Sub. (2) (a) does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation s. 236.10 (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. KW Holdings, LLC v. Town of Windsor, 2003 WI App 9, ___ Wis. 2d 259 Wis. 2d 357, 656 N.W.2d 752.

SUBCHAPTER III

LAYOUT REQUIREMENTS

236.15 Surveying requirements. For every subdivision of land there shall be a survey meeting the following requirements:

(1) MONUMENTS. All of the monuments required in pars. (a) to (h) shall be placed flush with the ground where practicable.

(a) The external boundaries of a subdivision shall be monumented in the field by monuments of concrete containing a ferrous rod one–fourth inch in diameter or greater imbedded its full length, not less than 18 inches in length, not less than 4 inches square or 5 inches in diameter, and marked on the top with a cross, brass plug, iron rod, or other durable material securely embedded; or by iron rods or pipes at least 18 inches long and 2 inches in diameter weighing not less than 3.65 pounds per lineal foot. Solid round or square iron bars of equal or greater length or weight per foot may be used in lieu of pipes wherever pipes are specified in this section. These monuments shall be placed at all corners, at each end of all curves, at the point where a curve changes its radius, at all angle points in any line and at all angle points along the meander line, said points to be not less than 20 feet back from the ordinary high water mark of the lake or from the bank of the stream, except that when such corners or points fall within a street, or proposed future street, the monuments shall be placed in the side line of the street.

(b) All internal boundaries and those corners and points not required to be marked by par. (a) shall be monumented in the field by like monuments as defined in par. (a). These monuments shall be placed at all block corners, at each end of all curves, at the point where a curve changes its radius, and at all angle points in any line.

(c) All lot, outlot, park and public access corners and the corners of land dedicated to the public shall be monumented in the field by iron pipes at least 18 inches long and one inch in diameter, weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 18 inches long and weighing not less than 1.13 pounds per lineal foot.

(d) The lines of lots, outlots, parks and public access and land dedicated to the public that extend to lakes or streams shall be monumented in the field by iron pipes at least 18 inches long and one inch in diameter weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 18 inches long and

weighing not less than 1.13 pounds per lineal foot. These monuments shall be placed at the point of intersection of the lake or stream lot line with a meander line established not less than 20 feet back from the ordinary high water mark of the lake or from the bank of the stream.

(f) Any durable metal or concrete monuments may be used in lieu of iron pipes provided that they are uniform within the platted area and have a permanent magnet embedded near the top or bottom or both.

(g) In cases where strict compliance with this subsection would be unduly difficult or would not provide adequate monuments, the department may make other reasonable requirements.

(h) The governing body of the city, village or town which is required to approve the subdivision under s. 236.10 may waive the placing of monuments under pars. (b), (c) and (d) for a reasonable time on condition that the subdivider executes a surety bond to ensure that he or she will place the monuments within the time required.

(2) ACCURACY OF SURVEY. The survey shall be performed by a land surveyor registered in this state and if the error in the latitude and departure closure of the survey or any part thereof is greater than the ratio of one in 3,000, the plat may be rejected.

History: 1979 c. 221, 248; 1979 c. 355 s. 240; 1981 c. 390; 2001 a. 16.

All permanent survey monuments required by 236.15 (1) (a), (b), (c) and (d), Stats. 1969, must be placed in the field prior to submission of a final subdivision plat for state level review; provided, however, that in the event of a waiver under sub. (1) (h), the placement of all permanent monuments other than those required by sub. (1) (a), may be temporarily deferred. 59 Atty. Gen. 262.

236.16 Layout requirements. (1) MINIMUM LOT WIDTH AND AREA. In counties having a population of 40,000 or more, each lot in a residential area shall have a minimum average width of 50 feet and a minimum area of 6,000 square feet; in counties of less than 40,000, each lot in a residential area shall have a minimum average width of 60 feet and a minimum area of 7,200 square feet. In municipalities, towns and counties adopting subdivision control ordinances under s. 236.45, minimum lot width and area may be reduced to dimensions authorized under such ordinances if the lots are served by public sewers.

(2) MINIMUM STREET WIDTH. All streets shall be of the width specified on the master plan or official map or of a width at least as great as that of the existing streets if there is no master plan or official map, but no full street shall be less than 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads platted after January 1, 1966, shall, however, comply with minimum standards for town roads prescribed by s. 86.26. Streets or frontage roads auxiliary to and located on the side of a full street for service to the abutting property may not after January 1, 1966, be less than 49.5 feet wide.

(3) LAKE AND STREAM SHORE PLATS. (a) All subdivisions abutting on a navigable lake or stream shall provide public access at least 60 feet wide providing access to the low watermark so that there will be public access, which is connected to existing public roads, at not more than one–half mile intervals as measured along the lake or stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department, and excluding shore areas where public parks or open–space streets or roads on either side of a stream are provided.

(b) No public access established under this chapter may be vacated except by circuit court action as provided in s. 236.43.

(c) Except as provided in par. (d), this subsection does not require any local unit of government to improve land provided for public access.

(d) All of the owners of all of the land adjacent to a public access established under par. (a) to an inland lake, as defined in s. 30.92 (1) (bk), may petition the city, village, town or county that owns the public access to construct shoreline erosion control measures. Subject to par. (e), the city, village, town or county shall construct the requested shoreline erosion control measures or request the department of natural resources to determine the need for shoreline erosion control measures. Upon receipt of a request under this paragraph from a city, village, town or county, the department of natural resources shall follow the procedures in s. 30.02 (3) and (4). Subject to par. (e), the city, village, town or county shall construct shoreline erosion control measures as required by the department of natural resources if the department of natural resources determines all of the following:

1. Erosion is evident along the shoreline in the vicinity of the public access.

2. The shoreline erosion control measures proposed by the owners of the property adjacent to the public access are designed according to accepted engineering practices.

3. Sufficient property owners, in addition to the owners of all property adjacent to the public access, have agreed to construct shoreline erosion control measures so that the shoreline erosion control project is likely to be effective in controlling erosion at the location of the public access and its vicinity.

4. The shoreline erosion control project is not likely to be effective in controlling erosion at the location of the public access and its vicinity if the city, village, town or county does not construct shoreline erosion control measures on the land provided for public access.

(e) A city, village, town or county may not be required to construct shoreline erosion control measures under par. (d) on land other than land provided for public access.

(f) Paragraphs (b) to (e) apply to public access that exists on, or that is established after, May 7, 1998.

(4) LAKE AND STREAM SHORE PLATS. The lands lying between the meander line, established in accordance with s. 236.20 (2) (g), and the water's edge, and any otherwise unplattable lands which lie between a proposed subdivision and the water's edge shall be included as part of lots, outlots or public dedications in any plat abutting a lake or stream. This subsection applies not only to lands proposed to be subdivided but also to all lands under option to the subdivider or in which the subdivider holds any interest and which are contiguous to the lands proposed to be subdivided and which abut a lake or stream.

History: 1971 c. 164; 1979 c. 221; 1979 c. 248 ss. 9, 25 (2); 1997 a. 172.

Cross Reference: See also s. NR 1.93, Wis. adm. code.

The circumstances under which the statutory platting standards set forth in s. 236.16 (1), (2) and (3) and 236.20 (4) (d), may be waived or varied, with specific reference to the approval of island subdivision plats, are discussed. 62 Atty. Gen. 315.

Each of 2 adjacent platted lots may not be divided for the purpose of sale or building development if the division will result in lots or parcels that do not comply with minimum lot width and area requirements established under sub. (1). Section 236.335 is discussed. 63 Atty. Gen. 122.

Sub. (3) does not apply to a navigable lake created by artificially enlarging a previously nonnavigable watercourse. 64 Atty. Gen. 146.

The extent to which local governments may vary the terms of ss. 236.16 (1) and (2) and 236.20 (4) (d) by ordinance is discussed. 64 Atty. Gen. 175.

Sub. (4) aims at preventing subdividers from creating narrow, unplatted buffer zones between platted lands and water's edge, thus avoiding public access requirements. 66 Atty. Gen. 85.

236.18 Wisconsin coordinate system. (1) REQUIREMENT FOR RECORDING. (a) No plat that is referenced to a Wisconsin coordinate system under sub. (2) may be recorded unless it is based on a datum that the approving authority under s. 236.10 of the jurisdiction in which the land is located has selected by ordinance.

(b) An approving authority under s. 236.10 may select a Wisconsin coordinate system under sub. (2). If it does so, it shall notify the department, on a form provided by the department, of the selection.

(c) An approving authority may, by ordinance, select a different Wisconsin coordinate system under sub. (2) than the one previously selected under par. (b). If it does so, the approving authority shall notify the department on a form provided by the department.

(2) ALLOWABLE SYSTEMS. An approving authority under s. 236.10 may select any one of the following systems:

(a) The Wisconsin coordinate system of 1927, which is based on the North American datum of 1927.

(b) The Wisconsin coordinate system of 1983 (1986), which is based on the North American datum of 1983 (adjustment of 1986).

(c) The Wisconsin coordinate system of 1983 (1991), which is based on the North American datum of 1983 (adjustment of 1991).

(d) A county coordinate system as approved by the department of transportation or a coordinate system that is mathematically relatable to a Wisconsin coordinate system.

(3) ZONES. Each of the systems under sub. (2) includes the following zones:

(a) A north zone composed of the following counties: Ashland, Bayfield, Burnett, Douglas, Florence, Forest, Iron, Oneida, Price, Sawyer, Vilas and Washburn.

(b) A central zone composed of the following counties: Barron, Brown, Buffalo, Chippewa, Clark, Door, Dunn, Eau Claire, Jackson, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Outagamie, Pepin, Pierce, Polk, Portage, Rusk, St. Croix, Shawano, Taylor, Trempealeau, Waupaca and Wood.

(c) A south zone composed of the following counties: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waushara and Winnebago.

(4) APPLICABLE DEFINITIONS AND SURVEY CONNECTIONS. (a) The following definitions apply to the systems under sub. (2):

1. For the Wisconsin coordinate system of 1927, the definitions provided by the national geodetic survey in U.S. coastal and geodetic survey special publication 235 (1974 edition).

2. For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the definitions provided by the national geodetic survey in the national oceanic and atmospheric administration manual national ocean service, national geodetic survey 5 (1989 edition).

(b) Existing positions of the systems under sub. (2) that are marked on the ground by monuments established in conformity with standards adopted by the national geodetic survey for 3rd–order work and above and the geodetic positions of which have been rigidly adjusted on the North American datum of 1927, the North American datum of 1983 (adjustment of 1986), the North American datum of 1983 (adjustment of 1991) or any later adjustment of the North American datum of 1983 may be used to establish a survey connection to the systems under sub. (2).

(5) OVERLAPPING LAND. If portions of any tract of land that is to be defined by one description in a plat are in different zones under sub. (3), the positions of all of the points on its boundaries may be referred to either of the zones but the zone to which those positions are referred and the system under sub. (2) that is used shall be named in the description and noted on the face of all maps and plats of the land.

(6) COORDINATES. (a) The plane coordinates of a point that are to be used to express the position or location of a point shall consist of 2 distances that are expressed in U.S. survey feet or meters and decimals of those feet or meters. The definitions of survey foot and meter in letter circular 1071 July 1976 national institute of standards and technology shall be used for conversion between feet and meters.

(b) For the Wisconsin coordinate system of 1927, the distances under par. (a) are the x–coordinate, which shall give the position in an east–and–west direction, and the y–coordinate, which shall give the position in a north–and–south direction.

(c) For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the distances are the northing, which shall give the position in a north–and–south direction and the easting, which shall give the position in an east–and–west direction.

(d) Coordinates in all of the systems under sub. (2) shall depend upon and conform to the plane rectangular coordinate values for the monumented points of the national geodetic reference system horizontal control network that are published by the national geodetic survey or by that agency's successor if those values have been computed on the basis of a system under sub. (2).

(7) USE OF TERM RESTRICTED. No person may use the term "Wisconsin coordinate system" on any map, report of a survey or other document unless the coordinates on the document are based on a system under sub. (2).

(8) DESIGNATION. Any person who prepares a plat under this section shall designate on that plat which of the systems under sub. (2) and which of the zones under sub. (3) that person has referenced.

(9) MULTIPLE DESCRIPTIONS. If a document describes a tract of land by means of the coordinates of a system under sub. (2) and by means of a reference to a subdivision, line or corner of the U.S. public land surveys, the description by means of coordinates supplements and is subordinate to the other description.

(10) RIGHT OF LENDERS AND PURCHASERS. A lender or purchaser may require a borrower or seller to provide the description required under s. 236.20.

History: 1979 c. 248 ss. 10, 25 (1); 1993 a. 16, 490; 2001 a. 16.

SUBCHAPTER IV

FINAL PLAT AND DATA

236.20 Final plat. A final plat of subdivided land shall comply with all of the following requirements:

(1) GENERAL REQUIREMENTS. All plats shall be legibly prepared and meet all of the following requirements:

(a) The plat shall have a binding margin 1 1/2 inches wide on the left side, and a one–inch margin on all other sides. A graphic scale of not more than 100 feet to one inch shall be shown on each sheet showing layout features. When more than one sheet is used for any plat, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the plat and showing the relation of that sheet to the other sheets and each sheet shall bear the subdivision and county name.

(b) For processing under s. 236.12 (6) the original shall be 22 inches wide by 30 inches long and on any material that is capable of clearly legible reproduction.

(c) For processing under s. 236.12 (2), the original copy of the final plat shall be 22 inches wide by 30 inches long and on any material that is capable of clearly legible reproduction.

(2) MAP AND ENGINEERING INFORMATION. The final plat shall show correctly on its face all of the following:

(a) The exterior boundaries of the land surveyed and divided.

(b) All monuments erected, corners, and other points established in the field in their proper places. The material of which the monuments, corners, or other points are made shall be noted at the representation thereof or by legend, except lot, outlot, and meander corners need not be shown. The legend for metal monuments shall indicate the kind of metal, the outside diameter, length, and weight per lineal foot of the monuments.

(c) The length and bearing of the exterior boundaries, the boundary lines of all blocks, public grounds, streets, and alleys, and all lot lines, except that when the lines in any tier of lots are parallel it shall be sufficient to mark the bearings of the outer lines on one tier. Easements not parallel to a boundary or lot line shall be shown by center line distance, bearing, and width or by easement boundary bearings and distances. Where easement lines are parallel to boundary or lot lines, the boundary or lot line distances and bearings are controlling. Where the exterior boundary lines show bearings or lengths that vary from those recorded in abutting plats or certified surveys there shall be the following note placed

along the lines, "recorded as (show recorded bearing or length or both)."

(d) Blocks, if designated, shall be consecutively numbered, or lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively through the several additions.

(e) All lots and outlots in each block consecutively numbered within blocks and the subdivision and throughout numbered additions to the subdivision.

(f) The exact width of all easements, streets and alleys.

(g) All lake or stream shore meander lines established by the surveyor in accordance with s. 236.15 (1) (d), the distances and bearings thereof, and the distance between the point of intersection of such meander lines with lot lines and the ordinary high water mark.

(h) The center line of all streets.

(i) A north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and related to a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located.

(j) The area in square feet of each lot and outlot.

(k) When a street is on a circular curve, the main chords of the right–of–way lines shall be drawn as dotted or dashed lines in their proper places. All curved lines shall show, either on the lines or in an adjoining table, the radius of the circle, the central angle subtended, the chord bearing, the chord length and the arc length for each segment. The tangent bearing shall be shown for each end of the main chord for all circular lines. When a circular curve of 30–foot radius or less is used to round off the intersection between 2 straight lines, it shall be tangent to both straight lines. It is sufficient to show on the plat the radius of the curve and the tangent distances from the points of curvature to the point of intersection of the straight lines.

(L) When strict compliance with a provision of this section will entail undue or unnecessary difficulty or tend to render the plat or certified survey map more difficult to read, and when the information on the plat or certified survey map is sufficient for the exact retracement of the measurements and bearings or other necessary dimensions, the department or, in 1st class cities, the city engineer may waive such strict compliance.

(3) NAME, LOCATION AND POSITION. The name of the plat shall be printed thereon in prominent letters, and shall not be a duplicate of the name of any plat previously recorded in the same county or municipality. All of the following information relating to the position and location of the subdivision shall be shown on the plat:

(a) The location of the subdivision by government lot, recorded private claim, quarter–quarter section, section, township, range, and county noted immediately under the name given to the subdivision.

(b) The location of the subdivision shall be indicated by bearing and distance from a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located. The monumentation at the ends of the boundary line shall be described and the bearing and distance between them shown.

(c) A small drawing of the section or governmental subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon or, if approved by the department, a location sketch showing the relationship of the subdivision to existing streets. The drawing or sketch shall be oriented on the sheet in the same direction as the main drawing.

(d) The names of adjoining streets, state highways and subdivisions shown in their proper location underscored by a dotted or dashed line.

(e) Abutting street and state highway lines of adjoining plats shown in their proper location by dotted or dashed lines. The width of these streets and highways shall be given also.

(4) ROADS AND PUBLIC SPACES. (a) The name of each road or street in the plat shall be printed on the plat.

(b) All lands dedicated to public use except roads and streets shall be clearly marked "Dedicated to the Public".

(c) All roads or streets shown on the plat which are not dedicated to public use shall be clearly marked "Private Road" or "Private Street" or "Private Way".

(d) Each lot within the plat must have access to a public street unless otherwise provided by local ordinance.

(5) SITE CONDITIONS AND TOPOGRAPHY. The final plat shall show all of the following:

(a) All existing buildings.

(b) All watercourses, drainage ditches and other existing features pertinent to proper subdivision.

(c) The water elevations of adjoining lakes or streams at the date of the survey and the approximate high and low water elevations of those lakes or streams. All elevations shall be referred to some permanent established datum plane.

History: 1979 c. 221, 248; 1983 a. 473; 1999 a. 85; 2001 a. 16, 103, 104.

The circumstances under which the statutory platting standards set forth in s. 236.16 (1), (2) and (3) and 236.20 (4) (d), may be waived or varied, with specific reference to the approval of island subdivision plats, are discussed. 62 Atty. Gen. 315.

A proposed plat may not consist solely of outlots. 66 Atty. Gen. 238.

236.21 Certificates to accompany plat. To entitle a final plat to be recorded, the following certificates lettered or printed legibly with a black durable image or typed legibly with black ribbon shall appear on it:

(1) SURVEYOR'S CERTIFICATE OF COMPLIANCE WITH STATUTE. The certificate of the surveyor who surveyed, divided and mapped the land giving all of the following information, which shall have the same force and effect as an affidavit:

(a) By whose direction the surveyor made the survey, subdivision and plat of the land described on the plat.

(b) A clear and concise description of the land surveyed, divided, and mapped by government lot, recorded private claim, quarter–quarter section, section, township, range, and county and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section that is not the center of the section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the subdivision is located. If the land is located in a recorded subdivision or recorded addition thereto, the land shall be described by the number or other description of the lot, block or subdivision thereof, that has previously been tied to a corner marked and established by the U.S. public land survey.

(c) A statement that the plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it.

(d) A statement that the surveyor has fully complied with the provisions of this chapter in surveying, dividing and mapping the land.

(2) OWNER'S CERTIFICATE. (a) A certificate by the owner of the land in substantially the following form: "As owner I hereby certify that I caused the land described on this plat to be surveyed, divided, mapped and dedicated as represented on the plat. I also certify that this plat is required by s. 236.10 or 236.12 to be submitted to the following for approval or objection: (list of governing bodies required to approve or allowed to object to the plat)." This certificate shall be signed by the owner, the owner's spouse, and all persons holding an interest in the fee of record or by being in possession and, if the land is mortgaged, by the mortgagee of record. These signatures shall be acknowledged in accordance with s. 706.07.

(b) As a condition to approval of the plat, the municipal, town or county body required by s. 236.12 to approve the plat may require that the owner furnish an abstract of title certified to date of submission for approval or, at the option of the owner, a policy of title insurance or certificate of title from an abstract company

for examination in order to ascertain whether all parties in interest have signed the owner's certificate on the plat.

(3) CERTIFICATE OF TAXES PAID. A certificate of the clerk or treasurer of the municipality or town in which the subdivision lies and a certificate of the treasurer of the county in which the subdivision lies stating that there are no unpaid taxes or unpaid special assessments on any of the lands included in the plat.

History: 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85; 2001 a. 16.

SUBCHAPTER V

RECORDING OF PLATS

236.25 Recording a plat. (1) The subdivider shall have the final plat recorded in the office of the register of deeds of the county in which the subdivision is located.

(2) The register of deeds shall not accept a plat for record unless:

(a) It is on muslin–backed white paper 22 inches wide by 30 inches long and bears a department certification of no objection or it is reproduced with photographic silver haloid image on double matt polyester film of not less than 4 mil thickness, 22 inches wide by 30 inches long. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals;

(b) The plat is offered for record within 6 months after the date of the last approval of the plat and within 24 months after the first approval;

(c) The plat shows on its face all the certificates and affidavits required by ss. 236.21 and 236.12 (4);

(d) The plat shows on its face the approval of all bodies required by s. 236.10 to approve or the certificate of the clerk that the plat is deemed approved under s. 236.11 (2).

(3) The recording of a plat which is not entitled to be recorded under sub. (2) shall not of itself affect the title of a purchaser of a lot covered by the plat, the donation or dedication of land made by the plat, or the validity of a description of land by reference to the plat, but it allows the purchaser a right to rescind the sale under s. 236.31.

(4) Every final plat entitled to be recorded under this section shall be bound or filed by the register of deeds into properly indexed volumes. Any facsimile of the original whole record, made and prepared by the register of deeds or under his or her direction shall be deemed to be a true copy of the final plat.

(5) The register of deeds may furnish certified copies or other accurate reproductions of any plat on record in his or her office to surveyors, engineers or other interested parties at cost.

History: 1979 c. 248 ss. 19, 25 (5); 1983 a. 473; 1997 a. 332; 2001 a. 16.

236.26 Notification to approving authorities. When a final plat is recorded, the register of deeds shall notify all authorities required by s. 236.10 to approve or permitted by s. 236.12 to object to the plat by mailing to the clerk of each authority written notice thereof.

History: 1981 c. 314.

236.27 Filing of copy of plat. The subdivider shall file a true copy of the final plat as a public record with the clerk of the municipality or town in which the subdivision is located.

236.28 Description of lots in recorded plat. When a subdivision plat has been recorded in accordance with s. 236.25, the lots in that plat shall be described by the name of the plat and the lot and block in the plat for all purposes, including those of assessment, taxation, devise, descent and conveyance as defined in s. 706.01 (4). Any conveyance containing such a description shall be construed to convey to the grantee all portions of vacated streets and alleys abutting such lots and belonging to the grantor unless the grantor by appropriate language indicates an intention to reserve or except them from the conveyance.

History: 1971 c. 41 s. 11; 1983 a. 189 s. 329 (26).

236.29 Dedications. (1) EFFECT OF RECORDING ON DEDICATIONS. When any plat is certified, signed, acknowledged and recorded as prescribed in this chapter, every donation or grant to the public or any person, society or corporation marked or noted as such on said plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted, and shall be considered a general warranty against such donors, their heirs and assigns to the said donees for their use for the purposes therein expressed and no other; and the land intended for the streets, alleys, ways, commons or other public uses as designated on said plat shall be held by the town, city or village in which such plat is situated in trust to and for such uses and purposes.

(2) DEDICATIONS TO PUBLIC ACCEPTED BY APPROVAL. When a final plat of a subdivision has been approved by the governing body of the municipality or town in which the subdivision is located and all other required approvals are obtained and the plat is recorded, that approval constitutes acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public including street dedications.

(3) MUNICIPALITY MAY LEASE TO A SUBDIVISION ASSOCIATION LAND ACCEPTED FOR PARK. The municipality or town in which the accepted subdivision is located may lease to a subdivision association any part of the subdivision intended for park purposes where such part has never been improved nor work done thereon nor funds expended therefor by the governing body, but such lease shall not exceed 10 years and shall only be for park improvement purposes.

A complaint against plat subdividers by a city set forth a cause of action with respect to costs incurred by the city in moving a tower and acquiring a right–of–way when the plat of a street dedicated as part of a subdivision did not show the existence, location, or easement of a power company's transmission line located in the area platted as a street. Kenosha v. Ghysels, 46 Wis. 2d 418, 175 N.W.2d 223 (1970).

236.292 Certain restrictions void. (1) All restrictions on platted land that interfere with the development of the ice age trail under s. 23.17 are void.

(2) All restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), are void.

History: 1991 a. 39; 1993 a. 414; 1999 a. 150 s. 672.

236.293 Restrictions for public benefit. Any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body or which names a public body or public utility as grantee, promisee or beneficiary, vests in the public body or public utility the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction. The restriction may be released or waived in writing by the public body or public utility having the right of enforcement.

History: 1979 c. 248.

The hidden dangers of placing easements on plats. Ishikawa. WBB Apr. 1988.

236.295 Correction instruments. (1) Correction instruments shall be recorded in the office of the register of deeds in the county in which the plat or certified survey map is recorded and may include any of the following:

(a) Affidavits to correct distances, angles, directions, bearings, chords, block or lot numbers, street names, or other details shown on a recorded plat or certified survey map. A correction instrument may not be used to reconfigure lots or outlots.

(b) Ratifications of a recorded plat or certified survey map signed and acknowledged in accordance with s. 706.07.

(c) Certificates of owners and mortgagees of record at time of recording.

(2) Each affidavit in sub. (1) (a) correcting a plat or certified survey map that changes areas dedicated to the public or restrictions for the public benefit must be approved prior to recording by

the governing body of the municipality or town in which the subdivision is located. The register of deeds shall note on the plat or certified survey map a reference to the page and volume in which the affidavit or instrument is recorded. The record of the affidavit or instrument, or a certified copy of the record, is prima facie evidence of the facts stated in the affidavit or instrument.

History: 1971 c. 41 s. 11; 1979 c. 248; 1999 a. 85; 2001 a. 16.

Section 236.295 does not apply to assessors plats. 61 Atty. Gen. 25.

SUBCHAPTER VI

PENALTIES AND REMEDIES

236.30 Forfeiture for improper recording. Any person causing his or her final plat to be recorded without submitting such plat for approval as herein required, or who shall fail to present the same for record within the time prescribed after approval, shall forfeit not less than $100, nor more than $1,000 to each municipality, town or county wherein such final plat should have been submitted.

History: 1979 c. 248 s. 25 (5).

236.31 Penalties and remedies for transfer of lots without recorded plat. (1) Any subdivider or the subdivider's agent who offers or contracts to convey, or conveys, any subdivision as defined in s. 236.02 (12) or lot or parcel which lies in a subdivision as defined in s. 236.02 (12) knowing that the final plat thereof has not been recorded may be fined not more than $500 or imprisoned not more than 6 months or both; except where the preliminary or final plat of the subdivision has been filed for approval with the town or municipality in which the subdivision lies, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.

(2) Any municipality, town, county or state agency with subdivision review authority may institute injunction or other appropriate action or proceeding to enjoin a violation of any provision of this chapter, ordinance or rule adopted pursuant to this chapter. Any such municipality, town or county may impose a forfeiture for violation of any such ordinance, and order an assessor's plat to be made under s. 70.27 at the expense of the subdivider or the subdivider's agent when a subdivision is created under s. 236.02 (12) (b) by successive divisions.

(3) Any conveyance or contract to convey made by the subdivider or the subdivider's agent contrary to this section or involving a plat which was not entitled to be recorded under s. 236.25 (2) shall be voidable at the option of the purchaser or person contracting to purchase, his or her heirs, personal representative or trustee in insolvency or bankruptcy within one year after the execution of the document or contract; but such document or contract shall be binding on the vendor, the subdivider's assignee, heir or devisee.

History: 1979 c. 248 s. 25 (6); 1979 c. 355, 357; 1983 a. 189 s. 329 (23).

Sub. (3) does not allow a purchaser to force a seller to violate sub. (1) and become subject to criminal penalties by doing so. Gordie Boucher Lincoln–Mercury v. J & H Landfill, 172 Wis. 2d 333, 493 N.W.2d 375 (Ct. App. 1992).

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8) [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.32 Penalty for disturbing or not placing monuments. Any of the following may be fined not more than $250 or imprisoned not more than one year in county jail:

(1) Any owner, surveyor or subdivider who fails to place monuments as prescribed in this chapter when subdividing land.

(2) Any person who knowingly removes or disturbs any such monument without the permission of the governing body of the municipality or county in which the subdivision is located or fails to report such disturbance or removal to it.

(3) Fails to replace properly any monuments which have been removed or disturbed when ordered to do so by the governing body of the municipality or county in which the subdivision is located.

236.33 Division of land into small parcels in cities of the first class prohibited; penalty. It shall be unlawful to divide or subdivide and convey by deed or otherwise any lot in any recorded plat or any parcel or tract of unplatted land in any city of the first class so as to create a lot or parcel of land which does not have street or public highway frontage of at least 4 feet or an easement to a street or public highway of a minimum width of 4 feet but this section shall not apply to conveyances by tax deed or through the exercise of eminent domain or to such reductions in size or area as are caused by the taking of property for public purposes. This section shall not prohibit the dividing or subdividing of any lot or parcel of land in any such city where the divided or subdivided parts thereof which become joined in ownership with any other lot or parcel of land comply with the requirements of this section, if the remaining portion of such lot or parcel so divided or subdivided complies. Any person who shall make such conveyance or procure such a sale or act as agent in procuring such sale or conveyance shall be fined not less than $100 or more than $500 or imprisoned not more than 6 months or both.

236.335 Prohibited subdividing; forfeit. No lot or parcel in a recorded plat may be divided, or used if so divided, for purposes of sale or building development if the resulting lots or parcels do not conform to this chapter, to any applicable ordinance of the approving authority or to the rules of the department of workforce development under s. 236.13. Any person making or causing such a division to be made shall forfeit not less than $100 nor more than $500 to the approving authority, or to the state if there is a violation of this chapter or the rules of the department of workforce development.

History: 1979 c. 221; 1995 a. 27 s. 9130 (4); 1997 a. 3.

The circumstances under which lots in a recorded subdivision may be legally divided without replatting are discussed. 64 Atty. Gen. 80.

236.34 Recording of certified survey map; use in changing boundaries; use in conveyancing. (1) PREPARATION. A certified survey map of not more than 4 parcels of land consisting of lots or outlots may be recorded in the office of the register of deeds of the county in which the land is situated. A certified survey map may be used to change the boundaries of lots and outlots within a recorded plat, recorded assessor's plat under s. 70.27 or recorded, certified survey map if the reconfiguration does not result in a subdivision or violate a local subdivision regulation. A certified survey map may not alter areas previously dedicated to the public or a restriction placed on the platted land by covenant, by grant of an easement, or by any other manner. A certified survey map that crosses the exterior boundary of a recorded plat or assessor's plat shall apply to the reconfiguration of fewer than 5 parcels by a single owner, or if no additional parcels are created. Such a certified survey map must be approved in the same manner as a final plat of a subdivision must be approved under s. 236.10, must be monumented in accordance with s. 236.15 (1), and shall contain owners' and mortgagees' certificates that are in substantially the same form as required under s. 236.21 (2) (a). A certified survey must meet the following requirements:

(a) The survey shall be performed and the map prepared by a land surveyor registered in this state. The error in the latitude and departure closure of the survey may not exceed the ratio of one in 3,000.

(b) All corners shall be monumented in accordance with s. 236.15 (1) (c), (d), and (g).

(c) The map shall be prepared in accordance with s. 236.20 (2) (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), and (L) and (3) (b), (d), and (e) at a graphic scale of not more than 500 feet to an inch, which shall be shown on each sheet showing layout features. The map shall be prepared with a binding margin 1.5 inches wide and a 0.5 inch margin on all other sides on durable white paper 8 1/2 inches wide by 14 inches long with nonfading black image or reproduced

with photographic silver haloid image on double matt polyester film of not less than 4 mil thickness which is 8 1/2 inches wide by 14 inches long. When more than one sheet is used for any map, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the map and showing the relationship of that sheet to the other sheets. "CERTIFIED SURVEY MAP" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter–quarter section, section, township, range and county noted. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals.

(d) The map shall include a certificate of the surveyor who surveyed, divided and mapped the land which has the same force and effect as an affidavit and which gives all of the following information:

1. By whose direction the surveyor made the survey, division and map of the land described on the certified survey map.

2. A clear and concise description of the land surveyed, divided, and mapped by government lot, recorded private claim, quarter–quarter section, section, township, range and county; and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section that is not the center of a section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the land is located; or if the land is located in a recorded subdivision or recorded addition to a recorded subdivision, then by the number or other description of the lot, block or subdivision, which has previously been tied to a corner marked and established by the U.S. public land survey.

3. A statement that the map is a correct representation of all of the exterior boundaries of the land surveyed and the division of that land.

4. A statement that the surveyor has fully complied with the provisions of this section in surveying, dividing and mapping the land.

(e) A certified survey map may be used for dedication of streets and other public areas when owners' certificates and mortgagees' certificates which are in substantially the same form as required by s. 236.21 (2) (a) have been executed and the city council or village or town board involved have approved such dedication. Approval and recording of such certified surveys shall have the force and effect provided by s. 236.29.

(f) Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, approve conditionally, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act.

(2) RECORDING. (a) Certified survey maps prepared in accordance with sub. (1) shall be numbered consecutively by the register of deeds and shall be recorded in a bound volume to be kept in the register of deeds' office, known as the "Certified Survey Maps of .... County".

(b) If the certified survey map is approved by a local unit of government, the register of deeds may not accept the certified survey map for record unless all of the following apply:

1. The certified survey map is offered for record within 6 months after the date of the last approval of the map and within 24 months after the first approval of the map.

2. The certified survey map shows on its face all of the certificates and affidavits required under sub. (1).

(3) USE IN CONVEYANCING. When a certified survey map has been recorded in accordance with this section, the parcels of land in the map shall be, for all purposes, including assessment, taxation, devise, descent and conveyance, as defined in s. 706.01 (4), described by reference to the number of the survey, lot or outlot number, the volume and page where recorded, and the name of the county.

History: 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96; 2001 a. 16.

Cross Reference: See also ch. Trans 233, Wis. adm. code.

Sub. (2) requires that certified survey maps be numbered consecutively without dependent reference to ownership, developer or surveyor. 61 Atty. Gen. 34.

Certified survey maps are corrected by recording corrected survey maps. 66 Atty. Gen. 90.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8) [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

SUBCHAPTER VII

SUPPLEMENTAL PROVISIONS

236.35 Sale of lands abutting on private way outside corporate limits of municipality. (1) No person shall sell any parcel of land of one acre or less in size, located outside the corporate limits of a municipality, if it abuts on a road which has not been accepted as a public road unless the seller informs the purchaser in writing of the fact that the road is not a public road and is not required to be maintained by the town or county.

(2) Any person violating this section may be fined not more than $200 or imprisoned not more than 30 days or both.

SUBCHAPTER VIII

VACATING AND ALTERING PLATS

236.36 Replats. Except as provided in s. 70.27 (1), replat of all or any part of a recorded subdivision, if it alters areas dedicated to the public, may not be made or recorded except after proper court action, in the county in which the subdivision is located, has been taken to vacate the original plat or the specific part thereof.

A recorded subdivision may be replatted under 236.36, without undertaking the court proceedings set forth in ss. 236.40, 236.41 and 236.42, if the replat complies with the requirements of ch. 236 applicable to original plats and does not alter areas dedicated to the public. 58 Atty. Gen. 145.

A replat of a recorded subdivision must comply with the formal platting requirements of ch. 236 relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

This section permits the replat of a part of a previously recorded subdivision plat, without circuit court action, if the only areas dedicated to the public in that portion of the original subdivision being replatted were discontinued streets fully and properly vacated under s. 66.296 [now s. 66.1003]. 63 Atty. Gen. 210.

The circumstances under which lots in a recorded subdivision may be legally divided without replatting are discussed. 64 Atty. Gen. 80.

Chapter 236 does not require a replat when the division of a lot or redivision of more than one lot does not meet the definition of a "subdivision" under this section. 67 Atty. Gen. 121.

236.40 Who may apply for vacation of plat. Any of the following may apply to the circuit court for the county in which a subdivision is located for the vacation or alteration of all or part of the recorded plat of that subdivision:

(1) The owner of the subdivision or of any lot in the subdivision.

(2) The county board if the county has acquired an interest in the subdivision or in any lot in the subdivision by tax deed.

236.41 How notice given. Notice of the application for the vacation or alteration of the plat shall be given at least 3 weeks before the application:

(1) By posting a written notice thereof in at least 2 of the most public places in the county; and

(2) By publication of a copy of the notice as a class 3 notice, under ch. 985; and

(3) By service of the notice in the manner required for service of a summons in the circuit court on the municipality or town in which the subdivision is located, and if it is located in a county having a population of 500,000 or over, on the county; and

(4) By mailing a copy of the notice to the owners of record of all the lots in the subdivision or the part of the subdivision proposed to be vacated or altered at their last–known address.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors plats under s. 70.27. Once properly filed and recorded an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessor's plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998).

236.42 Hearing and order. (1) After requiring proof that the notices required by s. 236.41 have been given and after hearing all interested parties, the court may in its discretion grant an order vacating or altering the plat or any part thereof except:

(a) The court shall not vacate any alleys immediately in the rear of lots fronting on county trunk highways without the prior approval of the county board or on state trunk highways without the prior approval of the department of transportation.

(b) The court shall not vacate any parts of the plat which have been dedicated to and accepted by the public for public use except as provided in s. 236.43.

(2) The vacation or alteration of a plat shall not affect:

(a) Any restriction under s. 236.293, unless the public body having the right to enforce the restriction has in writing released or waived such restriction.

(b) Any restrictive covenant applying to any of the platted land.

History: 1977 c. 29 s. 1654 (8) (c).

236.43 Vacation or alteration of areas dedicated to the public. Parts of a plat dedicated to and accepted by the public for public use may be vacated or altered as follows:

(1) The court may vacate streets, roads or other public ways on a plat if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) During all that period the areas dedicated for streets, roads or other public ways were not improved as streets, roads or other public ways; and

(c) Those areas are not necessary to reach other platted property; and

(d) All the owners of all the land in the plat or part thereof sought to be vacated and the governing body of the city, village or town in which the street, road or other public way is located have joined in the application for vacation.

(2) The court may vacate land platted as a public square upon the application of the municipality or town in which the dedicated land is located if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) The land was never in fact developed or utilized by the municipality or town as a public square.

(3) The court may vacate land, in a city, village or town, platted as a public park or playground upon the application of the local legislative body of such city, village or town where the land has never been developed or used by said city, village or town as a public park or playground.

(4) When the plat is being vacated or altered in any 2nd, 3rd or 4th class city or in any village or town which includes a street, road, alley or public walkway, said street, road, alley or public walkway may be vacated or altered by the circuit court proceeding under ss. 236.41 and 236.42 upon the following conditions:

(a) A resolution is passed by the governing body requesting such vacation or alteration.

(b) The owners of all frontage of the lots and lands abutting on the portion sought to be vacated or altered request in writing that such action be taken.

History: 1993 a. 246; 1997 a. 172.

Cross–reference: See s. 66.1003 for other provisions for vacating streets.

Although dedicated as a street, an improvement of land as another public way may meet the requirements of sub. (1) (b). A walkway cleared and improved to be conducive to pedestrian traffic is a public way improved in accordance with sub. (1) (b). Application of K.G.R. Partnership, 187 Wis. 2d 375, 523 N.W.2d 120 (Ct. App. 1994).

A municipality is not an owner under sub. (1) (d). Closser v. Town of Harding, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997).

Isolated improvements to provide for a scenic outlook were not improvements as a street, road, or public way under sub. (1). Closser v. Town of Harding, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997).

236.44 Recording order. The applicant for the vacation or alteration shall record in the office of the register of deeds the order vacating or altering the plat together with the plat showing the part vacated if only part of the plat is vacated or the altered plat if the plat is altered.

236.445 Discontinuance of streets by county board. Any county board may alter or discontinue any street, slip or alley in any recorded plat in any town in such county, not within any city or village, in the same manner and with like effect as provided in s. 66.1003.

History: 1999 a. 150 s. 672.

SUBCHAPTER IX

SUBDIVISION REGULATION AND REGIONAL PLANS

236.45 Local subdivision regulation. (1) DECLARATION OF LEGISLATIVE INTENT. The purpose of this section is to promote the public health, safety and general welfare of the community and the regulations authorized to be made are designed to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations provided for by this section shall be made with reasonable consideration, among other things, of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town or county.

(2) DELEGATION OF POWER. (a) To accomplish the purposes listed in sub. (1), any municipality, town or county which has established a planning agency may adopt ordinances governing the subdivision or other division of land which are more restrictive than the provisions of this chapter. Such ordinances may include provisions regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land into less than 5 parcels, and may prohibit the division of land in areas where such prohibition will carry out the purposes of this section. Such ordinances shall make applicable to such divisions all of the provisions of this chapter, or may provide other surveying, monumenting, mapping and approving requirements for such division. The governing body of the municipality, town, or county shall require that a plat of such division be recorded with the register of deeds and kept in a book provided for that purpose. "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter–quarter section, section, township, range, and county noted. When so recorded, the lots included in the plat shall be described by reference to "COUNTY

PLAT," "MUNICIPAL PLAT," or "TOWN PLAT," the name of the plat and the lot and block in the plat, for all purposes, including those of assessment, taxation, devise, descent, and conveyance as defined in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5 parcels, shall not apply to:

1. Transfers of interests in land by will or pursuant to court order;

2. Leases for a term not to exceed 10 years, mortgages or easements;

3. The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this chapter or other applicable laws or ordinances;

4. Such other divisions exempted by such ordinances.

(b) This section and any ordinance adopted pursuant thereto shall be liberally construed in favor of the municipality, town or county and shall not be deemed a limitation or repeal of any requirement or power granted or appearing in this chapter or elsewhere, relating to the subdivision of lands.

(3) AREAS IN WHICH SUBDIVISION ORDINANCES APPLY. An ordinance adopted hereunder by a municipality may regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the municipality as well as land within the corporate limits of the municipality if it has the right to approve or object to plats within that area under s. 236.10 (1) (b) 2. and (2).

(4) PROCEDURE. Before adoption of a subdivision ordinance or any amendments thereto the governing body shall receive the recommendation of its planning agency and shall hold a public hearing thereon. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance adopted shall be published in form suitable for public distribution.

(5) REGULATION OF FEDERAL SURPLUS LAND. With respect to any surplus lands in excess of 500 acres in area, except the Bong air base in Kenosha County, sold in this state by the federal government for private development, the department, in accordance with the procedure specified in ch. 227, may regulate the subdivision or other division of such federal surplus land in any of the ways and with the same powers authorized hereunder for municipalities, towns or counties. Before promulgating such rules, the department shall first receive the recommendations of any committee appointed for that purpose by the governor.

History: 1979 c. 221, 248, 355; 1981 c. 354; 1983 a. 189 s. 329 (26); 2001 a. 16.
Cross Reference: See also ch. Trans 233, Wis. adm. code.

This section authorizes towns to regulate minimum lot size. Town of Sun Prairie v. Storms, 110 Wis. 2d 58, 327 N.W.2d 642 (1983).

Assessment of school and park land dedication fees as a condition for rezoning and issuance of building permit was authorized. Black v. City of Waukesha, 125 Wis. 2d 254, 371 N.W.2d 389 (Ct. App. 1985).

This section does not prevent municipalities from adopting and enforcing more than one ordinance that relates to subdivisions. Manthe v. Town of Windsor, 204 Wis. 2d 546, 555 N.W.2d 156 (Ct. App. 1996).

A city may not condition extraterritorial plat approval on annexation. Hoepker v. City of Madison Plan Commission, 209 Wis. 2d 633, 563 N.W.2d 145 (1997).

It was not a violation of this section, s. 61.34, or the public purpose doctrine for a municipality to assume the dual role of subdivider of property it owned and reviewer of the plat under ch. 236. Town of Beloit v. Rock County, 2001 WI App 256, 249 Wis. 2d 88, 637 N.W.2d 71. Affirmed on other grounds. Town of Beloit v. County of Rock, 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344.

Chapter 236 authorizes a municipality to reject a preliminary plat under its extraterritorial jurisdictional authority based upon a subdivision ordinance that considers the plat's proposed use. Wood v. City of Madison, 2003 WI 24, 260 Wis. 2d 71, 659 N.W.2d 31.

A subdivision plat prepared in compliance with a local ordinance enacted under authority of s. 236.45 is not required by statutes to be submitted for state level review unless such land division results in a "subdivision" as defined in s. 236.02 (8) [now s. 236.02 (12)]. 59 Atty. Gen. 262.

If subdivision regulations, adopted under s. 236.45, conflict, a plat must comply with the most restrictive requirement. 61 Atty. Gen. 289.

Application of municipal and county subdivision control ordinances within the municipality's extraterritorial plat approval jurisdiction is discussed. 66 Atty. Gen. 103.

236.46 County plans. (1) (a) The county planning agency may prepare plans, in such units as it may determine, for the future platting of lands within the county, but without the limits of any municipality, or for the future location of streets or highways or parkways, and the extension or widening of existing streets and highways. Before completion of these plans, the county planning agency shall fix the time and place it will hear all persons who desire to be heard upon the proposed plans, and shall give notice of that hearing as required below for the passage of the ordinance by the county board. After these hearings the county planning agency shall certify the plans to the county board, who may, after having submitted the same to the town boards of the several towns in which the lands are located and obtained the approval of the town boards, adopt by ordinance the proposed plans for future platting or for street or highway or parkway location in towns which may have approved the same, and upon approval of those towns may amend the ordinance. Before the ordinance or any amendments to the ordinance are adopted by the county board, notice shall be given by publication of a class 2 notice, under ch. 985, of a hearing at which all persons interested shall be given an opportunity to be heard at a time and place to be specified in the notice. The ordinance with any amendments as may be made shall govern the platting of all lands within the area to which it applies.

(b) In counties having a population of less than 500,000 any plan adopted under this section does not apply in the extraterritorial plat approval jurisdiction of any municipality unless that municipality by ordinance approves the same. This approval may be rescinded by ordinance.

(2) A plan adopted under this section may be any of the following:

(a) A system of arterial thoroughfares complete for each town.

(b) A system of minor streets for the complete area surrounded by any such main arterial thoroughfares and connecting therewith.

(c) The platting of lots for any area surrounded completely by any such arterial thoroughfares or any such minor streets or both.

(3) Such system of arterial thoroughfares and such system of minor streets within such system of arterial thoroughfares and such platting of lots within any such system of minor streets may be adopted by the same proceeding. For the purpose of this section a parkway may be considered either an arterial thoroughfare or a minor street if it performs the function of an arterial thoroughfare or minor street. A natural obstacle like a lake or river or an artificial obstacle like a railroad or town line may, where necessary, be the boundary of a plan adopted under this section instead of a street or highway or parkway.

History: 1979 c. 248.

SUBCHAPTER X

GENERAL PROVISIONS

236.50 Date chapter applies; curative provisions as to plats before that date. (1) (a) This chapter shall take effect upon July 1, 1956, but any plat recorded prior to December 31, 1956, may be approved and recorded in accordance with this chapter or ch. 236, 1953 stats. This chapter shall not require that any subdivision made prior to July 1, 1956, which was platted under the laws in force at that time or which did not constitute a subdivision under the laws in force at that time, be platted and the plat approved and recorded as provided in this chapter.

(b) This chapter shall not require the preparation and recording of a plat of any subdivision which has been staked out and in which sales or contracts of sales have actually been made prior to June 28, 1935, and nothing herein contained shall require the recording of a plat showing property sold or contracted for sale by metes and bounds or by reference to an unrecorded plat prior to June 28, 1935, as a condition precedent to the sale or contract of sale of the whole or part thereof.

(2) No plat which was recorded in the office of any register of deeds prior to July 1, 1956, shall be held invalid by reason of noncompliance with any statute regulating the platting of lands, in force at the time of such recording. Any unaccepted offer of donation or dedication of land attempted to be made in any such plat

shall be as effectual as though all statutory requirements had been complied with unless an action to set aside such offer of donation or dedication is commenced prior to July 1, 1958.

Chapter Trans 233
DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAYOR CONNECTING HIGHWAY

(Option B – Less Restrictive)

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.~~

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~~